

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

LCB File No. R216-08

(This regulation consists of §§8 and 19-23 of LCB File No. R107-08;
these sections have been split out from that regulation for separate consideration)

November 11, 2008

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

AUTHORITY: §1, NRS 483.220 and 483.490; §2, NRS 483.220, 483.495 and 483.908; §3, NRS 483.220 and 483.495; §4, NRS 481.051; §§5 and 6, NRS 483.908;

A REGULATION relating to the Department of Motor Vehicles; revising provisions relating to the issuance of a temporary commercial driver's license; and providing other matters properly relating thereto.

Section 1. NAC 483.254 is hereby amended to read as follows:

483.254 The Department will not issue ~~[a]~~:

1. A restricted license to a person who ~~[:~~

~~—1. [Is]~~ *is* under 18 years of age and has been prohibited from applying for a driver's license pursuant to a court order issued pursuant to:

(a) Title 5 of NRS for placing graffiti on or otherwise defacing the public or private property, real or personal, of another person, in violation of NRS 206.125 or 206.330; or

(b) Title 5 of NRS for handling or possessing a firearm or having a firearm under his control in violation of NRS 202.300; ~~[or]~~

2. ~~[Is]~~ *A restricted license to a person who is* 18 years of age or older and has been prohibited from applying for a driver's license pursuant to a court order for placing graffiti on or

otherwise defacing the public or private property, real or personal, of another person in violation of NRS 206.330 ~~(f)~~; *or*

3. A restricted commercial driver's license which permits the operation of a commercial motor vehicle.

Sec. 2. NAC 483.475 is hereby amended to read as follows:

483.475 1. The Department will administer an applicable driving skills test to an applicant for reinstatement of his driver's license in, but not limited to, the following instances:

(a) He has been convicted of six or more moving violations while operating a noncommercial motor vehicle during the 4-year period immediately preceding the date of reinstatement;

(b) He has been convicted of four or more moving violations while operating a commercial motor vehicle during the 4-year period immediately preceding the date of reinstatement;

(c) He has been involved in more than one accident in which he was at fault during the 1-year period immediately preceding the date of reinstatement;

(d) He is applying for an upgrade in the type or classification of his license;

(e) He is applying for an additional endorsement not on the license which was withdrawn that requires a driving skills test;

(f) The license has *been* expired *for 1 year* or *more*;

(g) The license has been withdrawn for 1 year or more; or

~~(g)~~ *(h)* The license was withdrawn because of the failure of the applicant to complete a driving skills test.

2. The Department will administer an applicable knowledge test, or a test more specific to a particular classification or endorsement, to an applicant for reinstatement of his driver's license in, but not limited to, the following instances:

(a) He has been convicted of three or more moving violations while operating a noncommercial motor vehicle during the 4-year period immediately preceding the date of reinstatement;

(b) He has been convicted of two or more moving violations while operating a commercial motor vehicle during the 4-year period immediately preceding the date of reinstatement;

(c) He is applying for an upgrade in the type or classification of his license;

(d) He is applying for an additional endorsement on his license which was withdrawn that requires a knowledge test;

(e) The license has *been* expired *for 1 year or more*;

(f) The license has been withdrawn for 1 year or more; or

~~(f)~~ *(g)* The license was withdrawn because of the failure of the applicant to complete a knowledge test.

Sec. 3. NAC 483.480 is hereby amended to read as follows:

483.480 1. The Department will terminate or rescind an action to withdraw a driver's license or award credit against the period of revocation if the action resulted from:

(a) Incorrect information on the driver's license and the information has been corrected by the Department;

(b) A conviction and the Department has received a notice from the court amending the conviction to an offense which is not cause for the withdrawal of the license;

(c) A statement from a law enforcement officer and the Department has received a corrected statement from the officer amending the information that caused the withdrawal action; or

(d) A statement from a law enforcement officer and the Department has received an amended conviction order from the court finding that the license was incorrectly revoked.

2. If the action to withdraw a driver's license resulted from a statement of the court that the court seized a person's driver's license at the time of a conviction and ordered the person not to operate a motor vehicle, the person must receive credit against the period of revocation from the time of the conviction to the time of withdrawal of the driver's license by the Department.

