

LCB File No. R062-02

**PROPOSED REGULATION OF THE  
DEPARTMENT OF MOTOR VEHICLES**

Proposed Effective Date: Upon Codification

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

AUTHORITY: NRS 483.908

**Section 1.** Chapter 483 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3, and 4 of this regulation:

**Sec. 2.** *Commercial Per Se, mandatory suspension of commercial driver's license of person if test shows concentration of alcohol of 0.04 or more, but less than 0.10 in blood or breath; cancellation of suspension and credit toward subsequent revocation or suspension.*

*1. If the result of a test given pursuant to NRS 483.922, 484.382 or 484.383, shows that a person who holds a commercial driver's license, while in control of a commercial motor vehicle, had a concentration of alcohol of 0.04 or more but less than 0.10 in his blood or breath at the time of the test, his commercial driver's license, permit or privilege to drive must be suspended for a period of 90 days.*

*2. If a revocation or suspension of a person's commercial driver's license, permit or privilege to drive for a violation of NRS 484.379 or 484.3795, follows a suspension ordered pursuant to subsection 1, the department shall:*

*(a) Cancel the suspension ordered pursuant to subsection 1; and*

*(b) Give the person credit toward the period of revocation or suspension ordered pursuant to NRS 484.379 or 484.3795, whichever is applicable, for any period during which the person's commercial driver's license, permit or privilege to drive was suspended pursuant to subsection 1.*

*3. This section does not preclude:*

*(a) The prosecution of a person for a violation of any other provision of law; or*

*(b) The suspension or revocation of a person's commercial driver's license, permit or privilege to drive pursuant to any other provision of law.*

**Sec. 3** *Test indicating person who holds a commercial driver's license, while in control of a commercial motor vehicle, has concentration of alcohol of 0.04 or more but less than 0.10 in blood or breath; duties of peace officer and department; order for suspension of commercial driver's license.*

*1. A peace officer who has received the result of a test given pursuant to NRS 483.922, 484.382 or 484.383 which indicates that a person who holds a commercial driver's license to whom the test was given had a concentration of alcohol of 0.04 or more but less than 0.10 in his blood or breath shall prepare a written certificate indicating whether the peace officer:*

*(a) Had reasonable grounds to believe that the person was driving under the influence of alcohol;*

- (b) Served an order of suspension on the person pursuant to subsection 2; and*
- (c) Issued the person a temporary commercial driver's license pursuant to subsection 2.*

*2. If a person who holds a commercial driver's license to whom a test is given pursuant to NRS 483.922, 484.382 or 484.383, is present when a peace officer receives the result of the test and the test indicates that the person has a concentration of alcohol of 0.04 or more but less than 0.10 in his blood or breath, the peace officer shall:*

- (a) Serve an order of suspension of the commercial driver's license, permit or privilege;*
- (b) Seize any commercial driver's license or permit of the person;*
- (c) Advise the person of his right to:*
  - (1) Administrative and judicial review of the suspension; and*
  - (2) Have a temporary commercial driver's license;*

*(d) If the person requests a temporary commercial driver's license, issue the person a temporary commercial driver's license on a form approved by the department which becomes effective after he receives the temporary commercial driver's license and expires 168 hours after it becomes effective; and*

*(e) Transmit to the department:*

- (1) Any commercial driver's license or permit seized pursuant to paragraph (b); and*
- (2) The written certificate which the peace officer is required to prepare pursuant to subsection 1.*

*3. If a person who holds a commercial driver's license to whom a test is given pursuant to NRS 483.922, 484.382 or 484.383, is not present when a peace officer receives the result of the test and the test indicates that the person has a concentration of alcohol of 0.04 or more but less than 0.10 in his blood or breath, the peace officer shall transmit to the department a copy of the result of the test and the written certificate which the peace officer is required to prepare pursuant to subsection 1.*

*4. The department, upon receiving a copy of the result of the test and the written certificate transmitted by the peace officer pursuant to subsection 3, shall:*

*(a) Review the result of the test and the written certificate; and*

*(b) If the department determines that it is appropriate, issue an order to suspend the commercial driver's license, permit or privilege to drive of the person by mailing the order to the person at his last known address.*

*5. An order for suspension issued by the department pursuant to subsection 4 must:*

- (a) Explain the grounds for the suspension;*
- (b) Indicate the period of the suspension;*

