

**ADOPTED REGULATION OF THE
NEVADA TRANSPORTATION AUTHORITY**

LCB File No. R113-10

Effective December 16, 2010

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

AUTHORITY: §1, NRS 706.171 and 706.321; §§2-4 and 7-15, NRS 706.171; §§5 and 6, NRS 706.171 and 706.371.

A REGULATION relating to motor carriers; amending provisions relating to applications to change the tariffs or contracts of certain carriers; requiring certain carriers to submit to the Nevada Transportation Authority a copy of certain vehicle inspection reports; amending provisions concerning changes of which carriers must notify the Authority; amending provisions relating to the lease of replacement equipment when certain equipment is taken out of service; amending provisions relating to the contracts of contract motor carriers; amending provisions relating to administrative proceedings before the Authority or a presiding officer; and providing other matters properly relating thereto.

Section 1. NAC 706.1384 is hereby amended to read as follows:

706.1384 1. In addition to the requirements established for pleadings, an application to change the tariff of any motor carrier, issuing agency or agent, including, without limitation, new rates for services authorized under a certificate, and new rules and regulations under a carrier's tariff, must include as exhibits attached thereto:

(a) A statement in the form of a tariff showing in full the rates or fares or the regulations proposed to be put into effect.

(b) A statement in the form of a tariff showing the rates or fares or the regulations which will be superseded by the proposed tariff.

(c) *Any other information that the Authority or the applicant considers to be necessary or appropriate for a complete understanding of the application. Such information may include, without limitation:*

(I) A complete and accurate statement of the circumstances and conditions relied on as justification for the proposed change, including, without limitation, the following information:

~~[(1)]~~ (I) The change in the total amount of intrastate revenue in the State of Nevada that the proposed rates would have produced if the rates had been in effect during the preceding year.

~~[(2)]~~ (II) The applicant's reasons that the proposed rates would be reasonable.

~~[(d)]~~ (2) An operating statement for the full 12-month period immediately preceding the date of application, insofar as is practicable.

~~[(e)]~~ (3) A balance sheet for the entire operations of the carrier as of ~~the~~ a date ~~of~~ specified by the ~~statement required pursuant to paragraph (d).~~
—~~[(f)]~~ Authority.

(4) In any application for any item that has not been included previously in the applicant's tariff, cost data, including, without limitation, a 12-month pro forma income statement, that is sufficient to demonstrate that the proposed rate would be fully compensatory and would not involve an excessive charge.

~~[(g) Such other information as the Authority or the applicant considers to be necessary or appropriate for a complete understanding of the application.]~~

2. In addition to the requirements established for pleadings, an application for the approval of any revision or modification to a contract submitted by a contract motor carrier to the Authority must include as exhibits attached thereto:

(a) A copy of the proposed contract as revised or modified;

(b) A complete and accurate statement of the circumstances and conditions relied on as justification for the proposed change, including, without limitation:

(1) The change in the total amount of intrastate revenue in the State of Nevada that would have been produced if the contract with the proposed revisions or modifications had been in effect during the preceding year; and

(2) The reasons of the applicant for the revision or modification which demonstrate that the proposed contract as revised or modified would be reasonable;

~~(c) [An operating statement for the entire 12-month period immediately preceding the date of the application, insofar as is practicable];~~

~~—(d) A balance sheet for the entire operation of the carrier as of the date of the operating statement required by paragraph (c);~~

~~—(e)]~~ For any item not included previously in the approved contract of the applicant, cost data, including, without limitation, a 12-month pro forma income statement which is sufficient to demonstrate that the proposed contract as revised or modified would be fully compensatory and would not involve an excessive charge; and

~~[(f) Such]~~

(d) Any other information as the Authority or the applicant considers to be necessary or appropriate for a complete understanding of the application. *Such information may include, without limitation:*

(1) An operating statement for the entire 12-month period immediately preceding the date of the application, insofar as is practicable.

(2) A balance sheet for the entire operation of the carrier as of a date specified by the Authority.

3. Suggested language for the public notice to be published in accordance with NAC 706.1355 may be submitted by the applicant.

4. The provisions of subsection 1 apply to all applications for rate changes made by common and contract motor carriers under the jurisdiction of the Authority.

Sec. 2. NAC 706.203 is hereby amended to read as follows:

706.203 1. An authorized carrier operating motor vehicles within this State shall maintain a centralized accounting system and the records required by the ~~[Nevada Transportation]~~ Authority in a designated headquarters.

2. Except as otherwise provided in subsection 3, all records required by the ~~[Nevada Transportation]~~ Authority to be maintained by an authorized carrier must be maintained by the authorized carrier for at least 3 years.