3. If an investigation conducted by the Compliance Enforcement Division of the Department indicates that a conviction has been recorded on the driving record of a person who is the victim of identity theft, or the subject of an action to withdraw a driver's license is a victim of identity theft, and is not the actual person identified on the report of conviction or by a law enforcement agency at the time of the report, the Department will remove the conviction and terminate or rescind the action to withdraw a driver's license.

Sec. 4. NAC 483.555 is hereby amended to read as follows:

483.555 1. The Department hereby adopts by reference the provisions of 23 C.F.R. Part 1327.5 and Appendix A to Part 1327, "Abridged Listing of the American Association of Motor Vehicle Administrators Violations Exchange Code, Used by the NDR for Recording Driver License Denials , ~~[and]~~ Withdrawals ~~[,']~~, *and Convictions of Motor Vehicle-Related Offenses,*" as those provisions existed on ~~[November 8, 1991.]~~ *April 1, 2007, and any subsequent amendments to those provisions.* A copy of the provisions of 23 C.F.R. Part 1327.5 and Appendix A to Part 1327 may be obtained from the Superintendent of Documents, ~~[P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$26.]~~ *United States Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by telephone at (866) 512-1800, for the price of \$45.*

2. ~~[In addition to the offenses listed in Appendix A to Part 1327, the Department will report to the National Driver Register the following offenses if any of those offenses occurred during the operation of a commercial motor vehicle:~~

~~—(a) Exceeding the speed limit by not less than 15 miles per hour.~~

~~—(b) Following a motor vehicle too closely.~~

~~—(c) Changing lanes improperly.~~

~~—3.]~~ As used in 23 C.F.R. Part 1327.5 (a), “for cause” means an adverse action taken by a state against a person which is based on a violation set forth in Appendix A to Part 1327 . ~~[or any violation set forth in subsection 2.]~~

Sec. 5. NAC 483.8485 is hereby amended to read as follows:

483.8485 1. A peace officer who has received the ~~[result]~~ *results* of a test given pursuant to *NRS 484.379778 and* NRS 484.382 or 484.383 which ~~[indicates]~~ *indicate* that a person who, 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 *noncommercial* driver’s license ~~[of the same type and class as the license which was seized]~~ pursuant to subsection 2.

2. If a person who was in control of a commercial motor vehicle and to whom a test is given pursuant to *NRS 484.379778 and* NRS 484.382 or 484.383 is present when a peace officer receives the ~~[result]~~ *results* of the test and the *results of the* test ~~[indicates]~~ *indicate* that the

person ~~[has]~~ *had* 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 driver's license, permit or privilege to drive;
- (b) Seize any 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 *noncommercial* driver's license ~~[of the same type and class as the license which was seized,]~~ if his driver's license is seized pursuant to paragraph (b);
- (d) ~~If the person [requests a temporary driver's license, and his driver's license is seized pursuant to paragraph (b), issue the person a temporary 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 driver's license and expires 168 hours after it becomes effective; and]~~ *holds a commercial driver's license and his license is seized pursuant to paragraph (b), advise the person that he is not eligible to receive a temporary commercial driver's license;*
- (e) *If the person requests a temporary driver's license, issue the person a temporary noncommercial driver's license pursuant to NRS 484.385 on a form approved by the Department; and*
- (f) Transmit to the Department:
 - (1) Any 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 motor vehicle and to whom a test is given pursuant to *NRS 484.379778 and* NRS 484.382 or 484.383 is not present when a peace officer receives the ~~[result]~~ *results* of the test and the *results of the* test ~~[indicates]~~ *indicate* that the person ~~[has]~~ *had* 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]~~ *results* 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]~~ *results* of the test and the written certificate transmitted by the peace officer pursuant to subsection 3, will:

- (a) Review the ~~[result]~~ *results* of the test and the written certificate; and
- (b) If the Department determines that it is appropriate, issue an order to suspend the 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 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.

Sec. 6. NAC 483.849 is hereby amended to read as follows:

483.849 1. At any time during which the 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) 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]~~ *If the person holds a driver's license, the* Department will issue to the person a temporary *noncommercial* driver's license ~~[of the same type and class as the license which was seized, if he holds a 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, *if the person holds a driver's license*, the Department will issue *to the person* an additional temporary *noncommercial* driver's license ~~[if the person holds a 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 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.

10. If the person holds a commercial driver's license and his commercial or noncommercial driving privilege has been suspended, revoked or cancelled, he is not eligible to receive a temporary commercial driver's license.