

LCB File No. R137-99

**PROPOSED REGULATION OF THE OFFICE OF TRAFFIC
SAFETY OF THE DEPARTMENT OF MOTOR
VEHICLES AND PUBLIC SAFETY**

**NOTICE OF WORKSHOP
To Solicit Comments on Proposed Regulations**

The Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, is proposing to amend regulations pertaining to Chapters 50, 202, 483, 484 and 488 of the Nevada Administrative code. A workshop has been set for **10:00 A.M., October 25, 1999** at the Washoe County Sheriff's Office, 911 Parr Blvd. Room 233, Reno, NV 89512. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulation amendments.

Topics to be discussed:

1. Amend the relevant sections and provisions of NAC Chapters 50, 202, 483, 484 and 488 to comply with 1999 Legislative Bill Senate Bill 152 referencing a concentration of alcohol in a person's breath or blood; and
2. Repeal and/or amend the relevant sections and provisions of NAC Chapters 50, 202, 483, 484 and 488 to comply with 1999 Legislative Bill Assembly Bill 620 authorizing the Committee on Testing for Intoxication to certify as accurate and reliable by committee vote rather than by regulatory amendment those devices used to determine the percent by weight of alcohol in a person's breath.

A copy of all the materials relating to the proposal may be obtained at the workshop or by contacting the Department of Motor Vehicles and Public Safety, Office of Traffic Safety, Coordinator Joanne Keller, 107 Jacobsen Way, Stewart Facility, Carson City, NV 89711. A reasonable fee for copying may be charged.

**NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Adoption, Amendment and Repeal of Regulations
of the Department of Motor Vehicles and Public Safety,
Committee on Testing for Intoxication**

The Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, will hold a public hearing at **10:30 A.M. on Monday, October 25, 1999**, at the Washoe County Sheriff's Office, 911 Parr Blvd. Room 233, Reno NV 89512. The purpose of the hearing is to receive comments from all interested persons regarding the amendment and/or repeal of

regulations pertaining to Chapters 50, 202, 483, 484 and 488 of the Nevada Administrative Code.

The following information is provided pursuant to the requirement of NRS 233B.060:

1. With passage of DUI legislation that will become effective October 1, 1999, the Committee on Testing for Intoxication wants to amend pertinent regulations to reflect the most recent legislative changes and best practices.
2. The proposed regulation changes include:
 - (1) Amend the relevant sections and provisions of NAC Chapters 50, 202, 483, 484 and 488 to comply with 1999 Legislative Bill Senate Bill 152 referencing a concentration of alcohol in a person's breath or blood; and
 - (2) Repeal and/or amend the relevant sections and provisions of NAC Chapters 50, 202, 483, 484 and 488 to comply with 1999 Legislative Bill Assembly Bill 620 authorizing the Committee on Testing for Intoxication to certify as accurate and reliable by committee vote rather than by regulatory amendment those devices used to determine the percent by weight of alcohol in a person's breath.
3. These regulations do not have a direct economic effect on any business, but do have an economic effect on the public:
 - (a) There is no adverse effect on the public, but there is a beneficial effect in that, in part, the Committee on Testing for Intoxication is no longer required to go through the entire administrative rule-making process to add or delete certain devices measuring a person's breath alcohol content; and
 - (b) *See*, 3(a).
4. Enforcement of these regulations should not result in any increased cost.
5. To our knowledge, these regulations do not overlap or duplicate the regulations of other state or local government agencies.
6. Not applicable.
7. Not applicable.
8. These regulations do not establish any new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Department of Motor Vehicles and Public Safety Committee on Testing for Intoxication, may address their comments, data, views, or arguments, in written form, to the Department of Motor Vehicles and Public Safety,

Office of Traffic Safety, 107 Jacobsen Way, Stewart Facility, Carson City, NV 89711. Written submissions must be received on or before October 18, 1999. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, may proceed immediately to act upon any written submissions.

