

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 LCB FILE No. R062-17

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 706.2472.

***A. A clear and concise explanation of the need for the adopted regulation.***

- Nevada Revised Statute 706.171 authorizes the Nevada Department of Public Safety (DPS) Director to adopt by reference regulations to enforce provisions of NRS Chapter 706. NAC 706.297 and NAC 706.247 were authorized by NRS 706.171. NAC 706.2472 is a revised and separated version of NAC 706.247. The Departments listed under NAC 706.247 have been separated and the DPS has been assigned NAC 706.2472. NAC 706.2472 allows the DPS to adopt regulations that won't affect the Nevada Department of Motor Vehicles or the Nevada Transportation Authority adoptions.
- The DPS - Nevada Highway Patrol Division (NHP) is the Motor Carrier Safety Assistance Program (MCSAP) lead agency for the State Of Nevada. As the lead MCSAP agency, NHP receives annual grant funding from the Federal Motor Carrier Safety Administration (FMCSA) to administer Nevada's Commercial Motor Vehicle (CMV) enforcement program. As required by Code of Federal Regulation Title 49 CFR 350.335, DPS/NHP is required to adopt the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations (HMR) within 3 years of its effective date. The last adoption of the FMCSR's and HMR's was in 2012.

***B. 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.***

- The notice of Public Workshop/Hearing was sent to the Nevada Trucking Association, the Nevada Chapter AGC (Associated General Contractors), all county libraries, posted at NHP offices in Elko, Reno and Las Vegas as well as published on the Nevada DPS website, the State Of Nevada Public Notices website, and the Nevada Legislative Council Public Meetings calendar.
- No written comment was submitted prior to the workshop or hearing.
- Interested persons may request a copy by writing to the Nevada Department of Public Safety, Highway Patrol Division, attention Lt. Baughman, 555 Wright Way, Carson City, NV. 89711.

***C. The number of persons who:***

1. Number of persons who attended the workshop on October 30, 2017.
  - a) Fifteen persons attended the workshop.
  - b) Four persons testified at the workshop.
  - c) Tom Redican submitted written testimony that he also testified to.
2. Number of persons who attended the hearing on November 30, 2017.
  - a) Thirteen persons attended the hearing.

- b) Three persons testified at the hearing.
- c) Alexis Motarex submitted written testimony that she also testified to.

***D. Identifying information for persons who attended the workshop or hearing,***

**October 30<sup>th</sup> Workshop**

- Thomas Redican - Comstock Transportation  
P.O. Box 2401, Dayton, NV. 89403  
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- Alexis Motarex - AGC – Nevada Chapter  
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(775) 813-8150
- K. Bart Hiatt - A&K Earthmovers  
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(775) 423-6085
- Kevin Linderman – Q&D Construction  
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(775) 786-2677
- Jeremiah Merritt – Sierra Nevada Construction  
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(916) 825-0277
- Trevor R. Hobbs – Sierra Nevada Construction  
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(775) 335-9982
- Martin Hefner – Nevada DMV  
555 Wright Way Carson City, NV. 89711  
[mhefner@dmv.nv.gov](mailto:mhefner@dmv.nv.gov)  
(775) 684-4773
- Lyle R. Kibbe – A&K Earthmovers  
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(775) 221-2120

- John Amestoy – Nevada DPS/NHP  
555 Wright Way, Carson City, NV. 89711  
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(775) 687-8399
- Linda Allred – Nevada DPS/NHP  
555 Wright Way, Carson City, NV. 89711  
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- Brent Smith – Nevada DPS/NHP  
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- Lt. Roy Baughman – Nevada DPS/NHP  
555 Wright Way, Carson City, NV. 89711  
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- Lt. Scott Stuenkel – Nevada DPS/NHP via video conference from Las Vegas  
4615 W. Sunset Road, Las Vegas, NV 89118  
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(702) 432-5221
- Sgt. Jeremy George - Nevada DPS/NHP via video conference from Las Vegas  
4615 W. Sunset Road, Las Vegas, NV 89118  
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- Clark Whitney – Ewing Bros. Tow via video conference from Las Vegas  
1200 A St, Las Vegas, NV, 89106  
[clarkwhitney.cw@gmail.com](mailto:clarkwhitney.cw@gmail.com)  
(702) 572-7368

