

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

**LCB File No. R062-02**

June 19, 2002

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

AUTHORITY: §§1-7, 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. 1.** *If the result of a test given pursuant to NRS 483.922 shows that a person who holds a commercial driver's license or permit, 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 or permit for a violation of NRS 484.379 or 484.3795 follows a suspension ordered pursuant to subsection 1, the department will:*

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

*(b) Give the person credit towards 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. 1. A peace officer who has received the result of a test given pursuant to NRS 483.922 which indicates that a person who holds a commercial driver's license or permit 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 or permit to whom a test is given pursuant to NRS 483.922 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 to drive;*
- (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) Obtain a temporary commercial driver's license, if his commercial driver's license is seized pursuant to paragraph (b);*

*(d) If the person requests a temporary commercial driver's license, and his commercial driver's license is seized pursuant to paragraph (b), issue the person a temporary commercial driver's license on a form approved by the department which becomes effective 24 hours 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 that the peace officer is required to prepare pursuant to subsection 1.*

*3. If a person who holds a commercial driver's license or permit to whom a test is given pursuant to NRS 483.922 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 that 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, will:*

*(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 by the department, postage prepaid, in the United States mail. 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. 1. At any time during which the commercial driver's license, permit or privilege to drive is suspended pursuant to section 3 of this regulation, the person may request in writing an administrative 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 of the department 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 or permit; 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 will issue the person a temporary commercial driver's license, if he holds a commercial 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 will 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. Upon receiving a notice from a court of competent jurisdiction that the court has issued a stay, the department will issue an additional temporary commercial driver's license if he holds a commercial driver's license for a period that is sufficient to complete the judicial review.*

*9. Upon receiving a notice from:*

*(a) A hearing officer that he has granted a continuance of the administrative hearing; or*

*(b) A court of competent jurisdiction that the court has granted a continuance after issuing a stay of the suspension,*

*the department will 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.*

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**Sec. 5.** NAC 483.800 is hereby amended to read as follows:

483.800 1. Except as otherwise provided in NAC 483.802, the department hereby adopts by reference the provisions of 49 C.F.R. Part 383 as they existed on ~~June 1, 1990,~~ *October 1, 2001, and any subsequent amendments. Each amendment shall be deemed approved by the department unless it disapproves the amendment within 60 days after the United States Department of Transportation has adopted such an amendment,* with the following exceptions:

- (a) Paragraphs 1, 2 and 3 of subsection (a) of 49 C.F.R. § 383.91 are deleted; and
- (b) The vehicle classification groups found in figure 1 of 49 C.F.R. § 383.91 are deleted and replaced with the vehicle classifications listed in NAC 483.110.

2. A copy of the volume containing ~~these~~ *the* provisions *described in this section and NAC 483.802* is available at a cost of ~~[\$20]~~ *\$60* from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

3. A licensee shall comply with the requirements of the provisions adopted by reference in subsection 1.

**Sec. 6.** NAC 483.802 is hereby amended to read as follows:

483.802 1. The department hereby adopts by reference the regulations contained in 49 C.F.R. § 383.51, as ~~the provision existed on October 1, 1995,~~ *provided in NAC 483.800* with the following modifications:

- (a) As used in 49 C.F.R. § 383.51:
  - (1) “Disqualification” means the suspension, revocation or cancellation of a person’s privileges to drive a commercial motor vehicle and applies only to the administration of NRS 483.900 to 483.940, inclusive, as those sections relate to commercial drivers’ licenses ~~+~~ *or permits.*

(2) “Serious traffic violation” means a conviction, when operating a commercial motor vehicle, of:

(I) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(II) Reckless driving, as defined by state or local law or regulation, including offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(III) Improper or erratic lane changes;

(IV) Following the vehicle ahead too closely; or

(V) A violation of a state or local law relating to the control of motor vehicle traffic that arises in connection with a fatal accident.

FLUSH The term does not include a violation regarding the weight of a commercial motor vehicle, the manner in which it is parked or a mechanical defect in the vehicle.

(b) A person who operates a commercial motor vehicle while his driver’s license *or permit* is suspended, revoked or canceled, or while he is otherwise disqualified from operating a commercial motor vehicle, is subject to the provisions and penalties specified in NRS 483.560.

(c) A person who knowingly falsifies any information or certification on an application filed with the department for a commercial driver’s license or ~~learner’s~~ permit is subject to the provisions specified in NRS 483.420.

(d) A person who is disqualified from driving a commercial motor vehicle under this section shall surrender his commercial driver’s license *or permit* to the department.

(e) To reinstate a commercial driver’s license *or permit* after disqualification, a person must, in addition to any other conditions required by law:

- (1) Complete an application;
  - (2) Pass a vision test, knowledge tests and, if applicable, driving skills tests;
  - (3) Provide any additional information requested by the department to determine his fitness to operate a commercial motor vehicle safely; and
  - (4) Pay the reinstatement fees established in NRS 483.910.
2. The volume containing 49 C.F.R. Parts 200 to 399 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at the price of ~~[\$30.]~~ **\$60.**
3. As used in this section, “commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
- (a) Has a gross combination weight rating of 26,001 or more pounds which includes a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
  - (b) Has a gross vehicle weight rating of 26,001 or more pounds;
  - (c) Is designed to transport 16 or more passengers, including the driver; or
  - (d) Regardless of size, is used in the transportation of materials which are considered to be “hazardous” for the purposes of the federal Hazardous Materials Transportation Act and for which the display of identifying placards is required pursuant to the Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

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

483.850 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,

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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.