

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

LCB File No. R022-16

March 18, 2016

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.

Legislative Counsel’s Digest:

Existing law authorizes the Director of the Department of Public Safety to adopt regulations pertaining to safe transportation of hazardous materials in this State. (NRS 459.721, 459.725) Existing regulations adopt by reference certain federal regulations related to such transportation as those federal regulations existed on May 30, 2012. (NAC 459.977) **Section 1** of this regulation adopts by reference those federal regulations as they exist on the effective date of this regulation, and revises the specific federal regulations so adopted.

Existing law also authorizes the Department to adopt by reference certain federal regulations, including, without limitation, regulations applicable to all motor vehicles transporting hazardous materials. (NRS 706.171, 706.173) Existing regulations adopt by reference certain federal regulations as they existed on May 30, 2012. (NAC 706.247, 706.297) **Sections 2 and 3** of this regulation adopt by reference those federal regulations as they exist on the effective date of this regulation. **Section 2** also revises the specific federal regulations so adopted.

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

459.977 1. The provisions of 49 C.F.R. Parts 40, 105 to 180, inclusive, and ~~325~~ **303** to 399, inclusive, are hereby adopted by reference as they exist on ~~May 30, 2012,~~ *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~~ *Publishing* 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\$66
- (2) For the volume containing Parts 105 to ~~180,~~ *177*, inclusive.....70
- (3) *For the volume containing Parts 178 to 199, inclusive..... 70*
- (4) For the volume containing Parts ~~325~~ *303* to 399, inclusive.....37

(b) At the Internet address <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 ~~May 30, 2012,~~ *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 Chair.

(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 Nevada Transportation 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~~ 303 to 399, inclusive, is available from the ~~Superintendent of Documents,~~ U.S. Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, at the price of \$37. The volume containing 49 C.F.R. Part 40 is available from the ~~Superintendent of Documents,~~ U.S. Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, at the price of \$66. The volumes are also available free of charge at the Internet address <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 ~~May 30, 2012,~~ *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}~~ *Publishing* Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, for the price of \$37. The publication is also available free of charge at the Internet address <http://www.gpo.gov/fdsys>.