

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

LCB File No. R003-12

Effective May 30, 2012

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

AUTHORITY: §1, NRS 459.721 and 459.725; §§2 and 3, NRS 706.171 and 706.173.

A REGULATION relating to highway safety; adopting by reference certain federal regulations concerning the transportation of hazardous materials; adopting by reference certain federal regulations concerning motor carrier safety; and providing other matters properly relating thereto.

Section 1. NAC 459.977 is hereby amended to read as follows:

459.977 1. The provisions of 49 C.F.R. Parts 40, ~~[100]~~ *105* to 180, inclusive, and 325 to 399, inclusive, are hereby adopted by reference as they ~~[existed on August 1, 2009.]~~ *exist on the effective date of this regulation and as subsequently revised by the United States Department of Transportation unless the Director gives notice pursuant to subsection 3 that a revision is not suitable for this State.* Each motor vehicle used for the transportation of hazardous materials in this State must, and each driver of such a vehicle shall, comply with those provisions.

2. A copy of the publications which contain these parts may be obtained:

(a) By mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800. The price is:

- (1) For *the volume containing* Part 40 ~~[\$63]~~ *\$66*
- (2) For the volume containing Parts ~~[100]~~ *105* to 180, inclusive..... ~~[67]~~ *70*

(3) For the volume containing Parts 325 to 399, inclusive ~~[35]~~ 37

(b) At the Internet address ~~[<http://www.gpoaccess.gov/cfr/index.html>]~~

<http://www.gpo.gov/fdsys>, free of charge.

3. If a provision adopted by reference pursuant to subsection 1 is revised, the Director will review the revision to determine its suitability for this State. If the Director determines that the revision is not suitable for this State, the Director will hold a public hearing to review his or her determination and give notice of the hearing within 6 months after the date of the publication of the revision. If, after the hearing, the Director does not revise his or her determination, the Director will give notice that the revision is not suitable for this State within 30 days after the hearing. If the Director does not give such notice, the revision becomes part of the provision adopted by reference pursuant to subsection 1.

Sec. 2. NAC 706.247 is hereby amended to read as follows:

706.247 1. The Department of Motor Vehicles, the Department of Public Safety and the 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 ~~[August 1, 2009,]~~ *the effective date of this regulation* 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 of Motor Vehicles, the Department of Public Safety and the 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 of Motor Vehicles, the Director of the Department of Public Safety 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) Section 392.5(a)(3) will not apply to motor carriers authorized to provide intrastate charter service by limousine or to the drivers of those motor carriers.

(e) References to special agents in Appendix B of 49 C.F.R. Chapter III, Subchapter B, are amended to include personnel of the Department of Motor Vehicles, the Department of Public Safety and the Authority.

(f) 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.

(g) 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 Nevada Transportation 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 of Motor Vehicles and the Department of Public Safety and compliance enforcement officers of the 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. Each compliance enforcement officer employed by the Authority pursuant to NRS 706.176 shall complete training regarding the federal regulations adopted by reference in

subsection 1 which relate to common, contract and private motor carriers of passengers and property, including, without limitation, training in commercial vehicle safety inspections provided by the Nevada Highway Patrol.

4. The volume containing 49 C.F.R. Parts 325 to 399, inclusive, is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, at the price of ~~[\$35.]~~ \$37. The volume containing 49 C.F.R. Part 40 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, at the price of ~~[\$63.]~~ \$66. The volumes are also available free of charge at the Internet address ~~<http://www.gpoaccess.gov/cfr/index.html>~~
<http://www.gpo.gov/fdsys>.

Sec. 3. 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 382, 383, 387, 390 to 397, inclusive, and Appendix G of 49 C.F.R. Chapter III, Subchapter B, as those regulations existed on ~~[August 1, 2009,]~~ *the effective date of this regulation* with the following exceptions:

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

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

(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, 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 of Motor Vehicles, 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).

2. To enforce these regulations, enforcement officers of the Department of Motor Vehicles and the Department of Public Safety 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 by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, for the price of ~~[\$35.]~~ \$37. The publication is also available free of charge at the Internet address ~~[<http://www.gpoaccess.gov/cfr/index.html>.]~~ <http://www.gpo.gov/fdsys>.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R003-12**

The Nevada Department of Public Safety – Highway Patrol Division adopted regulations assigned LCB File No.R003-12 which pertain to chapter 459.977, 706.247 and 706.297 of the Nevada Administrative Code.

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 posted Notice for a Public Workshop on March 1, 2012. In addition, public comment was solicited during the actual hearing on March 29, 2012. The Notice of Public Hearing and the proposed amendments to NAC 459.977, 706.246 and 706.297 were posted on February 2, 2012 to all County Libraries, The State of Nevada Library, The Department of Public Safety-Highway Patrol Division offices in Carson City, Reno and Elko, The Department of Motor Vehicle, The Nevada Transportation Authority, The Nevada Motor Carrier Transport Association (NMTA) and the Associated General Contractors. The Public Hearing was held at the Nevada Highway Patrol Offices in Reno and Las Vegas via teleconference.

- 2. The number of persons who:**

- (a) Attended the public hearing:**

**Lieutenant Bill Bainter
John Amestoy
Lieutenant James Oschlager
Trooper Elmer Johnson**

- (b) Testified at the Public Hearing:**

No one.

The Public Hearing was held on March 29, 2012. There were no questions, comments, opposition or discussion concerning the regulations.

- (c) Submitted written comments:**

No one

3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

During the Public Hearing, Lieutenant Bainter stated that the primary purpose for the adoption was to do re-adopt the Federal Regulations as written on the effective date of this regulation. The previous adoption was August 1, 2009. Lt. Bainter further stated that after discussing the CFR adoption process with the LCB Attorney Bruce Danes, additional changes were made in 459.977 to include revised regulations by the Federal Motor Carrier Safety Administration. There were no questions, comments, opposition or discussions concerning the regulations.

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.

Please refer to question number three. There were no questions, comments, oppositions or discussions concerning the regulations.

5. The estimated economic effect of the regulation on the business 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

The proposed amendments are expected to have an immediate benefit on the safety of the regulated industry and the motoring public in ensuring the safe and uneventful transportation of commercial motor vehicles. The Department does not foresee any adverse effects.

- (b) Both immediate and long-term effects.

Immediate and long-term effects include the ease of understanding the rules and their relationship to statute and vehicle/driver safety.

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 amendments, which primarily update references to federal provisions and harmonizes the language between NRS 459.977, 706.246 and 706.297.

7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap 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 that regulates the same activity, a summary of such provisions.**

The Agency does not believe that the proposed amendments are more stringent than Federal regulations.

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.**

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

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 re-adoption of the Federal Motor Carrier Regulations will not have an economic burden on small business. The Federal Regulations, as written today, contains no significant changes that will impact small business.