

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

LCB File No. R167-03

Effective December 16, 2003

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.

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. ~~[Ch. III, Subch.]~~ *Chapter III, Subchapter B*, as those regulations existed on ~~[January 2, 2002,]~~ *October 1, 2003*, with the following exceptions : ~~[applying to those carriers regulated by the Transportation Services Authority:]~~

(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)(1) 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. ~~[Ch. III, Subch.]~~ *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 ~~[the Hazardous Materials Transportation Act,]~~ 49 U.S.C. §§ ~~[5101 et seq.;~~ *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 ~~10,001~~ **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).

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 ~~\$60.~~ **\$61.** *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 ~~adopts~~ **adopt** by reference the regulations contained in 49 C.F.R. Parts 383, 387, 390 to 397, inclusive, and appendices D, E and G, as those regulations existed on ~~September 1, 1995,~~ **October 1, 2003**, 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 ~~the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 to 5127, inclusive);~~ **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). ~~of this subsection.]~~

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 ~~[\$30.] \$61. *The publication is also available at the Internet address <<http://www.gpoaccess.gov/cfr/index.html>>*~~

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R167-03**

The Department of Public Safety adopted regulations assigned LCB File No. R167-03 which pertain to chapter 706 of the Nevada Administrative Code on December 3, 2003.

Notice date: 10/17/2003
Hearing date: 12/3/2003

Date of adoption by agency: 12/3/2003
Filing date: 12/16/2003

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Public comment was solicited through a Notice of a workshop, and at the workshop on December 3, 2003. The Notice of Workshop, and the proposed amendments to NAC 459 were mailed on October 17, 2003 to all county libraries; the State of Nevada Library; division offices in Elko, Las Vegas and Reno; at Department of Public Safety in Carson City; to Department of Motor Vehicles and the Transportation Services Authority; to the Nevada Motor Transport Association and the Associated General Contractors. The proposed amendments were also posted to the Division's Internet web site at <http://ps.state.us/nhp/ar.htm>.

Interested persons may obtain a copy of the summary at the Division's Internet web site at <http://ps.state.us/nhp/ar.htm> or may request a copy by writing the Nevada Highway Patrol, Attn. Mr. James Rhode, 555 Wright Way, Carson City, NV 89711.

2. The number of persons who:
 - a. Attended each hearing:
 - i. At the Workshop to solicit comments: 8
 1. James Rhode, NHP
 2. Lt. Bill Bainter, NHP
 3. Lt. Kevin Tice, NHP
 4. Sgt. Carl Johnson, NHP
 5. Sgt. Harvey Weathford, NHP
 6. William Bensmiller, FMCSA¹
 7. A.R. Fairman, No Stress Express
 8. John Cardiner, Sunshine Taxi
 - ii. At the Public Hearing: 8
 1. James Rhode, NHP
 2. Lt. Bill Bainter, NHP
 3. Sgt. Carl Johnson, NHP

¹ Federal Motor Carrier Safety Administration (FMCSA)

4. Sgt. Harvey Weathford, NHP
 5. William Bensmiller, FMCSA
 6. Amy Levine, NMTA²
 7. John Madole, AGC³
 8. Mike Rich, AGC
- b. Testified at each hearing:
- i. At the workshop: 5
 - ii. At the Public Hearing: 7
- c. Submitted to the agency written comments:
- i. Prior to Workshop and/or Public Hearing: 0
 - ii. At the Workshop: 1
 1. William Bensmiller, FMCSA
3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary.

Comment was solicited from affected business through a Notice of a workshop; mailing of the Notice of Workshop, and the proposed amendments to NAC 706, to the Nevada Motor Transport Association and Associated General Contractors. The proposed amendments were also posted to the Division's Internet web site at <http://ps.state.us/nhp/ar.htm>.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted at the Notice of Intent to Act Upon A Regulation meeting (Public Hearing), December 3, 2003 with no changes to proposed amendments. Positive comments were received from representatives of the Associated General Contractors and William Bensmiller generally supported the proposed amendments with the exception reinstating the 26,001 exception for intrastate commercial motor vehicles. The Agency received one written comment at the workshop concerning the proposed amendments. The written comments received, from Mr. Bensmiller, generally supported the proposed amendments with the exception of reinstating the 26,001 exception for intrastate commercial motor vehicles.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:
- a. Both adverse and beneficial effects; and
 - b. Both immediate and long-term effects.

a. The proposed amendments are expected to have an immediate benefit on the safety of the regulated industry and the motoring public. The Department does not foresee any adverse effects.

² Nevada Motor Transport Association (NMTA)

³ Associated General Contractors (AGC)

b. Immediate and long-term effects include the elimination of additional potentially large expenses for intrastate motor carriers, operating vehicles between 10,001 and 26,001 pounds.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The agency does not envision any increased costs associated with enforcement of the proposed amendment, which primarily update references to federal provisions and reinstates a provision for the 26,001 exception for intrastate commercial motor vehicles.

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The agency does not believe that the proposed amendments are more stringent than federal regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This proposed regulation does not provide or involve a new fee.