

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

LCB File No. R086-12

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the
Committee on Testing for Intoxication.

The Committee on Testing for Intoxication will hold a public hearing at 10:00 AM on May 12, 2014 at the:

State Library and Archives,
100 North Stewart Street (conference room 100)
Carson City, Nevada, 89701

. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to 484 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- 1) NEED FOR AND PURPOSE OF THE PROPOSED REGULATION OF AMENDMENT
 - a) NAC 484C.100(2) currently describes the certification requirements for the operation of breath-alcohol-detection devices, by referring to the minimum number of hours of instruction an applicant must successfully complete (4 hours), in a course approved by the Peace Officers' Standards and Training Commission ("P.O.S.T."). However, there is a need to better address this certification requirement, by allowing P.O.S.T. to determine the appropriate number of hours given to a person for completing the instruction-course, and to further require an additional approval of this instruction course by a second body, the Committee on Testing for Intoxication.
 - b) NAC 484C.100(3) currently describes the certification requirements for the operation of additional evidential breath-testing devices, by referring to the minimum number of hours of instruction an applicant must successfully complete (2 hours), in a course approved by the Peace Officers' Standards and Training Commission ("P.O.S.T."). However, there is a need to better address this certification requirement, by allowing P.O.S.T. to determine the appropriate number of hours given to a person for completing the instruction-course, and to further require an additional approval of this instruction course by a second body, the Committee on Testing for Intoxication.

c) NAC484.110(2), currently describes the certification-renewal requirements for the operation of additional evidential breath-testing devices, by referring to the minimum number of hours of instruction an applicant must successfully complete (2 hours), in a course approved the Peace Officers' Standards and Training Commission ("P.O.S.T."). As well, the current regulation limits who may teach this course and requires instruction on and a determination of the applicant's proficiency in operating such devices. However, there is a need to better address this certification requirement, by allowing P.O.S.T. to determine the appropriate number of hours given to a person for completing the instruction-course, and to further require an additional approval of this instruction course by a second body, the Committee on Testing for Intoxication.

2) TERMS OR THE SUBSTANCE OF THE REGULATIONS TO BE AMENDED: The terms of the regulation to be amended are set forth as follows (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.

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 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 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 on 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 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 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 The Director or his or her designee shall renew the certificate of any person certified by the Director or designee as an operator on 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 month 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 Officer's 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.

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

- 3) ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC:
 - a) ADVERSE EFFECTS (BOTH IMMEDIATE AND LONG-TERM): 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, beyond the initial and periodic allocation of Committee staff resources to pre-approve instruction courses on the operation of an evidential breath testing device.
 - b) BENEFICIAL EFFECTS (BOTH IMMEDIATE AND LONG TERM):

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.
- 4) ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION: There is no cost to enforcing the regulation, inasmuch as a list of the pre-approved courses will be available to consult when implementing the certification process. As stated above, there will be an initial and periodic allocation of Committee staff resources to pre-approve instruction courses on the operation of an evidential breath testing device.
- 5) OVERLAPPING OR DUPLICATE REGULATIONS OF OTHER STATE OR LOCAL GOVERNMENTAL AGENCIES: To our knowledge, these proposed amendments to the regulations do not overlap or duplicate the regulations of other state or local government agencies.
- 6) FEDERAL LAW REQUIREMENT OF THIS REGULATION: To our knowledge, this proposed regulation is not required by federal law.
- 7) PROVISIONS OF THIS REGULATION THAT ARE MORE STRINGENT THAN FEDERAL REGULATION THAT REGULATES THE SAME ACTIVITY: To our knowledge, there are no provisions of this proposed regulation which are more stringent than a federal regulation that regulates the same activity.

- 8) **WHETHER REGULATION ESTABLISHES NEW FEE OR INCREASE OF EXISTING FEE:** This proposed regulation does not create a new fee or change in anyway existing fees.

Persons wishing to comment upon the proposed action of the Committee on Testing for Intoxication may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to:

Department of Public Safety
Office of Traffic Safety
John R. Johansen, Committee on Testing for Intoxication
107 Jacobsen Way
Carson City, NV, 89711

Written submissions must be received by the Department of Public Safety, Office of Traffic Safety on or before May 8, 2014. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Public Safety, Office of Traffic Safety may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be amended will be available at the Office of Traffic Safety, 107 Jacobson Way, Carson City, Nevada, 89711, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by member of the public during business hours. This notice and the text of the proposed regulations are also available in the state of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 2123B.0653, and on the Internet at <http://www.Leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This notice of hearing has been posted at the following locations:

Posting Locations for Committee on Testing for Intoxication

Carson City Library
900 North Roop Street
Carson City, NV, 89702

Churchill County Library
553 South Main Street
Fallon, NV, 89406

Clark County District Library
883 Las Vegas Blvd. North
Las Vegas, NV, 89101

Douglas County Library
1625 Library Lane
Minden, NV, 89423

Elko County Library
720 Court Street
Elko, NV, 89801

Humboldt County Library
85 East 5th Street
Winnemucca, NV, 89445

Lincoln County Library
63 Main Street
Pioche, NV, 89043

Mineral County Public Library
110 1st Street
Hawthorne, NV, 89415

Storey County Public Library
95 South R Street
Virginia City, NV, 89440

Washoe County Library
301 South Center Street
Reno, NV, 89501

Eureka Branch Library
PO Box 293
Eureka, NV, 89316-0293

Las Vegas Metro PD Forensic Lab
5605 West Badura Avenue Suite 120B
Las Vegas, NV, 89118