3. Driver vehicle inspection reports and records relating to such reports which are required to be maintained pursuant to 49 C.F.R. §§ 396.11 and 396.13 must be maintained by the authorized carrier for at least 3 months after the date the written report was prepared.

4. *Not later than 30 days after the date on which a periodic inspection is due pursuant to 49 C.F.R § 396.17, an authorized carrier shall provide to the Authority a true and correct copy of the periodic inspection report in the form required by 49 C.F.R. § 396.21(a).*

5. All records required by the ~~[Nevada Transportation]~~ Authority to be maintained by an authorized carrier are subject to inspection or audit by the ~~[Nevada Transportation]~~ Authority or its designated agent at any time during regular business hours.

Sec. 3. NAC 706.206 is hereby amended to read as follows:

706.206 1. All common and contract carriers operating within this State under the jurisdiction of the Authority shall notify the Authority of any changes in address, ~~[or]~~ location of

points where equipment will be located, officers of the corporation, or an intended sale, transfer, lease or discontinuance of operations under the authority granted them in their certificate or permit.

2. Any carrier, before the purchase or sale of the corporate control, must have the approval of the Authority.

Sec. 4. NAC 706.209 is hereby amended to read as follows:

706.209 1. When mechanical or body damage causes equipment to be out of service for at least 3 days, ~~[an authorized]~~ *a fully regulated* carrier ~~[of property or passengers]~~ may *seek approval from the Chair or the Chair's designee to* lease replacement equipment ~~[on a one-for-one basis to supplement its fleet up to the entire amount]~~ *for each item* of similar equipment ~~[owned and currently operated by]~~ *that is out of service, unless such a lease would result in* the ~~[carrier]~~ *carrier's active, in-service fleet* under its certificate or permit ~~[.]~~ *being comprised of more leased replacement items of equipment than items of similar equipment owned by the carrier.* Equipment that is owned by the carrier and used in the services of intrastate transportation in this State must be used to determine what constitutes similar equipment.

2. ~~[An authorized]~~ *A fully regulated* carrier shall not lease any kind of replacement equipment to provide transportation if the carrier does not currently own similar equipment.

3. The ~~[Authority]~~ *Chair or the Chair's designee* may approve the lease of replacement equipment *for a period up to 30 days* if, at the time of the lease, the ~~[authorized]~~ *fully regulated* carrier provides, in writing, to the Authority:

(a) Identification, by make, model, license plate and vehicle identification number, of the equipment placed out of service;

(b) Identification of the mechanical or body damage causing the equipment to be placed out of service;

(c) The estimated time during which the equipment will be out of service; ~~and~~

(d) A copy of the lease for the replacement equipment ~~and~~; *and*

(e) A statement indicating the total number of:

(1) Items of replacement equipment which the carrier will be leasing if the lease is approved; and

(2) Currently active, in-service items of equipment owned by the carrier under its certificate which are similar to the replacement equipment for which the carrier is seeking approval.

4. The Chair or the Chair's designee may approve an extension of a lease of replacement equipment for a period longer than 30 days if, before the expiration of the lease which was approved pursuant to subsection 3, the fully regulated carrier submits to the Authority a detailed explanation of the delay in returning to service the equipment that was taken out of service and the expected date for the return of such equipment to service.

5. Notwithstanding any provision of NAC 706.210 or 706.211 to the contrary, leases approved pursuant to this section will not be considered leases for the purposes of NAC 706.210 and 706.211.

Sec. 5. NAC 706.232 is hereby amended to read as follows:

706.232 A contract motor carrier shall not:

1. Operate between fixed terminals, provide service over a regular route or operate over the same route or to the same points so frequently as to constitute a regularly scheduled route or service, unless approved by the Authority;

2. Operate in such a manner that would interfere with the operation of a common motor carrier;

3. Conduct any operation as a common motor carrier; or

4. Provide transportation pursuant to more than ~~three~~ six contracts.

Sec. 6. NAC 706.274 is hereby amended to read as follows:

706.274 A carrier who obtains a contract permit:

1. May have a contract containing not more than ~~three~~ six shippers or not more than ~~three~~ six contracts, but neither the total number of contracts nor the total number of shippers may exceed ~~three;~~ six; and

2. Must present sufficient evidence to the Authority that either the number of contracts held by the contract carrier does not exceed the number of vehicles owned by the contract carrier and that at least one vehicle is dedicated to each individual shipper or, when the number of vehicles owned by the carrier is less than the number of shippers in a single contract, the contract carrier must explain in the contract how the exclusive use will be provided to the shipper for a continuing period.

