

**ADOPTED REGULATION OF THE
COMMISSION ON TOURISM**

LCB File No. R190-07

Effective April 17, 2008

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

AUTHORITY: §§1-12, section 13 of chapter 345, Statutes of Nevada 2007.

A REGULATION relating to airports; setting forth the circumstances under which the Commission on Tourism may award grants for certain airports; requiring the recipient of such a grant to enter into an agreement with the Commission concerning the grant; and providing other matters properly relating thereto.

Section 1. Chapter 231 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Air carrier” means a person that provides commercial air transportation to passengers.*

Sec. 4. *“Commission” means the Commission on Tourism.*

Sec. 5. *“Director” means the Director of the Commission.*

Sec. 6. *“Grant” means an amount of money awarded to a small airport pursuant to sections 2 to 12, inclusive, of this regulation from money appropriated to the Commission for that purpose pursuant to section 13 of chapter 345, Statutes of Nevada 2007.*

Sec. 7. 1. To receive a grant, a local government applying for a grant for an airport within the jurisdiction of the local government must comply with the criteria and guidelines established by the Commission and apply using a form prescribed by the Commission.

2. The application must include, without limitation:

(a) A reasonable business plan for using the grant, if the application is approved, which includes reasonable cost estimates;

(b) A commitment from an air carrier and the airport which indicates that, if the grant is awarded to the local government, the air carrier and the airport will enter into a written operating agreement with the local government requiring the air carrier to commence or continue air service to the airport;

(c) The cost and terms of the operating agreement between the local government, the airport and the air carrier;

(d) The amount of the contribution and the manner in which the contribution from the airport or the local government will be paid pursuant to section 9 of this regulation; and

(e) The amount of the grant for which the local government is applying.

3. The Commission will evaluate each application for a grant in accordance with the criteria and guidelines specified by the Commission pursuant to subsection 1.

4. In reviewing an application for a grant, the Commission will give additional consideration to:

(a) An applicant who has an operating agreement with another airport in this State or who has applied or is eligible to apply for a grant pursuant to any federal law or regulation; or

(b) An air carrier offering intrastate service.

5. *Each applicant is solely responsible for soliciting, reviewing and selecting a regional air carrier for inclusion in the application.*

6. *The Commission will consider and approve or disapprove applications for grants at regularly scheduled meetings of the Commission.*

7. *The airport and the local government must concur in the application and present the application to the Commission together.*

8. *If an application is approved, the applicant is responsible for ensuring the provision of regional air service and the specified level of air service.*

Sec. 8. 1. *To be eligible for a grant, an airport within the jurisdiction of a local government applying for a grant:*

(a) Must be a commercial service airport that does not have more passenger boardings on an annual basis than a small hub airport;

(b) Must be certified by the Federal Aviation Administration pursuant to 14 C.F.R. Part 139;

(c) Must be located more than 150 miles from a medium hub airport or a large hub airport; and

(d) Must demonstrate to the Commission, through the applicant, that air carriers charge unreasonably high fares to service the airport or provide insufficient service to the airport.

2. *As used in this section, the terms “commercial service airport,” “large hub airport,” “medium hub airport,” “passenger boardings” and “small hub airport” have the meanings ascribed to them in 49 U.S.C. § 47102.*

Sec. 9. 1. *A grant may only be used to:*

(a) Guarantee that an air carrier will receive an agreed amount of revenue for each flight that the air carrier operates in or out of the airport; or

(b) Guarantee an amount of profit for an air carrier that is established by an agreement between the air carrier and the airport.

2. A recipient of a grant must use the grant to pay 80 percent of the cost of the guarantee set forth in the operating agreement between the local government, the airport and the air carrier. Except as otherwise provided in subsection 3, the remaining 20 percent of the cost of the guarantee must be paid by the airport or the recipient of the grant. The contribution to the cost of the guarantee from the airport or the local government must be in the form of money or in kind, or both. An in-kind contribution may be in the following forms:

(a) A waiver or reduction in favor of the air carrier, based on reasonable and customary rates for the following:

(1) Airport rental fees;

(2) Landing fees;

(3) Fees for supporting the operations of the air carrier; or

(4) Any other airport charges or taxes; or

(b) Marketing and advertising services provided by the airport or the local government to the air carrier.

3. All or any portion of the contribution required pursuant to subsection 2 may be provided through the recipient of the grant by a connecting airport or any other business entity receiving a benefit from any air service subsidized pursuant to sections 2 to 12, inclusive, of this regulation.

Sec. 10. 1. *If the Commission approves an application for a grant, the recipient of the grant must enter into an agreement with the Commission. The agreement must specify:*

(a) The amount of the grant;

(b) The proper use of the money obtained from the grant;

(c) The date on which the Commission approved the grant;

(d) The specific indicators of performance by which the Commission and the recipient of the grant will measure the progress of the project;

(e) A requirement that the recipient of the grant report to the Commission on a quarterly basis and that the report include a statement setting forth:

(1) The specific indicators of performance specified in paragraph (d);

(2) The projected estimates of costs; and

(3) The amount of money the recipient expects to draw from the grant and the dates on which the recipient expects to draw money from the grant;

(f) The right of the Commission or its designee to review any document which the Commission or its designee determines is necessary for the appropriate fiscal oversight of the project; and

(g) The date on which the grant will expire.

