

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

LCB File No. R123-07

October 9, 2007

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 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 section 22 of Chapter 486, Statutes of Nevada 2007 (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 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~~ *who was in control of a commercial 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 was in control of a commercial vehicle* ~~[who holds a commercial driver's license or permit,]~~ 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 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 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.