Sec. 7. NAC 706.356 is hereby amended to read as follows:

706.356 1. Except as otherwise provided in subsection 3, a common motor carrier who is subject to the provisions of NAC 706.010 to 706.4019, inclusive, shall not interrupt any service established pursuant to the provisions of NRS 706.011 to 706.791, inclusive, for more than 48 hours in any 180-day period without filing a petition and obtaining an order granting the petition from the Authority. The Authority will give public notice and, if a protest is filed, hold a hearing on the petition before granting the petition. The Authority may hold a hearing on the petition if

no protests are filed. If the Authority does not act on the petition within 45 days after its filing, the petitioner may temporarily suspend operations until a final order is entered by the Authority.

2. A carrier who interrupts such service for less than 48 hours must provide notice to the Authority if the service being interrupted is the transportation of passengers. A notice required pursuant to this subsection must include, without limitation, the justification for the interruption of service. Financial or economic hardship may not be used to justify such an interruption. An interruption of less than 48 hours may not be renewed or extended unless the carrier files a petition and obtains an order in accordance with subsection 1.

3. If an interruption of service for more than 48 hours is caused by an unforeseeable event which is beyond the control of the carrier, the carrier must provide written notice to the Authority within 24 hours after the event. If service is not resumed within 10 days after such an interruption, the carrier must file a petition in accordance with subsection 1.

4. An order of the Authority granting the temporary interruption of service expires 180 days after the date on which the petition was filed. If the carrier has not resumed service on a permanent basis upon the expiration of such an order, the staff of the Authority shall, within 30 days after the expiration of the order, forward a recommendation to the Authority stating whether the Authority should issue an order to show cause why the ~~contract permit or~~ certificate of public convenience and necessity of the carrier should not be revoked.

Sec. 8. NAC 706.3949 is hereby amended to read as follows:

706.3949 1. A person who requests that information, which is in the possession of the Authority and pertains to that person, not be disclosed must submit to:

(a) The Deputy Commissioner, one copy of the document which contains the information in an unredacted form. The document must be placed in a sealed envelope, and the envelope and each page of the document must be stamped with the word “Confidential.”

(b) The Authority, ~~[10 copies]~~ *a copy* of the document which redacts the information for which the confidential treatment is requested ~~[]~~ *and such additional copies of the redacted document as requested by the Authority. The Authority may not request more than nine additional copies of the redacted document.*

2. A request that information not be disclosed must be served on the staff of the Authority and must:

- (a) Describe with particularity the information to be treated as confidential information;
- (b) Specify the grounds for the claim of confidential treatment of the information; and
- (c) Specify the period during which the information must not be disclosed.

3. Public disclosure of only those specific portions of a filing which contain information for which confidentiality is requested will be withheld or otherwise limited.

4. If the information for which confidentiality is requested is part of an application, petition or other initial filing, the application, petition or filing must comply with the provisions of this section. The initial notice issued by the Authority pursuant to NAC 706.3937 will state that certain information contained in the application, petition or filing has been requested to be treated as confidential information.

5. The Authority is responsible for the custody, maintenance and return or disposal of confidential information in the possession of the Authority and will:

(a) Maintain the confidential information separate and apart from all other records of the Authority; and

(b) Adequately safeguard access to such information and ensure that confidential information is not divulged to unauthorized persons.

6. To determine whether to accord confidential treatment to information pursuant to NAC 706.3944 to 706.3954, inclusive, the presiding officer may review the information in camera.

7. A closed hearing held before the presiding officer must be held in accordance with the provisions of NRS 706.1725.

8. Notwithstanding the other provisions of this section, the staff of the Authority is entitled to receive information designated as confidential in accordance with NAC 706.3944 to 706.3954, inclusive, if the staff of the Authority has executed a protective agreement.

Sec. 9. NAC 706.3962 is hereby amended to read as follows:

706.3962 Except as otherwise provided in this section, the original ~~[and nine legible copies]~~ of all pleadings *and such additional legible copies as requested by the staff of the Authority* must be filed at the office of the Authority in Las Vegas. *The staff of the Authority may not request more than nine additional copies of pleadings.* If a written protest is made, only the original is required to be filed. The presiding officer may require the parties to file additional copies if needed.

Sec. 10. NAC 706.3967 is hereby amended to read as follows:

706.3967 1. A petition for leave to intervene must be filed with the Authority within any applicable period set in the public notice published in accordance with NAC 706.1355.

2. If a petition for leave to intervene is filed after the applicable period, the petition must state a substantial reason for the delay.

