

**ADOPTED REGULATION OF THE  
DEPARTMENT OF MOTOR VEHICLES**

**LCB File No. R123-07**

Effective January 30, 2008

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

AUTHORITY: §§1-3, NRS 483.908.

A REGULATION relating to driver's licenses; revising certain provisions relating to the revocation or suspension of the driver's license of a person who drives a commercial motor vehicle and is under the influence of alcohol; and providing other matters properly relating thereto.

**Section 1.** NAC 483.848 is hereby amended to read as follows:

483.848 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 or permit,]~~ while in control of a commercial motor vehicle, had a concentration of alcohol of 0.04 or more but less than 0.08 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, *484.37955 or 484.379778* 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, *484.37955 or 484.379778*, 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. 2.** NAC 483.8485 is hereby amended to read as follows:

483.8485 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 or permit to whom the test was given~~, **while in control of a commercial motor vehicle**, had a concentration of alcohol of 0.04 or more but less than 0.08 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 **of the same type and class as the license which was seized** pursuant to subsection 2.

2. If a person who ~~holds a commercial driver's license or permit~~ **was in control of a commercial motor vehicle and** 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 0.08 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 *[ ] of the same type and class as the license which was seized*, 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 *of the same type and class as the license which was seized* 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,~~ *was in control of a commercial motor vehicle and* 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 0.08 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 *specifying the date of mailing* that is prepared by an officer or employee of the Department. ~~specifying the date of mailing.~~

**Sec. 3.** NAC 483.849 is hereby amended to read as follows:

483.849 1. At any time during which the ~~commercial~~ driver's license, permit or privilege to drive is suspended pursuant to NAC 483.8485, 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;~~ *Was in control of a commercial motor vehicle;* and

(b) Had a concentration of alcohol of 0.04 or more but less than 0.08 in his blood or breath.

5. The Department will issue *to* the person a temporary ~~commercial~~ driver's license ~~of~~ *of the same type and class as the license which was seized,* 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~~ *the*

*person* 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R123-07**

The Department of Motor Vehicles adopted regulations assigned LCB File No. R123-07 which pertain to chapter 483 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

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

Copies of the proposed regulations, notices of workshop, and notices of intent to act upon the regulation were sent by email to persons who were known to have an interest in the subject of the revocation or suspension of the driver's license of a person who drives a commercial motor vehicle and is under the influence of alcohol, and other related matters, as well as to any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Motor Vehicles (DMV), [www.dmvnv.com](http://www.dmvnv.com), emailed with posting instructions to all county libraries in Nevada, and posted at the following locations:

Nevada Department of Motor Vehicles Branch Offices:

Office of the Director (Carson City DMV – Customer Lobby) 555 Wright Way Carson City, NV 89711	1085 Highway 95 Hawthorne, NV 89415
8250 West Flamingo Rd. Las Vegas, NV 89147	3030 S. Needles Highway, Ste. 900 Laughlin, NV 89028
3920 E. Idaho St. Elko, NV 89801	1780 E. Basin Ave. Pahrump, NV 89060
178 No. Avenue F Ely, NV 89301	330 N. Sandhill Rd., Ste. H Mesquite, NV 89027
973 W. Williams Ave. Fallon, NV 89406	7170 N. Decatur Blvd. Las Vegas, NV 89131
4110 Donovan Way N. Las Vegas, NV 89030	1137 S. Main St., #C-8 Tonopah, NV 89049
3505 Construction Way Winnemucca, NV 89445	215 West Bridge St. No. 9 Yerington, NV 89447
1694 County Rd. Minden, NV 89423	305 Galletti Way Reno, NV 89512
1399 American Pacific Dr. Henderson, NV 89014	2701 E. Sahara Ave. Las Vegas, NV 89104

A workshop was held on November 26, 2007, regarding the proposed amendments; a recording of that meeting was made and is on file at the Nevada Department of Motor

Vehicles, Research and Development, 555 Wright Way, Carson City, Nevada 89711. On or about November 7, 2007, the Director of the Department of Motor Vehicles issued a Notice of Intent to Act Upon a Regulation with a Notice of Public Hearing to be held December 19, 2007, at 9 a.m., at the Nevada Department of Education, Board Room, 700 East 5<sup>th</sup> Street, Carson City, Nevada 89701. Copies of the workshop recording or hearing minutes may be obtained by contacting Debbie Wilson by telephone at 775-684-4778 or by email, [dwilson@dmv.nv.gov](mailto:dwilson@dmv.nv.gov).

- 2. The number of persons who:**
  - (a) Attended each hearing: December 19, 2007** – 4 (including 3 from DMV)
  - (b) Testified at each hearing: December 19, 2007** – None
  - (c) Submitted to the agency written statements:** – None
  
- 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.**

There is no estimated adverse or beneficial economic effect on businesses. However, public comment was solicited as explained in response to question #1.
  
- 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. The statement should also explain the reasons for making any changes to the regulation as proposed.**

No changes were suggested at the workshop held on November 26, 2007, and the permanent regulation was adopted on December 26, 2007.
  
- 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:**
  - (a) Both adverse and beneficial effects; and**
  - (b) Both immediate and long-term effects.**

There is no estimated adverse or beneficial economic effect on businesses. There would be a potential adverse economic impact on the general public from reinstatement fees and court costs related to illegal per se actions taken for operating a commercial motor vehicle while under the influence of alcohol.
  
- 6. The estimated cost to the agency for enforcement of the adopted regulation.**

There should be no extra cost to enforce this regulation.
  
- 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.**

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 that 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 Director has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation, or expansion of a small business. In making this determination, the Director considered the fact that the proposed amendment only applies to activity by local and state government officials and imposes no direct requirements on any private businesses.