

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

LCB File No. R204-05

Effective February 23, 2006

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

AUTHORITY: §§1 and 2, NRS 706.171 and 706.173.

A REGULATION relating to motor carriers; revising provisions governing the adoption by reference and enforcement of federal regulations for motor carrier safety; and providing other matters properly relating thereto.

Section 1. NAC 706.247 is hereby amended to read as follows:

706.247 1. The Department, the Department of Public Safety and the Transportation Services Authority hereby adopt by reference the regulations contained in 49 C.F.R. Parts 40, 382, 383, 385, 387, 390 to 393, inclusive, 395, 396 and 397, and Appendices B and G of 49 C.F.R. Chapter III, Subchapter B, as those regulations existed on October 1, ~~[2003.]~~ 2005, with the following exceptions:

(a) References to the Department of Transportation and the Federal Motor Carrier Safety Administration are amended to refer to the Department and the Transportation Services Authority.

(b) References to the Administrator of the Federal Motor Carrier Safety Administration and to the Director are amended to refer to the Director of the Department and the Chairman.

(c) Section 391.11(b)(l) applies only to drivers of commercial motor vehicles who:

- (1) Operate in interstate transportation;
- (2) Transport passengers intrastate; or

(3) Transport hazardous material of a type or quantity that requires the vehicle to be marked or placarded in accordance with 49 C.F.R. §§ 172.300 and 172.500.

(d) References to special agents in Appendix B of 49 C.F.R. Chapter III, Subchapter B are amended to include personnel of the Department and the Transportation Services Authority.

(e) The definition of “motor carrier” in 49 C.F.R. §§ 390.5 and 397.65 is amended to read:

“Motor carrier” includes, without limitation, interstate and intrastate common, contract and private carriers of property and passengers, including, without limitation, their agents, officers and representatives.

(f) The definition of “commercial motor vehicle” in 49 C.F.R. §§ 382.107, 385.3 and 390.5 is amended to read:

“Commercial motor vehicle” means any self-propelled or towed vehicle used on public highways in:

1. Interstate commerce to transport passengers or property if the vehicle:

(a) Is designed to transport more than eight passengers, including, without limitation, the driver;

(b) Is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary pursuant to 49 U.S.C. §§ 103, 104 and 106; or

(c) Has a gross vehicle weight rating, gross combination weight rating or gross vehicle weight of 10,001 or more pounds, whichever is greater.

2. Intrastate commerce to transport passengers or property if the vehicle:

(a) Is one described in paragraph (a) or (b) of subsection 1;

(b) Has a gross vehicle weight rating, gross combination weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or

(c) Is owned or operated by a motor carrier subject to the jurisdiction of the Transportation Services Authority, except that any vehicle so owned or operated is subject only to the provisions of 49 C.F.R. §§ 392.2, 392.4, 392.5 and 392.9 and 49 C.F.R. Parts 40, 382, 383, 385, 390, 391, 393, 395, 396 and 397 if the vehicle is not one described in paragraph (a) or (b) ~~or being used pursuant to the exemption from hours-of-service limitations set forth in section 6 of chapter 357, Statutes of Nevada 2005, at page 1351 (NRS 706.687).~~

2. To enforce these regulations, enforcement officers of the Department and the Transportation Services Authority may, during regular business hours, enter the property of a carrier to inspect its records, facilities and vehicles, including, without limitation, space for cargo and warehouses.

3. The volume containing 49 C.F.R. Parts 325 to 399, inclusive, is available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at the price of ~~[\$61.]~~ \$64. The volume containing 49 C.F.R. Part 40 is available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at the price of \$56. The volumes are also available at the Internet address <<http://www.gpoaccess.gov/cfr/index.html>>.

Sec. 2. NAC 706.297 is hereby amended to read as follows:

706.297 1. The Department of Motor Vehicles and the Department of Public Safety hereby adopt by reference the regulations contained in 49 C.F.R. Parts 383, 387, 390 to 397,

inclusive, and ~~[Appendices D, E and G,]~~ *Appendix G of 49 C.F.R. Chapter III, Subchapter B*, as those regulations existed on October 1, ~~[2003,]~~ *2005*, with the following exceptions:

(a) References to the Department of Transportation, the Federal Highway Administration and the Office of Motor Carrier Safety are amended to refer to the Department.

(b) References to the Federal Highway Administrator and to the Director are amended to refer to the Director of the Department.

(c) Section 391.11(b)(1) applies only to drivers operating in interstate transportation and drivers transporting hazardous material of a type or quantity that requires the vehicle to be marked or placarded pursuant to 49 C.F.R. § 177.823.

(d) The definition of “motor carrier” in 49 C.F.R. § 390.5 is amended to read:

“Motor carrier” includes interstate and intrastate common and contract motor carriers of property, other than fully regulated carriers, and private motor carriers, including their agents, officers and representatives.

(e) The definition of “commercial motor vehicle” in 49 C.F.R. § 390.5 is amended to read:

“Commercial motor vehicle” means any self-propelled or towed vehicle used on public highways in:

1. Interstate commerce to transport property, other than household goods, if the vehicle:

(a) Is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary pursuant to 49 U.S.C. §§ 103, 104 and 106; or

(b) Has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds.

2. Intrastate commerce to transport property, other than household goods, if the vehicle:

(a) Is one described in paragraph (a) of subsection 1;

(b) Has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds; or

(c) Is owned or operated by a motor carrier subject to the jurisdiction of the Department, except that any vehicle so owned or operated is subject only to the provisions of 49 C.F.R. §§ 391.51, 392.2, 392.4, 392.5, 392.9 and 396.3(b)(2) and 49 C.F.R. Parts 390, 393 and 397 if the vehicle is not one described in paragraph (a) or (b) ~~or~~ *or being used pursuant to the exemption from hours-of-service limitations set forth in section 6 of chapter 357, Statutes of Nevada 2005, at page 1351 (NRS 706.687).*

2. To enforce these regulations, enforcement officers of the Department may, during regular business hours, enter the property of a carrier to inspect its records, facilities and vehicles, including space for cargo.

3. A copy of the publication which contains the provisions described in subsection 1 may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, for the price of ~~[\$61.]~~ *\$64.* The publication is also available at the Internet address [<http://www.gpoaccess.gov/cfr/index.html>](http://www.gpoaccess.gov/cfr/index.html).

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R204-05

The Department of Public Safety adopted regulations assigned LCB File No. R204-05 which pertain to chapter 706 of the Nevada Administrative Code on January 5, 2006.

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

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

INFORMATIONAL STATEMENT

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

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

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

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

LAS VEGAS

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

RENO

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

CARSON CITY

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

ELKO

Captain Mark Malloy- DPS
Sergeant Randy Jackson- DPS

Testimony was provided at the workshop by the following:

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

There were no written statements submitted to the agency.

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

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

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