3. As used in this section, “substantial reason” means a reason to relieve a person from a final judgment, order or proceeding pursuant to Rule 60(b) of the Nevada Rules of Civil Procedure.

Sec. 11. NAC 706.3968 is hereby amended to read as follows:

706.3968 1. If a petition for leave to intervene demonstrates that:

(a) Based upon the contents of the petition required pursuant to NAC 706.3966, the petitioner has a direct and substantial interest in one or more of the elements of the proceeding; and

(b) The intervention would not unduly broaden the issues,

↳ the Authority or presiding officer may grant leave for the petitioner to intervene or otherwise to appear in the proceeding with respect to those elements of the proceeding in which a direct and substantial interest is found, subject to such reasonable conditions as may be prescribed by the Authority or presiding officer.

2. Not later than 60 days after the date on which a petition for leave to intervene is received by the Authority, the Authority will or the presiding officer shall grant or deny the petition or set the petition for further proceedings.

3. If the Authority or presiding officer grants a petition for leave to intervene in a matter in which the Authority or presiding officer deems prehearing discovery to be appropriate, the Authority will or the presiding officer shall prescribe discovery requirements and establish a schedule for the completion of discovery.

4. If it appears during the proceedings that an intervener has no direct or substantial interest in the proceeding and that the public interest does not require his further participation, the Authority will or the presiding officer shall dismiss the intervener from the proceeding.

Sec. 12. NAC 706.3987 is hereby amended to read as follows:

706.3987 1. Applicants, petitioners or complainants may present their evidence first at a hearing. Then any parties of record opposing the application, petition or complaint may present their evidence. The presiding officer shall designate the stage of the proceeding at which each intervener, protestant or member of the staff of the Authority may be heard. Evidence must be received in the following order unless the presiding officer determines that a special circumstance requires a different order:

(a) Upon an application or petition:

(1) Applicant or petitioner;

(2) ~~Staff of the Authority;~~

~~(3)~~ Interveners;

(3) Staff of the Authority; and

(4) Rebuttal by the applicant or petitioner.

(b) Upon a complaint:

(1) Complainant;

(2) Respondent;

(3) ~~Staff of the Authority;~~

~~(4)~~ Interveners;

(4) Staff of the Authority; and

(5) Rebuttal by complainant.

(c) Upon a complaint by the Authority or an order to show cause:

(1) Staff of the Authority;

(2) Respondent;

(3) Interveners; and

(4) Rebuttal by staff of the Authority.

2. A witness may be cross-examined on issues testified to by that witness by:

(a) Opposing parties who have been granted leave to intervene pursuant to NAC 706.3968;

(b) The Authority;

(c) The Attorney General; and

(d) The staff of the Authority.

3. If there is more than one applicant, petitioner or complainant, the witnesses of all applicants, petitioners or complainants may present direct testimony on an issue before any of these witnesses may be cross-examined on that issue, unless otherwise ordered by the presiding officer.

4. If two or more matters are set for hearing at the same time and place, the matter having the lowest docket number will be heard first, unless the presiding officer directs a different order for the convenience of the parties.

Sec. 13. NAC 706.3992 is hereby amended to read as follows:

706.3992 1. An exhibit must be limited in size to 8 1/2 by 11 inches when folded, unless otherwise allowed by the presiding officer. A copy of each documentary exhibit must be furnished to each party of record, and ~~10~~ copies *of each exhibit* must be furnished to the Authority ~~1~~ *in such number as requested by the staff of the Authority or the presiding officer. The Authority or presiding officer may not request more than 10 copies of each documentary exhibit.* A copy must be submitted to the court reporter or transcriber. If relevant evidence is included in a written or printed statement, book or document of any kind containing other matter not relevant and not intended to be put in evidence, the statement, book or document containing that other matter may not be received or admitted in whole. Counsel or other parties offering the

evidence or exhibit shall present, in convenient and proper form for filing, a copy of the relevant portions or, at the discretion of the presiding officer, read these portions into the record. Any documentary evidence offered, whether in the form of an exhibit or introduced by reference, is subject to appropriate and timely objection.

2. If documents are numerous, such as freight bills or bills of lading, and a party desires to offer into evidence more than a limited number of these documents as typical of the others, an orderly abstract of relevant data contained in these documents may be prepared and offered as an exhibit. Other parties of record may examine both the abstract and the source document.

3. In a proceeding involving detailed accounting exhibits, the presiding officer shall require each party to file with him and to serve on each party of record a copy of these exhibits within a specified time before the hearing to enable the parties of record to study the exhibits and to prepare cross-examination with reference to them. An amendment to an exhibit may be made after the exhibit has been filed with the presiding officer if it does not prejudice the rights of any party or if it corrects a clerical or mathematical error.

