

**Nevada State Emergency Response Commission (SERC)
Policy Committee Meeting**

**Wednesday March 17th, 2021
9:00am**

COMMITTEE MEMBERS PRESENT

Richard Brenner
Susan Crowley
Matthew Griego
Jon Bakkedahl
Christina Wilson, SERC Coordinator
Brandi Salisbury, SERC Administrator

COMMITTEE MEMBERS ABSENT

Dennis Nolan
Lance Chantler

OTHERS PRESENT

Nathan Hastings, Senior Deputy Attorney General

1. CALL TO ORDER (Non-action Item)

Christina Wilson called the meeting to order.

2. ROLL, CONFIRM QUORUM AND INTRODUCTIONS (Non-action Item)

Christina Wilson called roll and a quorum was confirmed.

Matt Griego indicated that Chief Snyder was in attendance.

Christina Wilson also indicated that Nathan Hastings was in attendance.

3. PUBLIC COMMENT (NON-ACTION ITEM)

There were no public comments.

4. APPROVAL OF May 17, 2018 MEETING- (DISCUSSION/FOR POSSIBLE ACTION)

Jon Bakkedahl made a motion to approve the minutes from the May 17, 2021 meeting. Matt Griego seconded the motion. The motion unanimously carried.

5. REVIEW DISTRICT POLICY FOR OVERTIME AND BACKFILL COSTS FOR REIMBURSEMENT OF HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANT (For Discussion/For Possible Action)

Susan Crowley asked if this item was intended to be established as policy or if it was just for review.

Richard Brenner indicated that this was intended to be established as a policy. Brandi Salisbury indicated that recent guidance now allows for HMEP to do backfill, overtime, and stipends, but a policy needs to be put in place and approved by PHMSA prior to moving forward.

Richard Brenner explained that he and Brandi Salisbury had worked together to draft a policy, which was originated January 1, 2021. Mr. Brenner indicated that the subject matter has been identified in the draft along with policy number 8.16. In addition, principle use is identified. Mr. Brenner reminded the Committee that this is a PHMSA grant as well as an HMEP grant, which was designed for planning and training and transportation of hazardous materials with funding coming from the transporters of hazardous materials.

Susan Crowley indicated that the defining of and accounting for overtime is already in place as part of the business of running the state.

Richard Brenner explained that he had looked at the policies of other states, one of which was Illinois, for dealing with grant dollars and overtime and fashioned this draft based on Illinois' policy.

Richard Brenner went over Policy Letter A, which can be used for training activities and exercises. Mr. Brenner then asked for questions regarding the additional Paragraphs in the proposed policy.

Jon Bakkedahl pointed out that in Paragraph D, for statewide deployable teams, the course must be listed as part of the team curriculum requirements also on file with DEM and indicated that he was not sure that requirement was being met.

Richard Brenner suggested changing the language to indicate that the course should be listed rather than must be listed.

Jon Bakkedahl indicated that this would be an appropriate change.

Matthew Griego asked if the requirements would be fulfilled if going through fire training through a different entity, such as Alabama State Fire College or TEEEX.

Richard Brenner indicated his belief that they would.

Matthew Griego asked for confirmation that in item F, upon application, an estimate would need to be made and then upon completion, would need to be closed out and followed up with actual time sheets.

Richard Brenner confirmed that this was correct.

Brandi Salisbury confirmed that the hours, even an estimate of the hours, would need to be submitted to PHMSA for approval for back time, overtime, or stipend.

Richard Brenner indicated that for Item G, PHMSA limits the stipend not to exceed 20 percent.

Jon Bakkedahl asked if there was a timeframe under which recordkeeping was expected to maintain the records.

Christina Wilson responded that any type of documentation with a grant should be kept for up to three years after the end of the grant period and suggested checking with HMEP to see if the retention period was going to change.

Jon Bakkedahl suggested documenting the timeframe for people's awareness.

Richard Brenner indicated that for reimbursement limitations, examples are available.