A copy of this NOTICE OF WORKSHOP and NOTICE OF INTENT TO ACT UPON A REGULATION and the proposed regulation amendments 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 these notices and the proposed regulations will be available at the Department of Motor Vehicles and Public Safety, Office of Traffic Safety, 107 Jacobsen Way, Stewart Facility, Carson City, NV 89711; and in all counties in which an office or agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. These notices 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 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of these notices and the proposed regulations will be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

The NOTICE OF WORKSHOP and NOTICE OF INTENT TO ACT UPON A REGULATION have been posted at the following locations:

Department of Motor Vehicles
and Public Safety
555 Wright Way
Carson City, NV 89711-0999

US Post Office
311 East Washington
Carson City, NV 89701

Nevada State Library
401 North Carson
Carson City, NV 89710

Washoe County Sheriff's Office
911 Parr Blvd.
Reno, NV 89152

Department of Motor Vehicles
and Public Safety
305 Galetti Way
Reno, NV 89502
Fax 688-2328

Department of Motor Vehicles
and Public Safety
2701 East Sahara Avenue
Las Vegas, NV 89104
Fax 486-4291

Department of Motor Vehicles
and Public Safety

City of Las Vegas council Chambers
City Hall, 400 East Stewart

3920 East Idaho Street
Elko, NV 89801
Fax 738-9856

Las Vegas, NV 89101
Fax 388-1807

Reno City Council Chambers
490 South Center Street
Reno, NV 89501
Fax 334-2097

Department of Motor Vehicles
and Public Safety
973 W. Williams Street
Fallon, NV 89406
Fax 423-2797

Department of Motor Vehicles
and Public Safety
8250 W. Flamingo
Las Vegas, NV 89117
Fax 486-8606

Department of Motor Vehicles
and Public Safety
178 Avenue F
Ely, NV 89301
Fax 289-1607

Department of Motor Vehicles
and Public Safety
4021 W. Carey
North Las Vegas, NV 89030
Fax 486-5193

Department of Motor Vehicles
and Public Safety
300 Ridgeway Drive
Tonopah, NV 89049
Fax 482-3624

Department of Motor Vehicles
and Public Safety
3505 Construction Way
Winnemucca, NV 89445
Fax 623-6508

Department of Motor Vehicles
and Public Safety
215 West Bridge Street
Yerington, NV 89447
Fax 463-4046

Department of Motor Vehicles
and Public Safety
1694 County Road
Minden, NV 89423
Fax 782-0202

Goldfield Public Library
Fourth & Crook Street
PO Box 430
Goldfield, NV 89013
Fax 485-3236

Eureka Branch Library
10190 Monroe Street
PO Box 293
Eureka, NV 89316

Battle Mountain Branch library
625 S. Broad Street
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
PO Box 330
Pioche, NV 89043
Fax 962-5244

Mineral County Library
First & A Street
PO Box 1390
Hawthorne, NV 89415
Fax 945-0703

Pershing County Library
1125 Central Avenue
PO Box 781
Lovelock, NV
Fax 273-7058

Storey County Library
95 South R Street
PO Box 14
Virginia City, NV 89440
Fax 847-0996

Reasonable accommodations for members of the public who are disabled and wish to attend the Workshop and/or Hearing may be arranged by notifying Joanne Keller, Highway Safety Coordinator, Office of Traffic Safety, 107 Jacobsen Way, Stewart Facility, Carson City, Nevada 89711, (775) 687-5720.

AFFIDAVIT

I, Susan Brown did fax or mail, on September 17, 1999, to the locations listed above, NOTICE OF WORKSHOP and NOTICE OF INTENT TO ACT UPON A REGULATION. I, Susan Brown, did further on the 20th day of September, 1999, post five (5) notices each of NOTICE OF WORKSHOP and NOTICE OF INTENT TO ACT UPON A REGULATION in the County of Carson, to wit: At the main entrance of the Department of Motor Vehicles and Public Safety, 555 Wright Way, Carson City, NV; at the Capitol Press Corp Basement, Capitol Bldg., Carson City, NV; at the front entrance of the Carson City Courthouse, 885 E. Musser St., Carson City, NV; in the lobby of the Nevada State Library, 100 Stewart ST., Carson City, NV; and in the lobby of the United States Post Office, Washington St., Carson City, NV.

SUSAN BROWN

LCB File No. R137-99

**PROPOSED REGULATION OF THE OFFICE OF TRAFFIC
SAFETY OF THE DEPARTMENT OF MOTOR
VEHICLES AND PUBLIC SAFETY**

NAC 50.010 Form of affidavit regarding presence, identity or amount of alcohol, controlled substance, chemical, poison or organic solvent in blood or urine of person. (NRS 50.320) An affidavit of an expert referred to in NRS 50.320 must be substantially in one of the following forms:

1. If the sample or substance contained a controlled substance as defined in chapter 453 of NRS or a chemical, poison or organic solvent:

State of Nevada }

}ss.

