

LCB File No. R123-07

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

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Public Hearing for the
Adoption of Proposed New and Amended Regulations of the
Department of Motor Vehicles**

The Department of Motor Vehicles will hold a public hearing at the following location on the date and time specified:

**PUBLIC HEARING
CARSON CITY**

**Wednesday, December 19, 2007, 9 a.m.
Nevada Department of Education, Board Room
700 East 5th Street
Carson City, Nevada 89701**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption of proposed new and amended regulations (LCB File No. R123-07) that pertain to chapter 483 of the Nevada Administrative Code.

Proposed Regulation of the Department of Motor Vehicles, LCB File No. R123-07

The following information is provided pursuant to the requirements of NRS 233B.0603:

- 1. The need for and the purpose of the proposed regulation or amendment.**
This is a regulation relating to the Department of Motor Vehicles to amend Chapter 483 of NAC to comply with legislation passed during the 2007 Legislative Session.
- 2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.**
This regulation revises 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. It provides for a 90-day suspension for any driver operating a commercial motor vehicle with a blood alcohol concentration of 0.04 or more but less than 0.08 in his blood or breath at the time of the test, as well as other related matters.
- 3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in 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.

4. The estimated cost to the agency for enforcement of the proposed regulation.

There should be no extra cost to enforce the proposed regulation.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

N/A.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

N/A.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

N/A.

Persons wishing to comment upon the proposed action of the Department of Motor Vehicles may appear at the scheduled public workshop and hearing or may address their comments, data, views, or arguments, in written form to:

Debbie Wilson, Management Analyst
Department of Motor Vehicles
Research and Development Division
555 Wright Way, Carson City, NV 89711

Written submission must be received by Department of Motor Vehicles on or before **Friday, December 21, 2007**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Motor Vehicles may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and regulations to be adopted will be available at each of

the Department of Motor Vehicles listed, and at the main public libraries listed, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://leg.state.NVus/Register/>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

THIS NOTICE HAS BEEN POSTED AT THE FOLLOWING LOCATIONS:

DEPARTMENT OF MOTOR VEHICLE BRANCH OFFICES

Office of the Director
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

LIBRARIES

Goldfield Public Library
Fourth & Crook St.
Goldfield, NV 89013

Lincoln County Library
93 Main St.
Pioche, NV 89043

Eureka Branch Library
10190 Monroe St.
Eureka, NV 89316

Battle Mountain Branch
625 Broad St.
Battle Mountain, NV 89820

Pershing County Library
1125 Central Ave.
Lovelock, NV 89419

Storey County Library
95 South R St.
Virginia City, NV 89440

Mineral County Library
1125 Central Ave.
Hawthorne, NV 89419

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

LCB File No. R123-07

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

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

AUTHORITY: 49 CFR 383.51

Regulations relating to the concentration of alcohol for drivers operating a commercial motor vehicle.

Chapter 483 of NAC is hereby amended to read as follows:

Section 1 NAC 483.810 Requirements for application for instruction permit or license. (NRS 483.908) In addition to complying with the requirements of NRS 483.290, an application for a commercial driver's instruction permit or a commercial driver's license must comply with the requirements of 49 C.F.R. § 383.23.

Section 1 NAC 483.848 Test to determine concentration of alcohol: Suspension of license for certain concentration. (NRS 483.908)

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 0.08 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 Section 22 of Assembly Bill 584* 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 Section 22 of Assembly Bill 584*, 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 Test to determine concentration of alcohol: Duties of peace officer; review by Department; contents and mailing of order for suspension of license. (NRS 483.908)

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 0.08 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, pursuant to subsection 2, *of the same type and class to that which was seized*.

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 0.08 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 to that 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 *of the same type and class to that which was seized*, 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 to that 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 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 0.08 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 *person's* ~~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 Suspension of license as result of certain concentration of alcohol: Hearing; temporary license; judicial review. (NRS 483.908)

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; and~~

~~—(b) H] 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 the person a temporary ~~commercial~~ driver's license, *of the same type and class to that 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 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.