### **November 30<sup>th</sup> Hearing**

1. Paul Enos – Nevada Trucking association  
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[pje@nevadatrucking.com](mailto:pje@nevadatrucking.com)  
(775) 843-7580
2. Alexis Motarex - AGC – Nevada Chapter  
5400 Mill St., Reno, NV. 89502  
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3. K. Bart Hiatt - A&K Earthmovers  
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4. Lyle R. Kibbe – A&K Earthmovers  
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5. Jerry Clark – Q&D Construction  
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(775) 302-6345
6. Jerry Calderon – USDOT Federal Motor Carrier Safety Administration  
705 N. Plaza #204, Carson City, NV. 89701  
[jerry.calderon@dot.gov](mailto:jerry.calderon@dot.gov)  
(775) 687-5335
7. William Bensmiller – USDOT Federal Motor Carrier Safety Administration  
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8. John Amestoy – Nevada DPS/NHP 555  
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9. Linda Allred – Nevada DPS/NHP  
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10. Brent Smith – Nevada DPS/NHP

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11. Lt. Roy Baughman – Nevada

DPS/NHP555 Wright Way, Carson City, NV. 89711

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12. Sgt. Jeremy George - Nevada DPS/NHP via video conference from Las Vegas

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(775) 432-5120

13. Tony Hewes – WERDCO BC

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[Werdcosafety796@gmail.com](mailto:Werdcosafety796@gmail.com)

(775) 742-0476

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

- Comments were directly solicited from the Nevada Trucking Association, their membership and the AGC Nevada Chapter. No responses were received prior to the workshop on October 30<sup>th</sup> or the hearing on November 30<sup>th</sup>.
- Interested persons may request a copy by writing to the Nevada Department of Public Safety, Highway Patrol Division, attention Lt. Baughman, 555 Wright Way, Carson City, NV. 89711.

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

1. A public workshop was held on October 30, 2017. During the workshop, a request was made to exempt all intrastate drivers from a specific section of the proposed adoption of Federal regulation, Title 49 CFR 395 Subpart B – Electronic Logging Devices (ELDS) (effective December 18, 2017). This request was taken under consideration and evaluated.

An identical request was made to the Federal Motor Carrier Safety Administration by the Pipeline Contactors Association (PLCA), Docket No. FMCSA-2017-0175. This exemption request was subsequently denied by FMCSA. FMCSA based its decision on research that “indicated that the (ELD) rule improves CMV safety by improving compliance with the HOS (Hours of Service) rules. The rule also reduces the overall paperwork burden for both motor carriers and drivers. The primary reason for denying this exemption is that PLCA did not demonstrate how, without using ELDs, they would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.” Using the same analogy, the DPS also denied the request for exemption.

The DPS subsequently met with members of the AGC to discuss other options for Title 49 CFR 395. Several options were considered which included extending the short-haul exception from 12 to 14 hours, increasing the 8 day ELD requirement or delaying the adoption of Subpart B. All options were deemed unfeasible due to the effects which would apply, not only to construction CMV drivers, but to all intrastate CMV drivers. The ELD rule was published by FMCSA on December 16, 2015 which gave almost 2 years to prepare for the implementation of the ELD rule.

2. During the hearing on November 30<sup>th</sup>, the AGC expressed great disappointment that the DPS did not grant a 2-year extension of the ELD implementation.

The Nevada Trucking Association (NTA) testified in full support of the proposed regulation without change. NTA CEO Paul Enos testified that he was originally against the Federal (ELD) mandate but since its implementation in 2012 by the US Congress, he believes that carriers have been given ample time to get ready for the implementation. He also believes that the (ELD) implementation creates an even playing field whether you are an interstate or intrastate. He also testified that safety needs to follow the same criteria of an even set of rules between intrastate carrier and interstate carriers.

***G. The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately and each case must include:***

1. Both adverse and beneficial effects; and
  - The Department does not foresee any adverse economic effects since this adoption affects the DPS’s authority to enforce the Federal regulations for commercial vehicle safety. This adoption of Federal safety regulations does effect Interstate and intrastate motor carriers, as they will have to comply with the safety regulations.

2. Both immediate and long-term effects

- The re-adoption of these regulations benefit the Department by allowing the DPS to enforce the up-to-date Federal regulations for commercial vehicle safety. The long-term effect is overall public safety by the DPS continuing the Nevada commercial vehicle safety program.

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

- The agency does not envision any increased costs associated with the re-adoption of this regulations.

***I. A description of any regulations of other state or government agencies that 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.***

- With the creation of NAC 706.2472 from NAC 706.247, the only agency or Department affected by this adoption is the DPS.

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

- No regulations in this adoption are more stringent than Federal regulations, since this adoption is adopting Federal regulations for enforcement and compliance in the state.

***K. 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 adoption does not provide new fees or increase an existing fee.