

## LCB File No. R032-05

### PROPOSED REGULATION OF THE COMMITTEE ON TESTING FOR INTOXICATION

(This proposed regulation was previously adopted as T021-05)

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

AUTHORITY: §1, NRS 484.3884; §1, NRS 484.3886.

A REGULATION relating to evidential breath testing devices, what additional approved devices are included within a certification for one approved device; the solution used for calibrating the devices; and clarifying that devices not in service do not need to be calibrated every 90 days.

**Section 1.** NAC 484.640 is hereby amended to read as follows:

NAC 484.640

1. A person or his employer must apply to the Department of Motor Vehicles on a form furnished by the Department for certification of the person as an operator of an evidential breath-testing device.

2. The Director or his designee shall certify as an operator of an evidential breath-testing device each applicant who has successfully completed a course consisting of at least 4 hours of instruction on the subject of the operation of devices for testing a person's breath to determine the concentration of alcohol in his breath which has been approved by the Peace Officers' Standards and Training Commission. Such a course must be taught by a certified forensic analyst of alcohol and must include instruction on and a determination of the applicant's proficiency in the operation of the ~~specific~~ devices for which certification is granted.

3. The Director or his designee shall certify as an operator of an additional evidential breath-testing device each applicant who:

(a) Holds a current certification as an operator of an evidentiary breath-testing device; and

(b) Has successfully completed a course consisting of at least 2 hours of instruction on the subject of the operation of the device for testing a person's breath to determine the concentration of alcohol in his breath which has been approved by the Peace Officers' Standards and Training Commission. The course must be taught by a certified forensic analyst of alcohol and must include instruction on and a determination of the applicant's proficiency in the operation of the ~~specific~~ device for which certification is granted.

4. The certificate issued by the Director or his designee must specify by manufacturer and model the evidential breath-testing devices which the applicant has been certified to operate.

*5. If an operator is certified to operate an approved device, the operator is certified to operate all approved series of the model of the device unless the committee makes a specific finding otherwise.*

~~5~~ 6. Certification as an operator of an evidential breath-testing device is valid for 3 years after the date of the certification.

**Section 2.** NAC 484.650 is hereby amended to read as follows:

NAC 484.650 The Director or his designee shall renew the certificate of any person certified by him as an operator of an evidential breath-testing device who:

1. Individually or through his employer applies in writing to the Director for such renewal before the person's certificate expires or within 6 months after the person's certificate expires; and

2. Successfully completes a course consisting of at least 2 hours of instruction on the operation of devices for testing a person's breath to determine the concentration of alcohol in his breath which has been approved by the Peace Officers' Standards and Training Commission. Such a course must be taught by a certified forensic analyst of alcohol and must include instruction on and a determination of the applicant's proficiency in the operation of the [specific] devices for which renewal of certification will be granted.

**Section 3.** NAC 484.660 is hereby amended to read as follows:

1. Each evidential breath-testing device used by a law enforcement agency must be calibrated by a certified forensic analyst of alcohol at least once *within the [every] 90 days immediately prior to using the device to test a person's breath.*

2. The calibration must include verification by the analyst of the response and accuracy of the device at no less than three levels of alcohol within the range which corresponds to a concentration of alcohol in the breath from 0 to 0.4 gram per 210 liters of breath, inclusive.

**Section 4.** NAC 484.670 is hereby amended to read as follows:

NAC 484.670 A certified operator of an evidential breath-testing device:

1. In the ordinary course of his business and at the time he is performing a test of a person's breath, shall use, follow the instructions in and enter the appropriate information on the Checklist for Operators of Breath-Testing Devices which is approved by the Committee for use with the [specific] type of device that he is operating.

2. Immediately before performing the evidentiary test of the person's breath, shall verify the calibration of the device by testing it using an aqueous solution *or gas* which is certified to contain a specific concentration of alcohol within the range that corresponds to a concentration of alcohol in the breath from .05 to .20 gram per 210 liters of breath, inclusive.