Brandi Salisbury indicated that she would upload those examples to the website once the policy was approved.

Susan Crowley moved to approve the policy with the suggested edits. Jon Bakkedahl seconded the motion. The motion was unanimously carried.

6. REVIEW OF THE FOLLOWING SERC POLICIES (For Discussion/For Possible Action)

SERC POLICY 8.2a -- License Plate Funding Grant Applications and Awards

Brandi Salisbury indicated some changes. Under 1a, all training requests, Ms. Salisbury informed the Committee that SERC requests declination letters and as such, indicated the need to change the wording to "shall be included." Ms. Salisbury further indicated that SERC requests three quotes for equipment and suggested changing the wording to include that requirement of three quotes.

Susan Crowley raised the concern of LEPCs not always being able to obtain three quotes for equipment and suggested changing the wording to show that three quotes must be attempted to be obtained.

Nathan Hastings indicated that if the practice is for the LEPCs to show attempt at three quotes and not necessarily obtain all three quotes, from a legal standpoint, the wording in the policy must indicate that.

Jon Bakkedahl suggested wording along the lines of "services must attempt to include three competitive bids," citing the existing wording clearly states that a detailed explanation of the attempts must be provided in order to comply with the policy. In addition, Mr. Bakkedahl raised the issue of sole sourcing and indicated that the explanation for this is already in the wording of the policy.

Brandi Salisbury pointed out that in sections B through C, the United We Stand Grant application must address one or more of the Nevada Commissions of Homeland Security and indicated that the priorities have since changed, and as a result wondered if the verbiage was still accurate. Ms. Salisbury further questioned the accuracy of the verbiage used in the procedures section, citing the words "Homeland Security Strategies."

Jon Bakkedahl indicated that current terminology is "strategic capacities."

Brandi Salisbury suggested changing the wording to "Homeland Security Strategic Capabilities." Ms. Salisbury further indicated her confusion as to the inclusion of item number 1 under procedures.

Christina Wilson indicated that the CFTA for federal grants is not listed for grant award going out to subcommittees; it is only used internally.

Jon Bakkedahl suggested removing the verbiage.

Richard Brenner suggested removing the entire paragraph.

The Committee members concurred with this suggestion.

Brandi Salisbury summarized the proposed changes: Policy A-1a, change the words from may to shall be included in the SERC grant application; in item C, the existing sentence regarding furnishing a quote will be left and a sentence will be added requiring the attempts for three quotes; in procedures in Section A, the wording as outlined in Homeland security Strategic Capabilities, including without limitation will be added; section I would be deleted.

Susan Crowley moved to recommend the changes to the full SERC. Matt Griego seconded the motion. The motion was unanimously carried.

SERC POLICY 8.5 -- Funding of Grants

Brandi Salisbury indicated two changes required for this policy: item 2b, the link to the state administrative manual is wrong and needs to be corrected to the correct link; in Section I, Ms. Salisbury wondered as to the reason for receipts being required for all expenses except meals, including but not limited to lodging.

Susan Crowley asked if there are standard rates approved/authorized by the state that could be used as part of the grant application where receipts would not need to be provided.

Brandi Salisbury indicated that even with mileage, SERC requires a MapQuest of the route to determine mileage is correct with reimbursement. As such, Ms. Salisbury indicated that this would not be needed in the policy.

Both Richard Brenner and Susan Crowley concurred with Brandi Salisbury's recommendation to change this in the policy, indicating that this likely was a holdover from when the Committee first began.

Susan Crowley moved to recommend the changes to the full SERC. Jon Bakkedahl seconded the motion. The motion was unanimously carried.

SERC POLICY 8.14 -- Information Requests

Christina Wilson informed the Committee that this policy was put into effect in 2009 and states that companies need to follow the 42USC-116 emergency planning, SARA, also known as FCRA. Ms. Wilson explained that this policy states that any person can request information pertaining to Tier II information in the state of Nevada as long as they provide a specific address. Ms. Wilson further explained that requests will be considered on a case-by-case basis to assess interest and justification of the information. Ms. Wilson further explained that nothing has changed in the policy but suggested updating the policy with the new public information request link.