Department of Public Safety
555 Wright Way
Carson City, NV, 89711

Nevada Legislature Website
<http://leg.state.nv.us/App/Notice/A/>

Esmeralda County Library
Corner of Crook and 4th Streets
Goldfield, NV, 89013

Lander County Library
625 South Broad Street
Battle Mountain, NV, 89820

Lyon County Library
20 Nevin Way
Yerington, NV, 89447

Pershing County Library
1125 Central Avenue (PO Box 781)
Lovelock, NV, 89419

Tonopah Public Library
167 Central Street
Tonopah, NV, 89049

White Pine County Library
950 Camption Street
Ely, NV, 89301

Nevada State Library and Archives
100 North Stewart Street
Carson City, NV, 89701-4285

Washoe County SO Forensic Science Div.
911 Parr Blvd.
Reno, NV, 89512

Nevada Public Notice Website
<http://notice.nv.gov/>

NEVADA COMMITTEE ON TESTING FOR INTOXICATION

Notice of Public Meeting (NRS 241)

Regarding Proposed Amendments to NAC 484C.100 and 484C.110

NOTICE IS HEREBY GIVEN THAT STARTING AT 10:00 A.M ON May 7, 2014, THE NEVADA COMMITTEE ON TESTING FOR INTOXICATION (“COMMITTEE”) WILL HOLD A WORKSHOP ON A PROPOSED REGULATION AT THE FOLLOWING LOCATION.

State Library and Archives Board Room
100 North Stewart Street (conference room 100).
Carson City, Nevada, 89711

AGENDA

- 1. Call to Order**
- 2. Roll Call of all Attendees**
- 3. Public Comment** – No action may be taken upon a matter raised under this item of the agenda until the mater itself has been specifically included on an agenda as an item upon which action may be taken. The public may request that items be added to a future agenda. Public comments are limited to two minutes unless the Committee elects to extend the comments for purposes of further discussion. Comments will not be restricted based on viewpoint.
- 4. Workshop on Proposed Regulation:** The purpose of the workshop is to solicit comments from interested persons on the proposed changes to NAC 484C.100 and 484C.110, set forth as follows:

TOPIC OR PROPOSED REGULATION

NAC REGULATION

AUTHORITY: §§1 and 2, NRS 484C.630

NAC 484C.100 and 484C.110

A REGULATION relating to testing for intoxication: Providing that certain courses require 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.

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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 Committee *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 Peach Officer's Standards and Training Committee *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.

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(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 which has been approved by the Peace Officers' Standards and Training Committee [~~Such a course must be taught by a certified forensic analyst of alcohol and must include instruction and a determination of the applicants proficiency in the operation of the devices for which renewal of certification will be granted.~~] **and the Committee.**

5. Public Comment – No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. The public may request that items be added to a future agenda. Public comments are limited to two minutes unless the Committee elects to extend the comments for purposes of further discussion. Comments will not be restricted based on viewpoint.

6. Adjournment

Note: No action will be taken during the Workshop. All information and comments from this workshop will be included in the Public Hearing related to NAC 484C.100 and 484C.110

“The Committee may take action on items marked “Discussion/For Possible Action”. Items may be taken out of the order presented on the agenda at the discretion of the chair. Items may be combined for consideration by the committee at the discretion of the chair. Items may be pulled or removed from the agenda at any time, and discussion relating to items may be delayed at any time. The chair at his discretion may solicit public comment at the time of discussion of any or all agenda items”.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify John Johansen, and the Department of Public Safety, Office of Traffic Safety, 107 Jacobsen Way, Carson City, NV, 89711-0999 or call him at (775) 684-7477, no later than 24 hours prior to the meeting.

Persons wishing to comment upon the proposed action of the Committee on Testing for Intoxication may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to:

Department of Public Safety
Office of Traffic Safety
John R. Johansen, Committee on Testing for Intoxication
107 Jacobsen Way
Carson City, NV, 89711

Written submissions must be received by the Department of Public Safety, Office of Traffic Safety on or before May 5, 2014. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Public Safety, Office of Traffic Safety may proceed immediately to act upon any written submissions.

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Fallon, NV, 89406

Clark County District Library
883 Las Vegas Blvd. North
Las Vegas, NV, 89101

Douglas County Library
1625 Library Lane
Minden, NV, 89423

Elko County Library
720 Court Street
Elko, NV, 89801

Esmeralda County Library
Corner of Crook and 4th Streets
Goldfield, NV, 89013

Humboldt County Library
85 East 5th Street
Winnemucca, NV, 89445

Lander County Library
625 South Broad Street
Battle Mountain, NV, 89820

Lincoln County Library
63 Main Street
Pioche, NV, 89043

Lyon County Library
20 Nevin Way
Yerington, NV, 89447

Mineral County Public Library
110 1st Street
Hawthorne, NV, 89415

Pershing County Library
1125 Central Avenue (PO Box 781)
Lovelock, NV, 89419

Storey County Public Library
95 South R Street
Virginia City, NV, 89440

Washoe County Library
301 South Center Street
Reno, NV, 89501

Eureka Branch Library
PO Box 293
Eureka, NV, 89316-0293

Las Vegas Metro PD Forensic Lab
5605 West Badura Avenue Suite 120B
Las Vegas, NV, 89118

Department of Public Safety
555 Wright Way
Carson City, NV, 89711

Nevada Legislature Website
<http://leg.state.nv.us/App/Notice/A/>

Tonopah Public Library
167 Central Street
Tonopah, NV, 89049

White Pine County Library
950 Camption Street
Ely, NV, 89301

Nevada State Library and Archives
100 North Stewart Street
Carson City, NV, 89701-4285

Washoe County SO Forensic Science Div.
911 Parr Blvd.
Reno, NV, 89512

Nevada Public Notice Website
<http://notice.nv.gov/>