

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO. R049-15
March 7, 2016

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 483 & 426:

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

The Agency's Need for the Adopted Regulation

This regulation provides for the implementation of Federal requirements regarding Commercial Learner Permits (CLP) issuance and Third Party skills testing. It removes the requirement that firefighters must have a class A or B non-commercial license to operate emergency equipment. There is also clean up language that was missed when the Department increased card production fees in R028-13 that was effective on 1-1-14.

Solicitation of Public Comment

Copies of the proposed regulation, notices of workshop and notices of intent to act upon the regulations were sent out for posting by electronic mail to all DMV offices and county libraries. They were also sent to all Third Party Company & Schools in Nevada and made available on the Department of Motor Vehicles website at www.dmvnv.com/publicmeetings.htm.

A Public Workshop was noticed on November 16, 2015, and held on December 11, 2015 at the Department of Transportation building in Carson City and video-conferenced to NDOT offices in Las Vegas and Elko. Forty four members of the general public or industry were in attendance.

A Notice of Intent to Act upon the Regulations was noticed on January 25, 2016 and a public hearing was held on March 3, 2016. The hearing was held at the Department of Transportation (NDOT) in Carson City and video-conferenced to NDOT offices in Las Vegas and Elko. Forty one members of the general public or industry was in attendance.

A recording of the Public Workshop and Hearing is on file with the Department of Motor Vehicles, Management Services and Programs Division, 555 Wright Way, Carson City, Nevada 89711. Copies of these minutes may be obtained by written request to Attention Wayne Bahmiller, Department of Motor Vehicles, Management Services and Programs Division, 555 Wright Way, Carson City, Nevada 89711.

2. The number of persons who:

(a) Attended the workshop; 44

In attendance in Carson City – 25

Terri Baltisberger, Department of Motor Vehicles (Workshop Hearing Officer)
April Sanborn, Department of Motor Vehicles
Kathryn Hamlin, Department of Motor Vehicles
Patrick Curley, Department of Motor Vehicles
Christina Schlosser, Department of Motor Vehicles
Schelly Farmer-Viquez, Department of Motor Vehicles
Robert Tracy, Nevada Department of Transportation
Joe Reeves, Nevada Department of Transportation
Tim Kendall, Hodges
Pat Murray, Hodges
Scott Huntley, North Lyon County Fire Protection District
Jason Speltz, Storey County Fire
Bob Bottom, National Division of Forestry
Jim Reid, Sparks Fire Department
Joy Wilson, Washoe County School District
Margo Mederios, Washoe County School District
Allison Graber, Washoe County School District
Dave Groneman, CLCFPD
Chris Hansen, City of Reno
Mark Darragh, CLCFD
Chris Laeurian, Reno Fire Department
Robert Charles, Carson Fire
Lacey Parrott, Mason Valley Fire
Wayne Cirone, Truckee Meadows Fire
Lita Brooks, UPS

In attendance in Las Vegas – 13

Jude Hurin, Department of Motor Vehicles
Wayne Bahmiller, Department of Motor Vehicles
Thomas Martin, Department of Motor Vehicles
Shawanna Washington, Department of Motor Vehicles
Tia Linzsey, Department of Motor Vehicles
Gabrielle Moton, Department of Motor Vehicles
Alisha Brown, Nevada Department of Transportation
Gary Sallea, Nevada Department of Transportation
David Hunnel, Nevada Department of Transportation
Sandra Orr, Carson City School District
Terie Larsen, Bell Transportation
Chester Murray, SW Truck Driver Training
Laura Gylyte, RTDS

In attendance in Elko – 6

Donna Fogleman, Department of Motor Vehicles
Tiffany McClusky, Department of Motor Vehicles
John Schifer, Department of Motor Vehicles
Patti Griffith, Nevada Department of Transportation
Janet Van Camp, Nevada Department of Transportation
Kathy Durser, Nevada Department of Transportation

(b) Testified at the workshop; 9

Scott Huntley, North Lyon County Company Fire Protection District
shuntley@northlyonfire.com
775-575-3310

Mr. Huntley wanted to go on record to say that the 10 skills test per calendar year requirement and background check requirements were too restrictive on their Third Party Program and they have over 20 years as a Third Party. He also wondered where this change came from and what stemmed it. He believes the F endorsement is very important to rural Nevada. He also had a question about using the F endorsement to respond to emergencies out of state.

