

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

P2022-07

April 12, 2022

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

AUTHORITY: §1, NRS 459.3818.

A PERMANENT REGULATION relating to the Chemical Accident Prevention Program and providing other matters properly relating thereto.

Section 1. NAC 459.95333 is hereby amended to read as follows:

NAC 459.95333 If a facility with a process that is subject to C.A.P.P. changes ownership, the new owner or operator shall assume responsibility for full compliance with the requirements of NRS 459.380 to 459.3874, inclusive, and any regulations adopted pursuant thereto and:

1. If the annual registration required pursuant to NAC 459.95348 is not due, satisfy the requirements for registration set forth in NAC 459.95337 and 459.9535 *and pay a fee of \$1,000*, not later than 14 days after the transfer of ownership; or

2. If the annual registration required pursuant to NAC 459.95348 is due, submit the annual registration.

Sec. 2. NAC 459.95334 is hereby amended to read as follows:

459.95334 1. Except as otherwise provided in NAC 459.953345 and 459.95335, the owner or operator of a facility that contains one or more processes and does not have an explosive manufacturing operation shall pay the fee required by subsections 1 and 2 of NRS 459.3824 before July 31 of each year.

2. The amount of this annual fee for each facility will equal the sum of:

(a) A base fee that is established pursuant to subsection ~~[4]5~~; and

(b) A graduated fee that is established pursuant to subsection ~~[5.]6.~~

3. For the fiscal year beginning on July 1, 2024, and for each fiscal year thereafter, the Director shall increase each fee required by subsections 4, 5, and 6 by an amount that is equal to 2 percent of the fee for the immediately preceding fiscal year.

↪ The Director may, during any fiscal year, suspend an increase in a rate or fee specified in this subsection.

~~[3.]4.~~ The total annual fee required by this section must not exceed ~~[\$35,000]~~ *\$55,000* for a facility.

~~[4.]5.~~ The amount of the annual base fee that is authorized pursuant to subsection 1 of NRS 459.3824 is ~~[\$5,600]~~ *\$8,500*.

~~[5.]6.~~ The amount of the annual graduated fee that is authorized pursuant to subsection 2 of NRS 459.3824 is ~~[\$39]~~ *\$59* per unit of highly hazardous substance at a facility. A unit of highly hazardous substance is equal to the total amount of the highly hazardous substance present at a facility, divided by the corresponding threshold quantity set forth in subsection 1 of NAC 459.9533 for that highly hazardous substance.

Sec. 3. NAC 459.953345 is hereby amended to read as follows:

459.953345 1. Except as otherwise provided in NAC 459.95335, an owner or operator of a facility that has an explosives manufacturing operation shall pay to the Division an annual fee before July 31, as prescribed in this section.

2. If the explosives manufacturing operation includes only the combining of ammonium nitrate and fuel oil mixture, the owner or operator of the facility of which the operation is a part shall pay to the Division an annual *base* fee of ~~[\$5,600.]~~ *\$8,500 in addition to a per unit fee of \$59 per unit*

of explosives. A unit of explosives is equal to the total amount of explosives present at a facility, divided by 10,000 pounds.

3. If the explosives manufacturing operation includes any other type of explosives manufacturing, the owner or operator of the facility of which the operation is a part shall pay to the Division an annual *base* fee of ~~[\$13,500.]~~ *\$21,000 in addition to a per unit fee of \$59 per unit of explosives. A unit of explosives is equal to the total amount of explosives present at a facility, divided by 10,000 pounds.*

4. If a facility that has an explosives manufacturing operation also has a highly hazardous substance in a process in excess of the threshold quantity set forth for that highly hazardous substance in subsection 1 of [NAC 459.9533](#), the owner or operator of the facility shall pay, in addition to the fees set forth in this section, the graduated fee set forth in subsection ~~[5]6~~ of [NAC 459.95334](#) and is exempt from the base fee set forth in subsection ~~[4]5~~ of [NAC 459.95334](#).

5. For the fiscal year beginning on July 1, 2024, and for each fiscal year thereafter, the Director shall increase each fee required by subsections 2 and 3 by an amount that is equal to 2 percent of the fee for the immediately preceding fiscal year.

↪ The Director may, during any fiscal year, suspend an increase in a rate or fee specified in this subsection.

~~[5.]6.~~ The total annual fee required by this section must not exceed ~~[\$35,000]~~ *\$55,000* at any facility.