Sec. 14. NAC 706.400 is hereby amended to read as follows:

706.400 In a hearing, the presiding officer may order briefs to be filed within a reasonable time. The original and ~~10~~ *such* copies of each brief *as requested by the presiding officer, but not to exceed 10 copies*, must:

1. Be filed with the Authority;
2. Contain all legal authority cited therein as exhibits; and
3. Be accompanied by an acknowledgment of or an affidavit showing service on each party of record.

Sec. 15. NAC 706.4004 is hereby amended to read as follows:

706.4004 1. The presiding officer may require any party of record to file proposed findings of fact and conclusions of law at the close of the proceeding. The presiding officer will fix the period within which these proposed findings and conclusions must be filed. No decision, report or recommended order may be made until after the expiration of this period.

2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered. Each proposed finding of fact must specifically show, by appropriate references to the transcript, the testimony which supports the statement.

3. An original and ~~10~~ *such* copies of proposed findings of fact and conclusions of law, accompanied by a certificate of service, *as requested by the presiding officer* must be filed by each party with the Authority, and one copy must be served upon each party of record. *A presiding officer may not request more than 10 copies of proposed findings of fact and conclusions of law.*

4. Any party of record may petition the Authority for an extension of time in which to file proposed findings of fact and conclusions of law.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R113-10**

The following statement is submitted for adopted amendments to Nevada Administrative Code (“NAC”) chapter 706.

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 notices of workshops and the notice of intent to act upon the regulations were sent by U.S. mail or via facsimile to all persons on the Authority’s mailing list for administrative rulemaking and to all motor carriers licensed by the Authority. Copies of the notices of workshops and the notice of intent to act upon the regulations were also posted at all county libraries in Nevada and at the following locations:

Clark County Court House
200 Lewis Ave.
Las Vegas, NV 89155

Grant Sawyer Building
555 E. Washington Blvd.
Las Vegas, NV 89101

Nye County Court House
1520 E. Basin Ave., #105
Pahrump, NV 89060

Washoe County Court House
75 Court St.
Reno, NV 89501

Nevada State Library
100 N. Stewart St.
Carson City, NV 89701

Copies of all materials relating to the proposal were made available at the workshops and adoption hearing, at the offices of the Authority, on the Authority’s website at www.nta.nv.gov, and at the Nevada State Library, 100 North Stewart St., Carson City, NV.

Workshops were held on November 18, 2009, March 5, 2010, and May 14, 2010. On or about October 6, 2010, the Authority issued a Notice of Intent to Act Upon a Regulation. A public hearing was held on November 9, 2010. The minutes of the three workshops and the public hearing, attached hereto, contain summaries of the discussion held regarding the proposed amendments.

A copy of this summary of the public response to the proposed regulation may be obtained from the Authority, 2290 South Jones Blvd. Suite 110, Las Vegas, Nevada 89146, (702)486-3303.

2. **The number of persons who:**
 - a. **Attended each workshop/hearing:** November 18, 2009—98; March 5, 2010—76; May 14, 2010—34; November 9, 2010—40.
 - b. **Testified at each workshop/hearing:** November 18, 2009—7; March 5, 2010—9; May 14, 2010—3; November 9, 2010—6.
 - c. **Submitted to the agency written comments:** 4.

3. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of 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 in the response to question #1 above.

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

Not applicable. The permanent regulation was adopted on November 9, 2010 and included changes suggested at the workshops and the adoption hearing.

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**

The proposed revisions will have no significant adverse or beneficial economic impact upon the regulated industry, either immediately or long-term.

Persons who appear before the Authority may realize minimal short and long-term beneficial effects related to provisions allowing the Authority, hearing officers, or staff to request fewer copies of certain pleadings and materials than now required to be submitted to the Authority.

Carriers may realize negligible economic benefit related to abbreviated record retention standards, both in the short and long term.

Contract carriers may realize short and long-term economic benefit related to the increased number of contracts for service into which these carriers will be allowed to enter, but only if they choose to enter into additional contracts.

The foregoing economic effects on carriers are unlikely to have an economic effect on customers or the general public, either in the short or long term.

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

There is no additional cost to the Authority 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 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.

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 Authority has determined that the proposed regulation does not impose a direct and significant economic burden upon small business or restrict the formation, operation or expansion of a small business. In making this determination the Authority considered that numerous representatives of affected small businesses were present at the three workshops and at the hearing; that at the workshops and the hearing, Chairman Andrew J. MacKay asked the participants to address any impact on small business; and that no impacts on small business were identified for the regulation as adopted.