2. *The Director and the Office of the Attorney General shall review the form of the agreement entered into by the Commission and the recipient of the grant pursuant to subsection 1.*

3. *An agreement entered into pursuant to subsection 1 is not effective unless the Director and the Office of the Attorney General approve the form of the agreement.*

Sec. 11. 1. *The Director may not disburse any money from a grant until:*

(a) The recipient of a grant and a representative of the Commission have signed the agreement required pursuant to section 10 of this regulation; and

(b) The Director has received a request to draw money from the grant from the recipient of the grant pursuant to subsection 2.

2. The recipient of a grant must make a request to draw money from the grant on a form prescribed by the Director. The request must include:

(a) A statement specifying the amount of money the recipient wishes to draw from the grant; and

(b) Evidence of the performance and the calculation of the grant.

3. The recipient of a grant may request an initial advance of not more than 20 percent of the amount of the grant.

4. If the Commission awards a grant to a recipient and, after the recipient receives a disbursement of the grant pursuant to this section, the Commission determines that the recipient no longer needs the grant or any portion of the grant, the Commission may:

(a) Require the Director to cease making any further disbursements of the grant to the recipient of the grant; or

(b) Require the recipient of the grant to repay any unused portion of the grant.

5. The Director shall review and approve or deny a request to draw money from a grant within 10 working days after the date on which the Director receives the request.

6. If the Director approves a request to draw money from a grant, the Director shall cause a check to be issued to the recipient of the grant in the amount requested by the recipient.

7. If the Director denies a request to draw money from a grant, the Director shall provide the recipient who made the request with a written statement:

(a) Stating the reason for the denial of the request; and

(b) Describing any actions the recipient must take to receive approval of the request from the Director.

Sec. 12. *In addition to any money required to be repaid pursuant to section 11 of this regulation, if the Commission finds that the recipient of a grant is not using money from the grant in accordance with the provisions of the agreement entered into pursuant to section 10 of this regulation, the Commission will immediately cease providing the recipient with money from the grant and may determine that the agreement is void. If the Commission finds that money from the grant is not used in accordance with the agreement, the Commission may require the repayment of the grant or any portion of the grant.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R190-07**

The Commission on Tourism adopted regulations assigned LCB File No. R190-07 which pertain to chapter 231 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

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

Copies of the proposed regulation, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail, fax and/or email to persons who were known to have an interest in the subject of air service grant programs as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Commission on Tourism (www.travelnevada.com), distributed to the main library in each county in Nevada, and posted at the following locations:

Reno/Sparks Convention & Visitors Authority

ATTN: CHARLOTTE ANDERSON
4590 S. Virginia Street
Reno, NV 89502
FAX: (775) 827-7686

Las Vegas Convention & Visitors Authority

ATTN: MARY ANNE SCOTT
3150 Paradise Road
Las Vegas, NV
FAX: (702) 892-7515

Nevada Commission on Tourism/Las Vegas

ATTN: CONNIE MANCILLAS
555 E. Washington Avenue, Ste. 5600
Las Vegas, NV 89101
FAX: (702) 486-2789

Nevada Commission on Tourism/Carson City

ATTN: CLAUDETTE THOMPSON
401 N. Carson Street
Carson City, NV 89701
FAX: (702) 687-6779

Nevada State Library & Archives

100 North Stewart Street
Carson City, NV 89701- 4285
(775) 684-3360 FAX: (775) 684-3330
Carson City, NV 89701

Legislative Counsel Bureau

401 S. Carson Street
Carson City, NV 89701

Legislative Counsel Bureau

ATTN: CAPITOL POLICE (TONY)
555 E Washington Ave, Rm. 4401
Las Vegas, NV 89101
FAX: (702) 486-2012

A public workshop was held pursuant to NAC 233B.061(2) on February 6, 2008, and the minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed regulation. On or about January 16, 2008, the Nevada Commission on Tourism issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed regulation, and a public hearing was held February 21, 2008 during which the Commission on Tourism heard and considered public comment. A copy of this summary of the public response to the proposed regulation may be obtained from the Nevada Commission on Tourism, 401 N. Carson Street, Carson City, Nevada 89701, 775-687-4322, or email to ncot@travelnevada.com.

2. **The number of persons who:**
 - (a) **Attended each hearing:** February 6, 2008: 6; February 21, 2008: 24
 - (b) **Testified at each hearing:** February 6, 2008: 4; February 21, 2008: 0
 - (c) **Submitted to the agency written comments:** No written comments were submitted.
- 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.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #1.

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.**

No changes to the proposed regulation were suggested at either the public workshop or hearing, so the proposed regulations were adopted by the Commission on Tourism on February 21, 2008.

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 must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

(a) Both adverse and beneficial effects

There are no anticipated adverse effects to either businesses or the public. The regulations set forth the administration of a grant program to promote commercial air service within the State.

(b) Both immediate and long-term effects.

In the short term, the intent of the program is to incentivize an air carrier to provide commercial air service within the State. The long-term intent is to achieve regular, stable air service with a positive operating result for the carrier and a positive economic benefit to Nevada.

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

There is no significant additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government 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 regulation duplicates.

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

N/A

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.

N/A

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business.