Sec. 4. NAC 459.95344 is hereby amended to read as follows:

459.95344 A governmental entity or agency of the State that is required by subsection 1 of [NRS 459.382](#) to submit a report to the Division shall do so, upon request, within 10 working days after

a determination is made or an action is taken related to hazards involving highly hazardous substances or explosives at a facility. The report must be submitted on the following form:

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
CHEMICAL ACCIDENT PREVENTION PROGRAM
GOVERNMENTAL AGENCY REPORTING FORM

A facility which produces, uses, stores or handles a highly hazardous substance or manufactures an explosive for sale in a process subject to [NAC 459.95323](#) is subject to the provisions of [NRS 459.380](#) to [459.3874](#), inclusive. Pursuant to [NRS 459.382](#), governmental entities or agencies of the State are required to complete the following information whenever a determination is made or an action is taken related to hazards involving highly hazardous substances or explosives at a facility. Please complete this form and return it to the Nevada Division of Environmental Protection, ~~[333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851]~~ ***901 S. Stewart Street, Suite 4001, Carson City, NV 89701.***

1. Facility Name.....

2. Facility Location.....

.....

3. Highly Hazardous Substances or Explosives Present at the Facility

Substance	Estimated Quantity (lbs.)
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4. Describe any specific hazards related to highly hazardous substances or explosives which were noticed by regulatory or inspection staff at the facility.....
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5. Describe any action your agency has taken at this facility related to highly hazardous substances or explosives. Include orders, notices, penalties, etc.
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6. List statutes, regulations, standards or codes related to or controlling actions taken by your agency
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7. Agency contact: Phone:

8. Authorized signature: Date:

Attach additional sheets if required.

Sec. 5. NAC 459.953475 is hereby amended to read as follows:

459.953475 1. An owner or operator of a new process shall remit fees to the Division for activities conducted by the Division relating to permitting activities conducted pursuant to NAC 459.95345 to 459.953473, inclusive.

2. Upon the determination by the Division that an application for a permit to construct a new process is complete, the owner or operator shall remit ~~[\$5,000]~~ **\$7,600** to the Division. The Division shall issue invoices to the owner or operator for any costs in excess of **\$7,600.** ~~[\$5,000,~~
~~except that:~~

~~(a) If the new process has 5 or less piping and instrument diagrams, not including drawing legend sheets and utility piping and instrument diagrams, invoices may not be issued for more than a cumulative amount of \$40,000;~~

~~(b) If the new process has at least 6 but not more than 20 piping and instrument diagrams, not including drawing legend sheets and utility piping and instrument diagrams, invoices may not be issued for more than a cumulative amount of \$50,000; or~~

~~(c) If the new process has more than 20 piping and instrument diagrams, not including drawing legend sheets and utility piping and instrument diagrams, invoices may not be issued for more than a cumulative amount of \$50,000, plus \$500 for each piping and instrument diagram in excess of 20 diagrams.]~~

3. The Division shall accrue charges for activities relating to the permitting of the new process conducted by:

(a) Personnel of the Division in the amount of ~~[\$68]~~ **\$103** per hour; and

(b) Contractors in an amount equal to the cost to the Division, plus 5 percent.

~~[4. The Division shall not require the owner or operator to pay more than the maximum cumulative amount for the respective new process as set forth in subsection 2, except that fees related to:~~

~~(a) The review of the concrete foundations or structural steel design; and~~

~~(b) Reviewing corrections,~~

~~→ must not be considered when determining the maximum fee owed by the owner or operator.]~~

4. For the fiscal year beginning on July 1, 2024, and for each fiscal year thereafter, the Director shall increase each fee required by subsections 2 and 3 by an amount that is equal to 2 percent of the fee for the immediately preceding fiscal year.

↪ *The Director may, during any fiscal year, suspend an increase in a rate or fee specified in this subsection.*

5. After issuing a permit to operate to an owner or operator, the Division shall refund any excess fee paid to the Division by the owner or operator pursuant to this section.

6. The owner or operator may request in writing that the Division cease work on evaluating the application for a permit to construct, or evaluating whether the owner or operator has satisfied the requirements for the issuance of a permit to operate, at any time before the permit is issued. Upon receipt of such a request, the Division shall stop its evaluation and:

(a) Issue an invoice to the owner or operator for any outstanding money due pursuant to this section, including any money committed to any engineering contractor for review services; or

(b) Refund any excess fee paid to the Division by the owner or operator pursuant to this section, ↪ as appropriate.