Brandi Salisbury added that the policy currently states that all requests for FCRA information must be provided in writing, and informed the Committee that this needs to be removed as the form is no longer used.

Susan Crowley indicated that the verbiage "it is acceptable to ask for identification," has been struck out of the policy and questioned how SERC could provide information back to an applicant without knowing who the applicant is.

Christina Wilson explained that the information needs to be requested through the DPS public request website link where it is processed through a database assigned to SERC. SERC can therefore obtain the user information via that database. Ms. Wilson explained that the outdated version from 2009 includes the section being struck and with the updated version, users will need to provide information through the public request link for SERC to provide information back.

Susan Crowley asked for confirmation that the section being struck does not need to be included in SERC procedure or policy.

Nathan Hastings informed the Committee that there is nothing in the law that allows an agency to require a member of the public to use a particular request site like gov QA. Public bodies have the right to ask that requests be made through different systems than the one used by DPS. Thus, Mr. Hastings indicated that there is no legal way for SERC to require someone to use a particular system to make a request.

Susan Crowley indicated the importance of getting identification information given that public requests regarding hazardous materials is sensitive and SERC wants to confirm that the information is going to someone with a true interest rather than fishing for business or intending to use the information for an illegal act.

Brandi Salisbury clarified her suggestion to remove the first sentence and to include the link for public information; Ms. Salisbury indicated the part regarding identification did not need to be stricken.

Nathan Hastings indicated that public bodies have limited discretion to make determinations about what members of the public can access public records. With regards to hazardous materials data points, Mr. Hastings indicated that there will likely be a statute stating certain matters are confidential or if there is no statute under case law, the law states that SERC will need to engage in a balancing analysis to decide if the agency's duty in protecting the public in not releasing a particular record outweighs the public's interest in obtaining that record. Mr. Hastings further indicated there has never been a Nevada Supreme Court case that has ever upheld refusal of a record based on the balancing analysis.

Matt Griego suggested that Ms. Wilson strike what is in parentheses and add that information must be requested in writing or through the online request form.

Susan Crowley indicated that the request could be verbal.

Brandi Salisbury indicated that her proposed changes would require requests to come in either in writing or through the public information link.

Richard Brenner suggested taking Mr. Griego's suggestion to remove the parentheses example and to have the policy state that requests need to be submitted in writing or to the website with the website link included in that section.

Nathan Hastings indicated that public records law states that any public body or agency must be open during certain hours and have its records open and available for inspection by members of the public. Mr. Hastings indicated that he needs to research to see if there is a separate provision that allows for the policy to include the piece on requesting records in writing as generally the law states that nothing can be put in the written policy that is more stringent to the public than what the statute requires.

Brandi Salisbury questioned how this would work, given that it is FCRA and is a database system.

Christina Wilson explained that if someone arrived in the SERC office and requested to see information, the SERC members could log into the database and allow the member of the public to view it. Ms. Wilson also indicated that this has never before happened. Ms. Wilson further explained that the information could be viewed but not removed from the office given its confidentiality.

Nathan Hastings indicated that if the information is confidential, the public cannot view it at all if there is a statute in place that says that. Mr. Hastings discussed NRS 239.0107, which indicates that the person requesting the public record can request either orally or in writing and must inspect or receive the copy requested within five business days of the submission of the request. Thus, Mr. Hastings explained that because the statute says that an oral request can trigger a five-day rule, the policy cannot include the more stringent requirement of the request being in writing. Mr. Hastings therefore suggested that the wording can state that SERC requests that public records requests be in writing to streamline the process, but cannot require that the request be exclusively in writing.

Matt Griego asked if the wording could state that all requests for information must be made in accordance with NRS 239.