Wayne Bahmiller responded by explaining the 10 test requirement and back ground checks are a federal regulation for commercial Third Parties. His Third Party program is a non-commercial Third Party and the regulations he mentioned did not pertain to non-commercial Third parties. The changes to the non-commercial third party regulations that governed them were explained along with the new process where a non-commercial class A or B would no longer be required for operators of emergency equipment. They may operate emergency equipment with only an F endorsement. The process would be for fire fighters to submit a form signed by a chief to have the F endorsement added to an existing license. Firefighter Departments already have established training they are required to use that exceeds the skills testing performed by the Department. This simplifies and quickens the process for both fire fighter and the Department. Use of the F endorsements to respond to out of state emergencies was not being affected by these proposed regulations and remains the same as it is today. Once Mr. Huntley understood the changes he was in favor of them.

Margo Medeiros, Washoe County School District
mmedeiros@washoeschools.net
775-337-7704

Ms. Medeiros was also concerned about the 10 test requirement. She asked why the Department is not following 49 CFR 383.75 that allows a Third Party Certifier to go to a class if they don't make the 10 test requirement.

Ms. Medeiros also mentioned that a CLP holder must wait 14 days until they may take a CDL skills test and if an office is scheduling 10 days it could take months to get school bus drivers on the roads.

Ms. Medeiros also mentioned the Department is making drivers, testing with a third party be scheduled for 4 days prior to administer a skills test and CFR allows 2 days including retests.

Wayne Bahmiller responded by explaining that CFR allows two options as an exemption to the 10 test requirement. One is a 40 hour class the other is observing the Third Party Certifier administer a test. The Department chose to only offer the 40 hour class due to logistic reasons when observing a test. The Department also chose to offer the 40 hours class exemption one time due to many Third Parties only administering a few tests per year and consistently not meeting the 10 test requirement. The 10 test requirements are to ensure certifiers retain their skills for administering tests.

Wayne Bahmiller clarified the 14 day waiting period is a federal requirement to allow a time period for training and they could effectively schedule a test on the 15th day. The Department chose 4 days over 2 days due to the length of time to schedule travel so the Department may audit the test in rural locations, this includes retests.

Robert Tracy, Nevada Department of Transportation
rtracy@dot.state.nv.us
775-834-8314

Mr. Tracy does not agree with the 10 test requirement. He asked what the Department gets from dropping certifiers from the program. He explained that it would be a hardship on rural testers and losing them from the program could spark issues. Most other CDL Third Party Companies and Certifiers agreed and testified the 10 test requirement was too restrictive if they do not have enough turn over to meet the requirement they would be dropped from the program.

Jude Hurin and Wayne Bahmiller responded by explaining the 10 test requirement is a federal requirement and the Department is proposing regulations to clarify the process and there would be no gain by dropping certifiers from the program. It was also explained that it is a federal rule that the State must comply with and don't have the flexibility to not comply with the rule. It was explained that the program is changing from a constant training program by the department to an auditing program to ensure skills test examiners retain their testing skills.

Chris Hansen, City of Reno
hansench@reno.gov
775-657-4566

Mr. Hansen wanted to know what has happened to cause this change. He also stated that if Third Party certifiers had to drop from the program that would be forced back in to the State CDL offices to be tests and this would cost tax payers more money. He believes the state is causing more burden on governmental agencies.

Jude Hurin asked if he was suggesting the Department allow a continuous recertification program and remove the one time exception and Mr. Hansen responded with yes. Mr. Hurin responded that we would take his concerns under consideration.

Thomas Martin responded that Federal Motor Carrier Safety Administration enacted the 10 test requirement to ensure Third Party certifiers retain their skills.

Janet Van Camp, Nevada Department of Transportation
jvancamp@ndot.state.nv.us
775-289-1713

MS. Van Camp asked if it was possible to allow Third Party Certifiers to skills test employees of other agencies. She will have to send her new employees to Elko or Winnemucca to be skills tested.

Wayne Bahmiller responded that the current regulation is written that Third Party Company's and Schools may only certify their own employees and students.

Kathy Turner, Nevada Department of Transportation
kturner@dot.state.nv.us
775-340-9515 – 775-777-2706

Ms. Turner stated NDOT in her area has trouble meeting the 10 test requirement and they need to keep the roads open and the Governor would be update if roads couldn't be kept open.

Lacey Parrott, Mason Valley Fire
lparrott@lyon.county.org
775-722-1984

Ms. Parrott requested a synopsis of the changes to the F endorsements program for fire fighters.

Wayne Bahmiller stated that a non-commercial class A or B will no longer be required to operate emergency equipment, an F endorsement on a class C would allow operation of emergency equipment classified as a class A or B vehicle. A chief would complete a Department approved form to permit the Department to add an F endorsement.