Sec. 6. NAC 459.95521 is hereby amended to read as follows:

459.95521 1. The Division may investigate an accident occurring in connection with a process that involves one or more highly hazardous substances or explosives at a facility which results in an uncontrolled emission, fire or explosion and which presents or presented an imminent and substantial danger to the health of the employees of the facility, the public health or the environment, to determine the cause of the accident if the owner or operator of the facility:

(a) Is unwilling to commence and has not commenced an investigation of the accident in a timely manner; or

(b) Is not capable of conducting an investigation and has not retained persons who have expertise to conduct an investigation of the accident.

2. Except as otherwise provided in subsection 3, before the Division commences an investigation of an accident, the Division must provide written notice to the owner or operator:

- (a) Defining the scope of the investigation;
- (b) Citing the Division's authority and the reasons pursuant to subsection 1 for conducting the investigation;
- (c) Providing an explanation of how the Division's costs will be recovered; and
- (d) Informing the owner or operator that if the owner or operator fails to commence an investigation of the accident within 24 hours after receiving the written notice, the Division will commence its investigation of the accident and begin accruing costs.

3. The provisions of subsection 2 do not preclude the Division from commencing its investigation immediately if the Division determines that time is of the essence in gathering data.

4. The decision by the Division to conduct an investigation pursuant to this section does not relieve the owner or operator of the obligation to investigate pursuant to [NAC 459.95429](#).

5. Except as otherwise provided in subsection 6, the Division shall accrue costs for the investigation and invoice the owner or operator the following amounts:

- (a) For activities conducted by personnel of the Division, the amount of ~~[\$68]~~ **\$103** per hour;
- (b) For activities conducted by contractors, an amount equal to the cost to the Division; and
- (c) Such other amounts as are necessary for the Division to recover all costs incurred by the Division in conducting the investigation.

6. In no event may the total amount invoiced by the Division pursuant to subsection 5 for an investigation exceed the total costs incurred by the Division in conducting the investigation.

7. For the fiscal year beginning on July 1, 2024, and for each fiscal year thereafter, the Director shall increase each fee required by subsection 5 by an amount that is equal to 2 percent of the fee for the immediately preceding fiscal year.

↳ The Director may, during any fiscal year, suspend an increase in a rate or fee specified in this subsection.

~~[7.]~~8. An investigation conducted by the Division pursuant to this section shall be deemed complete when, to the satisfaction of the Division:

- (a) The direct cause of the accident and each contributing cause or potential cause of the accident has been identified;
- (b) Each root cause of the accident, or each potential root cause, has been identified;
- (c) The remedial steps to prevent recurrence of the accident have been identified; and
- (d) The remedial steps so identified have been implemented.

~~[8.]~~9. As used in this section:

- (a) “Direct cause of the accident” means the condition or event that resulted in the accident.
- (b) “Expertise to conduct an investigation” means having technical or operational knowledge plus knowledge of investigative techniques to make a determination of the direct, contributing and root causes of an accident.
- (c) “In a timely manner” means to start the investigation process with a formally defined investigation team within 48 hours after the accident.
- (d) “Is not capable of conducting an investigation” means that the owner or operator does not have the expertise to conduct an investigation within the group of employees and contractors of the owner or operator.

(e) “Root cause of the accident” means a condition or event that, if corrected, would prevent recurrence of the accident.

Sec. 7. NAC 459.95523 is hereby amended to read as follows:

459.95523 1. The Division shall, in accordance with this section and [NRS 459.3822](#), protect the confidentiality of any information that is obtained pursuant to C.A.P.P., including any information obtained through an observation made by the Division during a visit to a facility.

2. To protect the confidentiality of information, the owner or operator of the facility must request such protection in writing, indicating which information is to be protected and stating how the conditions in [NRS 459.3822](#) are satisfied.

3. An owner or operator who submits information under a claim of confidentiality shall pay the fee of \$1,000 per request for the information to be treated confidentially pursuant to this section and NRS 459.3822.

~~[3.]~~4. A request for, and the granting of, the protection of the confidentiality of information made pursuant to this section does not constitute a request for, or the granting of, an extension of any deadlines for reporting required pursuant to C.A.P.P., and the pending status of such a request does not prohibit access to the information or facility by the Division.

~~[4.]~~5. In addition to providing the confidential information to the Division, the owner or operator of the facility for which protection of the confidentiality of information is obtained pursuant to this section shall, upon the request of the Division, provide a redacted version of any submitted information that is intended for public review which substitutes the term “CBI” or provides generic information for the information deemed confidential.