Nathan Hastings indicated that would be fine.

Susan Crowley expressed concern that the reference to the NRS would not negate the ability to perform the balance by SERC.

Nathan Hastings explained that the balancing only needs to be done if a request to access to a record is going to be denied and there is not a statute that specifically mandates that denial of the record. Mr. Hastings further informed the Committee that anytime a record is going to be denied and there is no statute, he would be

looped in to go over the request in detail and develop the language for the response. Mr. Hastings informed the Committee that this has never happened with SERC.

Jon Bakkedahl pointed that the only Committee/Commission DEM has that is exempt from open-meeting law and having to give out information is the Homeland Security Cybersecurity subcommittee, and that this is in statute. Mr. Bakkedahl further indicated that for requests from other Committees/Commissions, DEM asks immediately for an extension as there are multiple places from which that information needs to be garnered and this gathering of information can take weeks to months. Mr. Bakkedahl next indicated that once all the information is collected, DEM works with their DAG to ensure that they are meeting the legal request and not violating any of the state's protective measures. Mr. Bakkedahl explained that the only other caveat DEM has is when plans are submitted, the statute states that those plans are not releasable, even back to the entity.

Nathan Hastings asked the Committee if there are any Boards or Commissions or public bodies affiliated with DEM without a command staff, indicating that for these types of bodies, the decision to produce something is not able to be done with quick turnaround, even with DAG assistance.

Jon Bakkedahl indicated that every one of DEM's committees and commissions has an administrator that works for DEM, and follows the same structure and process as SERC follows, with the exception of cybersecurity.

Nathan Hastings indicated that the only connection SERC has with DPS and the fire marshal is purely administrative; there is no substantive authority for DPS and the fire marshal to make decisions about SERC's records.

Jon Bakkedahl indicated his belief that this should be a discussion between Mr. Hastings and Samantha (no last name given) to determine legally where the DAG's authority lies.

Nathan Hastings asked if SERC falls under 477.

Christina Wilson indicated that SERC falls under 459 and clarified that the Committee is not looking to change the balancing of what information is released, but rather looking to change the first line indicating that the information requests would be from the form attached to the website.

Nathan Hastings explained his understanding that the discussion has gone beyond the proposed change and indicated the importance and value of being prepared should a request come in for which there is not a statute or policy in place.

Matt Griego suggested striking everything in the parentheses and changing the first line to state that requests shall be made in accordance with NRS 239 and that SERC staff may ask for the request to be in writing or through the online form to ensure the accuracy of the information given, thus not requiring the request to be in writing or through the website, but suggesting that SERC staff may make that request to provide more accurate information.

Christina Wilson asked Mr. Griego to send the verbiage to her in writing as his mic was cutting out and she wanted to be sure not to miss any of his suggested verbiage.

Susan Crowley suggested that the Mr. Griego's suggested verbiage would meet today's specific needs but indicated that this discussion should be a broader discussion within the full SERC to determine the best course of action and the best people to do the balancing, if needed. Nathan Hastings concurred with Ms. Crowley's suggestion, indicating that determining how SERC may want to deny things in the future, should that happen, is a valid and important discussion that should take place.

Matt Griego made a recommendation for staff to make the discussed changes to policy 8.14 and forward to the full SERC for discussion and review. Susan Crowley seconded the motion. The motion was unanimously carried.

7. REVIEW AND SCHEDULING OF NEXT POLICY MEETING FOR 2022 (Discussion/For Possible Action)

Richard Brenner informed the Committee that he would like to put the next policy meeting on the calendar for Wednesday, March 2, 2022, explaining that this is not an ironclad date on which the meeting must be held, but is important to have for scheduling purposes.

8. PUBLIC COMMENT (Non-Action Item)

There was no public comment.

8. ADJOURNMENT (Discussion/For Possible Action)

Jon Bakkedahl made the motion to adjourn. Susan Crowley seconded the motion. The motion unanimously carried.