Dave Groneman, Central Lyon County Fire Department
775-287-9780

Mr. Groneman asked if the Department was changing the F endorsement to add the skills required for the Department to train. Scott Huntley added that he thinks the liability will always fall on the fire fighter agency. Mr. Huntley said he is pleased with the proposed fire fighter changes and that they are good. Mr. Groneman and Mr. Huntley asked to see the document in question.

Wayne Bahmiller responded that he worked with Michael Heidemann, Director of the Fire Fighter Association on the wording in the form used to add the F endorsement and fire fighters are trained and tested on equipment prior to testing with the Department. He also added that he would provide the document for them to review.

Chris Ingram, Reno Fire Department
ingramc@reno.gov
775-334-2300

Mr. Ingram asked what happens to existing non-commercial class A holders licenses and if this would only impact future employees.

Wayne Bahmiller responded by saying existing holders would be grandfathered in and it would only impact future employees.

Jason Speltz, Story County Fire
jspeltz@storycounty.org
775-342-0220

Mr. Speltz asked why the Department can't send out someone to observe the Third Party Certifier administer a test to meet the 10 test requirement.

Mr. Hurin responded to everyone in attendance that the Department would relook at its position and hold a meeting with governmental agencies to develop a compromise for the hearing.

Lita Brooks, UPS
lbrooks@ups.com
775-544-5230

Ms. Brooks would like an exemption from the 10 test requirement for Third Party Certifiers that are also CDL trainers

Mr. Hurin thanked her for her statement and the Department would the 10 test requirement.

(c) Submitted to the agency written statements - 1

Tom Spencer
Smith Valley Volunteer Fire Rescue
775-465-2577

The Department received a letter from Tom Spencer with the Smith Valley Volunteer Fire Rescue. The concerns in the letter addressed performing 10 skills tests each calendar year, background checks, maintaining a bond, and license classification and endorsements to operate emergency vehicles.

Mr. Bahmiller responded in email to Mr. Spencer explaining the changes being made pertain to CDL Third Parties and his program is a non-commercial Third Party program so they do not impact their program. The items that did pertain to their program were explained

(d) Attended the hearing; 38

In attendance in Carson City – 17

Peter Olsen, Department of Motor Vehicles (Hearings Officer)
Jude Hurin, Department of Motor Vehicles
Wayne Bahmiller, Department of Motor Vehicles
Thomas Martin, Department of Motor Vehicles
April Sanborn, Department of Motor Vehicles
Kathryn Hamlin, Department of Motor Vehicles
Patrick Curley, Department of Motor Vehicles
Jennifer Pitts, Department of Motor Vehicles
Schelly Farmer-Viquez, Department of Motor Vehicles
Joy Wilson, Washoe County School District
Margo Mederios, Washoe County School District
Allison Graber, Washoe County School District
Lita Brooks, UPS
Alan, Maldonado, UPS
Michael Heidemann, NSFA
Cheri Fletcher, Carson City School District
W Kevin Marshall, NDOT Material Division

In attendance in Las Vegas – 13

Shawanna Washington, Department of Motor Vehicles
Tia Linzsey, Department of Motor Vehicles
Gabrielle Moton, Department of Motor Vehicles
Peter A DeJoseph, OTR Construction
Alisha Brown, Nevada Department of Transportation
Shannon Rothe, CCSD
Gary Sallea, Nevada Department of Transportation

Melynda Stanfield, CC Roads
Rodney Thomas, CC Roads
Sandra Orr, Carson City School District
Tony Rigoni, LVFR
Sonya Jepsen, CCSD
Theresa Banhill, CCSD

In attendance in Elko – 8

Donna Fogleman, Department of Motor Vehicles
Tiffany McClusky, Department of Motor Vehicles
John Schifer, Department of Motor Vehicles
Kim Holland, Department of Motor Vehicles
Matt Turreuil, ECSD
Pansey Johnson, ECSD
Patti Griffith, Nevada Department of Transportation
Kathleen Turner, Nevada Department of Transportation

(e) Testified at the hearing – 5

Lita Brooks, UPS
lbrooks@ups.com
775-544-5230

Ms. Brooks, asked for clarification to the proposed 10 test requirements and the exception in the proposed regulations may only be allowed one time. Ms. Brooks also asked if the Federal government has a one-time requirement as describe in the proposed regulations.

Mr. Bahmiller explained that the exception is permitted one time to allow a certifier that did not perform the required 10 tests annual per CFR 383.75 to remain in the program for one additional year. The intent of the 10 test rule is so that certifiers maintain their CDL testing skills so tests are performed to federal standards. Mr. Bahmiller explained the one-time requirement is not a federal equipment however was included due to the impact on the Department. In order to oversee the program the Department must commit more resources and incur more costs for certifiers to remain in the program if they did not meet the requirement.