*(c) Require the person to transmit to the department any commercial driver's license or permit held by the person; and*

*(d) Explain that the person has a right to administrative and judicial review of the suspension.*

*6. An order for suspension issued by the department pursuant to subsection 4 is presumed to have been received by the person 5 days after the order is deposited, postage prepaid, in the United States mail by the department. The date of mailing of the order may be shown by a certificate that is prepared by an officer or employee of the department specifying the date of mailing.*

**Sec. 4** *Review of order of suspension issued pursuant to NRS 483.462; hearing; issuance of temporary commercial driver's license; affirmation or rescission of suspension; judicial review.*

*1. At any time during which the commercial driver's license, permit or privilege to drive is suspended pursuant to Section 2 of this proposed regulation, the person may request in writing a*

*hearing by the department to review the order of suspension. A person is entitled to only one administrative hearing pursuant to this section.*

*2. Unless the parties agree otherwise, the hearing must be conducted within 15 days after receipt of the request or as soon thereafter as is practicable in the county in which the requester resides.*

*3. The director or his agent may:*

*(a) Issue subpoenas for:*

*(1) The attendance of witnesses at the hearing; and*

*(2) The production of relevant books and papers; and*

*(b) Require a reexamination of the requester.*

*4. The scope of the hearing must be limited to the issues of whether the person, at the time of the test:*

*(a) Held a commercial driver's license; and*

*(b) Had a concentration of alcohol of 0.04 or more but less than 0.10 in his blood or breath.*

*5. The department shall issue the person a temporary driver's license for a period that is sufficient to complete the administrative hearing.*

*6. Upon an affirmative finding on the issues listed in subsection 4, the department shall affirm the order of suspension. Otherwise, the order of suspension must be rescinded.*

*7. If the order of suspension is affirmed by the department, the person is entitled to judicial review of the issues listed in subsection 4 in the manner provided in chapter 233B of NRS.*

*8. The court shall notify the department upon issuing a stay. Upon receiving such notice, the department shall issue an additional temporary commercial driver's license for a period that is sufficient to complete the judicial review.*

*9. The hearing officer or the court shall notify the department if the hearing officer grants a continuance of the administrative hearing or the court grants a continuance after issuing a stay of the suspension. Upon receiving such notice, the department shall cancel any temporary commercial driver's license granted pursuant to this section and notify the holder by mailing an order of cancellation to the last known address of the holder.*

**Sec. 5** Chapter 483 of NAC is hereby amended by adding thereto the provisions set forth as section 6 of this regulation:

**Sec. 6. 1.** *A driver who is convicted of operating a commercial motor vehicle in violation of a Federal, State or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing must be disqualified for the period of time specified in paragraph 2 of this section.*

*(a) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;*

*(b) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;*

*(c) For drivers who are always required to stop, failing to stop before driving onto the crossing;*

*(d) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;*

*(e) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing;*

*(f) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.*

*2. Duration of disqualification for railroad highway grade crossing violation. The conviction or violation date will be used when determining number of offenses within the three-year period.*

*(a) First violation. A driver must be disqualified for not less than 60 days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.*

*(b) Second violation. A driver must be disqualified for not less than 120 days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.*

*(c) Third or subsequent violation. A driver must be disqualified for not less than 1 year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.*

**Sec. 7** NAC 483.850 is hereby amended to read as follows:

**NAC 483.850 Exemptions from requirements.** The following persons are exempt from the requirements of NRS 483.900 to 483.940, inclusive, and NAC 483.800 to 483.850, inclusive:

1. An operator of a farm vehicle that is:

(a) Controlled and operated by a farmer as a private motor carrier of property;

(b) Being used to transport either:

(1) Agricultural products; or

(2) Farm machinery or farm supplies, or both,

to or from a farm;

(c) Not being used in the operation of a motor carrier for hire;

(d) Being used within 150 ~~air~~ miles of the operator's farm; and

(e) Not carrying a hazardous material of a type or quantity which would require the vehicles to be placarded in accordance with 49 C.F.R. § 177.823.

2. Fire fighters and operators of emergency equipment, necessary to the preservation of life or property or the execution of emergency governmental functions, who are not subject to normal traffic regulation.

3. Military personnel while driving a motor vehicle in the service of the Armed Forces.

4. A person who is driving a recreational vehicle that is being used solely for recreational purposes.