

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

**LCB File No. R086-12**

Effective June 23, 2014

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

AUTHORITY: §§1 and 2, NRS 484C.630.

A REGULATION relating to testing for intoxication; providing that certain courses required for certification as an operator of an evidential breath-testing device must be approved by the Committee on Testing for Intoxication; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, the Committee on Testing for Intoxication is required to adopt regulations which establish methods for ascertaining the competence of a person to operate devices for testing a person's breath to determine the concentration of alcohol in the person's breath. (NRS 484C.630) Existing regulations require that a person be certified as an operator of an evidential breath-testing device upon the successful completion of a specified number of hours of certain courses that have been approved for that purpose by the Peace Officers' Standards and Training Commission. (NAC 484C.100, 484C.110) This regulation provides that such courses must also be approved by the Committee on Testing for Intoxication, and removes the specific number of hours required for each such course.

**Section 1.** NAC 484C.100 is hereby amended to read as follows:

484C.100 1. A person or his or her employer must apply to the Department of 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 or her 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 the person's breath which has been approved by the Peace Officers' Standards and Training Commission ~~and~~ *and the Committee*. 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 devices for which certification is granted.

3. The Director or his or her 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 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 the person's breath which has been approved by the Peace Officers' Standards and Training Commission ~~and~~ *and the Committee*. 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 device for which certification is granted.

4. The certificate issued by the Director or his or her 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:
- (a) Authorizes the holder of the certificate to operate any evidential breath-testing device which he or she 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 484C.610 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. 2.** NAC 484C.110 is hereby amended to read as follows:

484C.110 The Director or his or her designee shall renew the certificate of any person certified by the Director or designee as an operator of an evidential breath-testing device who:

1. Individually or through the person's 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 or her 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 devices for which renewal of certification will be granted.]~~ *and the Committee.*

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
NRS 233B.066  
LCB FILE R086-12**

The following statement is submitted for adopted amendment to Nevada Administrative Code (NAC) Chapter 484C.

- 1 A clear and concise explanation of the need for the adopted regulation:

The current regulation NAC 484C.100 (certification of an evidential breath test device operator) and NAC 484C.110 (recertification of an evidential breath test device operator) requires a specific number of hours of training – 4 hours for initial certification and 2 hours for a recertification. The course must be approved by POST (Peace Officer’s Standards and Training).

The hours of training requirement is related to the credits for law enforcement and use by POST to track total hours of training each year as required of peace officers. The course does not have to be approved by the Committee on Testing for Intoxication when this body has the expertise needed to prepare a lesson plan for training.

By deleting the hours requirement the regulation will not have to be revisited every time there is a change in devices used or other change that would increase or decrease the time required for training. Approval of the lesson plan by the Committee on Testing for Intoxication is added to ensure that the individuals with the technical expertise have approved the course of training.

- 2 A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

How public comment was solicited.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to all county libraries, Metropolitan PD Forensic Lab, Washoe County Sheriff’s Office Forensic Lab. The information was also posted to the Nevada Public Notice Website, Nevada Legislature Website, State Library and Archives, the Department of Public Safety (Carson City), and on the website for the Office of Traffic Safety. No persons requested to receive notices. Information on the address to use for written comments was given by including in the posting notices.

- 3 Summary of public response

The proposed change to chapter 484C of the Administrative Code was first discussed during an open meeting of the Committee on Testing for Intoxication. No public comment was made at the meeting (October 18, 2012). After the proposed NAC changes were evaluated by LCB both a workshop and public hearing (notice of intent to amend a regulation) were posted on April 7, 2014. The workshop was held at the “Board Room”

at the State Library and Archives on May 7, 2014 and the Notice of Intent to Act Public Hearing was held at “Board Room” at the State Library and Archives was held on May 12, 2014.

No comments were made at the workshop and no comments were made at the public hearing.

No written comments were submitted for either the workshop or the public hearing.

Workshop held on May 7, 2014	Attendance:	John Johansen for Committee No other persons present No written comments received
Public Hearing held on May 12, 2014	Attendance:	John Johansen for Committee No other persons present No written comments received

With no comments at either the workshop or public hearing and no written comments received there is no summary of public input.

- 4 The two forensic Laboratories in the State that are responsible for the maintenance, calibration verification, and training persons to become certified as an operator are the only businesses affected. The two labs represent two of the five voting members of the Committee on Testing for Intoxication. It is this body that requested the change to NAC 484C. This request was made at the open meeting held on October 18, 2012. The approved minutes of that meeting are posted on the Committee on Testing for Intoxication website located on the Office of Traffic Safety / Department of Public Safety website.

**HOW TO OBTAIN THE PROPOSED, PERMANENT REGULATION:** The proposed regulation is a permanent regulation. The approved version of the text of the proposed regulation may be obtained by contacting:

John R. Johansen  
Department of Public Safety  
Office of Traffic Safety  
107 Jacobsen Way  
Carson City, NV, 89711  
Phone 775 684-7477  
E-mail [jjohanse@dps.state.nv.us](mailto:jjohanse@dps.state.nv.us)

- 5 If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation with change.

Without any additional input from the public the original proposed change was adopted by the Committee on Testing for Intoxication.

- 6 The estimated economic effect of the regulation on the business which is to regulate and on the public.

For the Business Regulated

Both adverse and beneficial effects

The proposed regulation will promote efficiency and reliability in the certification of operators of an evidential breath testing device, in that the amended requirements eliminate the assessment of one's certification proficiency by the number of hours the applicant has completed in a course of instruction, but, instead, implements a certification process that requires that an additional body, the Committee- with its specialized knowledge, pre-approve the training courses upon which the certification will issue.

The proposed regulation applies to the two (2) law enforcement forensic laboratories within the state that are responsible for training Evidential Breath Test operators, as such, there is no impact on small business and does not restrict the operation, formation, or expansion of small business. There is no economic effect on the regulated laboratories, and it is not believed that this regulation will have any significant economic effect on the public.

No adverse effects anticipated.

For the public.

For the general public, there is no economic change (neither a beneficial or adverse effect).

- 7 The estimated cost to the agency for enforcement of the proposed regulation:

No change in cost for the enforcement of the regulation by either Forensic Lab.

- 8 A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates.

This proposed regulation does not overlap or duplicates other state or governmental agencies.

- 9 If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity. N/A

- 10 If the regulation establishes a new fee or increases an existing fee:

The proposed regulation does not add a new fee or increase any existing fee.