

**ADOPTED REGULATION OF THE
COMMITTEE ON TESTING FOR INTOXICATION**

LCB File No. R032-05

Effective October 31, 2005

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

AUTHORITY: §1, NRS 484.3882, 484.3884, 484.3886, 484.3888 and 484.3947; §2, NRS 484.3884 and 484.3886; §§3 and 4, NRS 484.3886; §§5 and 6, NRS 484.3884 and 484.3888.

A REGULATION relating to testing for intoxication; providing, under certain circumstances, that certification by the Director of the Department of Public Safety as an operator of an evidential breath-testing device authorizes the holder of the certificate to operate any such device in a series of a model of a device for which the holder of the certificate has been certified to operate; requiring such a device to be calibrated at least once within a certain number of days immediately preceding the use of the device to test a person's breath; and providing other matters properly relating thereto.

Section 1. NAC 484.590 is hereby amended to read as follows:

484.590 As used in NAC 484.590 to 484.715, inclusive, unless the context otherwise requires:

1. "Committee" means the Committee on Testing for Intoxication.
2. The phrase "device that prevents an intoxicated person from starting a vehicle" has the meaning ascribed to the term "device" in NRS 484.3941.
3. "Director" means the Director of the Department of ~~[Motor Vehicles.]~~ *Public Safety*.

Sec. 2. NAC 484.596 is hereby amended to read as follows:

484.596 1. A person must apply to the Director or his designee on a form furnished by the Department *of Public Safety* for certification as a forensic analyst of alcohol.

2. The Director or his designee shall certify as a forensic analyst of alcohol each applicant who:

(a) Possesses a baccalaureate degree in a natural, physical or forensic science;

(b) Has completed a minimum of 24 semester hours in the study of chemistry at an accredited college or university;

(c) Has successfully completed a course which has been approved by the Committee ~~on~~ **Testing for Intoxication** and consisted of at least 24 hours of instruction on the design, calibration and operation of the kind of breath-testing devices that he will be calibrating or teaching others to operate; and

(d) Demonstrates his competence in calibrating breath-testing devices and in evaluating others on their competence in operating those devices.

3. Certification as a forensic analyst of alcohol is valid for 2 years after the date of certification.

Sec. 3. NAC 484.640 is hereby amended to read as follows:

484.640 1. A person or his employer must apply to the Department of ~~Motor Vehicles~~ **Public Safety** 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] *evidential* 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. Certification as an operator of an evidential breath-testing device [is] :

(a) Authorizes the holder of the certificate to operate any evidential breath-testing device which he has been certified to operate and any other such device in a series of the model of that specific evidential breath-testing device if the Committee has certified the other device in the series pursuant to NRS 484.3882 and the Committee has not made a finding that the person needs additional training to operate the other device in the series; and

(b) Is valid for 3 years after the date of the certification.

Sec. 4. NAC 484.650 is hereby amended to read as follows:

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.

Sec. 5. NAC 484.660 is hereby amended to read as follows:

484.660 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 ~~[every]~~ *within the* 90 days ~~[.]~~ *immediately preceding the date on which the device is used 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.

Sec. 6. NAC 484.670 is hereby amended to read as follows:

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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R032-05**

The Committee for Testing on Intoxication adopted regulations assigned LCB File No. R032-05 which pertain to chapter 484 of the Nevada Administrative Code on October 13, 2005.

Notice date: 9/9/2005
Hearing date: 10/13/2005

Date of adoption by agency: 10/13/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

On October 13, 2005, a Public Workshop and Hearing was conducted to consider a revised proposed regulation on the Committee on Testing for Intoxication (reference LCB File No R032-05).

- a. Public comment was solicited through notices posted at the following places and sent to the following entities:

Department of Public Safety Carson City	Nevada State Library
DMV West Carey Las Vegas	Clark County Library
DMV Henderson	DMV Reno
DMV West Flamingo Las Vegas	DMV Elko
DMV Ely	DMV Fallon
DMV East Sahara Las Vegas	Story County Library
Pershing County Library	Pahrump Library
Lincoln County Library	Humboldt County Library
Goldfield Public Library	Churchill County Library
Eureka County Library	Las Vegas Metro PD Forensic Lab
Silver Peak Library	Reno Library
Boulder City Library	Elko County Library
Lyon County Library	White Pine County Library
Douglas County Library	Carson City County Library
Mineral County Library	Washoe County Admin Building
Carson City Sheriff Office	Nevada State Legislature Building
Grant Sawyer State Office Building	

There were no written comments submitted to the Committee.

No one appeared during the workshop or during the hearing to comment on the revised proposed regulations.

Individuals may obtain a summary of the public's response to the proposed regulation change by contacting the Department of Public Safety – Office of Traffic Safety, 555 Wright Way, Carson City, NV 89711 or by calling (775) 684-7470.

- b. Statistics
 - 1) There were 9 people attending the workshop and hearing. Five (5) of the attendees were members of the committee, 2 were forensic analysts for alcohol, and 2 were deputies of the Nevada Attorney General.
 - 2) There was no one present to testify at either the public workshop or the hearing.
 - 3) There were no written comments submitted to the Committee.
- c. Comments were not solicited from businesses, as no businesses are affected by the regulation changes.
- d. There were no changes recommended or made to the proposed regulation changes.
- e. The regulation change has no economic effect on businesses or the public.
- f. The regulation change does not change enforcement costs.
- g. The regulation change does not overlap or duplicate the regulations of other governmental agencies including both State and federal agencies.
- h. Not applicable because federal regulation does not govern certification of operators of evidential breath testing devices or calibration of the devices.
- i. Not applicable because the regulation does not deal with fees.