Alan Maldonado, UPS
alanmaldonado@ups.com
775-762-6120

Mr. Maldonado, testified they can see where the state is coming from and the program takes a burden off the State and UPS is willing to pay for reoccurring training if necessary. They also absorb a lot of expense with the donation of equipment to the Department for training certifiers and would like to see an exception added so they can remain certifiers.

Mr. Bahmiller thanked UPS and acknowledge that other Third Parties provided equipment for training and the Department appreciates their contributions.

Teresa Barnhill, Clark County School District
702-799-6890

Ms. Barnhill, testified they do not have an issue with the 10 test requirement at this time due to their turn over. Ms. Barnhill noted that due to the 10 test requirement drivers could be forced to test with the Department if certifiers are unable to meet the 10 test requirement and removed from the program. Ms. Barnhill also testified of the possibility of one school district certifying other school districts employees.

Mr. Bahmiller thank her for her testimony.

Tony Rigoni, LVFR
702-229-0999

Mr. Rigoni, testified about the 10 test requirement and having an F endorsement for fire fighters. Mr. Rigoni went on record agreeing with the changes to the non-commercial third party program pertaining to fire fighters.

Mr. Bahmiller, explained the 10 test requirement doesn't apply to non-commercial third party companies and the entire non-commercial third party program will be eliminated due to the improvements of allowing Fire Fighter Chiefs to complete a Department approved form so a fire fighter may add the F endorsement to a license and operate emergency equipment.

Melynda Stanfield, Clark County Road Division
melyndas@clarkcounty.nv.gov
702-455-7658

Ms. Stanfield, had a question about possibly allowing Clark County to possibly test outside of public works and test any county employees.

Mr. Bahmiller, testified that current regulations prohibit this action and the Department maintained the same position with the proposed regulations.

(f) Submitted to the agency written statements – 1

James Przybylski
National Security Technologies, LLC
702-295-7047

The Department received an email from Mr. Przybylski with the National Security Technologies, LLC. The concerns in the email addressed sections 33 & 35 pertaining to performing 10 skills tests employing only one third party certifier.

Mr. Bahmiller responded in email to Mr. Przybylski explaining the 10 test requirements and that Third Parties are not forced to employ more than one certifier but to employ the proper number of certifiers to ensure that each certifier can meet the minimum requirements. Mr. Przybylski thanked him for his response.

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 using electronic mail and postings as described in Question 1 for both the Workshop and the Hearing. Copies of the minutes may be obtained by written request to Attention Wayne Bahmiller, Department of Motor Vehicles, Management Services and Programs Division, 555 Wright Way, Carson City, Nevada 89711.

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.

Based on the opposition in the workshop and hearing to sections 35 & 36 pertaining to the 10 test requirement the Department made changes it feels will benefit Third Party certifiers. The changes will allow a Third Party certifier to remain in the program for not meeting the 10 test minimum and using the exception rule. The Department will offer the exception to all Third Party certifiers at the discretion of the Field Services Administrator. If the Administrator feels it is in the best interest of the Department they will remain in the program.

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

Business:

(a) Both adverse and beneficial effects; and

Adverse: The Department does not foresee an adverse economic effect of the adopted regulation.

Beneficial: No immediate or long-term economic benefit. Issuance of a CLP is a benefit to public safety.

(b) Both immediate and long-term effects.

Same as (a) above.

Public:

(a) Both adverse and beneficial effects; and

Adverse: The Department does not foresee an adverse economic effect of the adopted regulation.

Beneficial: No immediate or long-term economic benefit. Issuance of a CLP is a benefit to public safety

(b) Both immediate and long-term effects.

Same as (a) above.

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

There is no additional cost to the Department of Motor Vehicles for the enforcement of the adopted regulations.

7. 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.

The proposed regulations are a clarification to Federal requirements in 49 CFR 383 there are no other state or federal government agency regulations that are duplicated or overlapped by the adopted regulations.

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 proposed regulations are not more stringent than federal guidelines. The proposed regulations are for clarification of federal guidelines.

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.

Section 1

This is clean up language and the Department is currently collecting this fee and therefore there will be no increase in revenue.

The proposed regulation increases the fee of an expedited service permit by \$1.00. This increase is due to an overall increase for the production of cards by the Department. The card production increase was included in R028-13 that was effective on 1-1-14. The fees currently in NRS 486.630 include the card production fee and are not a separate fee. Since the card production fee is a separate fee the increase to the card production fee was missed in NRS 486.630 when R028-13 passed.

10. Small Business Impact Statement

In compliance with Assembly Bill 408 of the 2013 Legislative Session the Department of Motor Vehicles has completed a small business impact statement however the Department does not believe the regulations impose a direct and significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small businesses.