Sec. 8. NAC 459.95526 is hereby amended to read as follows:

459.95526 1. The provisions of this section apply only during periods when federal authority is delegated to the Division pursuant to Subpart E of 40 C.F.R. Part 63.

2. Upon receiving delegation of federal authority pursuant to Subpart E of 40 C.F.R. Part 63, the Division shall administer and enforce the provisions of 40 C.F.R. §§ 68.3 to 68.215, inclusive, and Appendix A of 40 C.F.R. Part 68, which are hereby adopted by reference.

3. A copy of the volume that contains 40 C.F.R. §§ 68.3 to 68.215, inclusive, or Appendix A of 40 C.F.R. Part 68 can be obtained by mail from the Superintendent of Documents, U.S. Government Printing Office, ~~[P.O. Box 979050, St. Louis, Missouri 63197-9000]~~ **732 North Capitol Street, NW Washington, D.C. 20401**, or by toll-free telephone at (866) 512-1800, at a cost of \$29. These sections are also available, free of charge, from the Government Printing Office at the Internet address **<http://www.gpoaccess.gov>**.

Sec. 9. NAC 459.95528 is hereby amended to read as follows:

459.95528 The following provisions are hereby adopted by reference:

1. Codes 211112, 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311 and 32532 of the 2002 version of the N.A.I.C.S. A copy of the N.A.I.C.S. may be obtained from the National Technical Information Service, ~~[5285 Port Royal Road, Springfield, Virginia 22161]~~ **5301 Shawnee Road, Alexandria, VA 22312**, at a cost of \$49.

2. *N.F.P.A. 704: Standard System for the Identification of the Hazards of Materials for Emergency Response*, 2001 edition. A copy may be obtained from the National Fire Protection Association, 1 Batterymarch Park, ~~[P.O. Box 9101,]~~ Quincy, Massachusetts, ~~[02269-9101]~~ **USA 02169-7471**, at a cost of \$28.75.

3. *N.F.P.A. 30: Flammable and Combustible Liquids Code*, 2003 edition. A copy may be obtained from the National Fire Protection Association, 1 Batterymarch Park, ~~[P.O. Box 9101,]~~ Quincy, Massachusetts, ~~[02269-9101]~~ **USA 02169-7471**, at a cost of \$38.25.

4. ERPG-2 of the *Emergency Response Planning Guidelines Series*. A copy of ERPG-2 may be obtained from the American Industrial Hygiene Association, ~~[2700 Prosperity Avenue, Suite 250, Fairfax, Virginia 22031]~~ **3141 Fairview Park Drive, Suite 777, Falls Church, Virginia 22042**, at a cost of \$15.

5. *R.M.P. Guidance for Off-Site Consequence Analysis*. A copy may be obtained free of charge from the United States Environmental Protection Agency, National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, Ohio 45242-2419.

6. *N.F.P.A. 70*, the 2002 version of the *National Electrical Code*. A copy may be obtained from the National Fire Protection Association, 1 Batterymarch Park, ~~[P.O. Box 9101,]~~ Quincy, Massachusetts, ~~[02269-9101]~~ **USA 02169-7471**, at a cost of \$65.

7. 49 C.F.R. § 172.101. A copy of the volume that contains 49 C.F.R. § 172.101 may be obtained by mail from the Superintendent of Documents, U.S. Government Printing Office, ~~[P.O. Box 979050, St. Louis, Missouri 63197-9000]~~ **732 North Capitol Street, NW Washington, D.C. 20401**, or by toll-free telephone at (866) 512-1800, at a cost of \$49. That section is also available, free of charge, from the Government Printing Office at the Internet address **<http://www.gpoaccess.gov>**.

8. *ASME B31.3 - 1999 Process Piping with Addenda*. A copy of this standard may be obtained from the American Society of Mechanical Engineers, ~~[P.O. Box 2300, Fairfield, New Jersey 07007-2300]~~ **Two Park Avenue, New York, New York 10016-5990**, at a cost of \$255.

9. *ASME B31.5 - 2001 Refrigeration Piping and Heat Transfer Components*. A copy of this standard may be obtained from the American Society of Mechanical Engineers, [~~P.O. Box 2300, Fairfield, New Jersey 07007-2300~~] *Two Park Avenue, New York, New York 10016-5990*, at a cost of \$105.