County of }

I,, being first duly sworn, depose and say:

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and identity in the blood or urine of a person of a controlled substance the use or possession of which is regulated by chapter 453 of NRS or a chemical, poison or organic solvent, or the identity of a controlled substance alleged to have been in the possession of a person;

That on (date) I obtained certain evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of for the purpose of performing a chemical analysis on the contents thereof;

That on (date) I analyzed the sample or substance and determined it to be or contain (name of controlled substance, chemical, poison or organic solvent);

That on (date) I replaced the sample or substance in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

Affiant's Signature

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19

Notary Public

2. If the sample contained alcohol:

State of Nevada }

}ss.

County of }

I,, being first duly sworn, depose and say:

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and amount of alcohol in the blood or urine of a person;

That on (date) I obtained evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of a sample of (blood or urine);

That on (date) I analyzed the sample and determined that the blood of the person from whom the sample was taken contained [~~..... (percent) by weight~~] *a concentration* of alcohol *of ..(gram per 100 milliliters of blood)*;

That on (date) I replaced the sample in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I first obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

Affiant's Signature

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19

Notary Public

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A by R112-97, 5-26-98)

NAC 50.015 Form of declaration regarding presence, identity or amount of alcohol, controlled substance, chemical, poison or organic solvent in blood or urine of person. (NRS 50.320) A declaration of an expert referred to in NRS 50.320 must be substantially in one of the following forms:

1. If the sample or substance contained a controlled substance as defined in chapter 453 of NRS or a chemical, poison or organic solvent:

I,, hereby declare:

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and identity in the blood or urine of a person of a controlled substance the use or possession of which is regulated by chapter 453 of NRS or a chemical, poison or organic solvent, or the identity of a controlled substance alleged to have been in the possession of a person;

That on (date) I obtained certain evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of for the purpose of performing a chemical analysis on the contents thereof;

That on (date) I analyzed the sample or substance and determined it to be or contain (name of controlled substance, chemical, poison or organic solvent);

That on (date) I replaced the sample or substance in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date) (Declarant's Signature)

(Declarant's Title)

2. If the sample contained alcohol:

I,, hereby declare:

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and amount of alcohol in the blood or urine of a person;

That on (date) I obtained evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of a sample of (blood or urine);

That on (date) I analyzed the sample and determined that the blood of the person from whom the sample was taken contained ~~[..... (percent) by weight]~~ **a concentration** of alcohol **of . (gram per 100 milliliters of blood)**;

That on (date) I replaced the sample in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I first obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date) (Declarant's Signature)

(Declarant's Title)

(Added to NAC by Com. on Testing for Intoxication by R112-97, eff. 5-26-98)

NAC 50.020 Form of affidavit regarding competence of person to operate certified breath-testing device and regarding identity of person from whom affiant obtained sample. (NRS 50.315) An affidavit which is referred to in subsection 1 of NRS 50.315 must be in substantially the following form:

State of Nevada }

}ss.

County of }

I,, being first duly sworn, depose and say:

That I am (occupation) employed by (employer);

That I was certified on (date) by the director of the department of motor vehicles and public safety as being competent to operate a (name of breath-testing device), a device of a type which, as designed and manufactured, has been certified by the committee on testing for intoxication to be accurate and reliable for testing a person's breath to determine the ~~{ percent by weight }~~ **concentration** of alcohol in his breath;

That on (date) I obtained a sample of the breath of (name of person tested) and tested it in accordance with the prescribed checklist on a (name of device) which was functioning properly; and

That the tests indicated the breath of the person tested contained the following ~~{ percents by weight }~~ **concentrations** of alcohol (grams per 210 liters of breath):

1st test .. 2nd test .. 3rd test ..

Affiant's Signature

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19

Notary Public

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 11-23-93; 9-9-94; R112-97, 5-26-98)

NAC 50.025 Form of declaration regarding competence of person to operate certified breath-testing device and regarding identity of person from whom affiant obtained sample. (NRS 50.315) A declaration which is referred to in subsection 1 of NRS 50.315 must be in substantially the following form:

I,, hereby declare:

That I am (occupation) employed by (employer);

That I was certified on (date) by the director of the department of motor vehicles and public safety as being competent to operate a (name of breath-testing device), a device of a type which, as designed and manufactured, has been certified by the committee on testing for intoxication to be accurate and reliable for testing a person's breath to determine the ~~percent by weight~~ **concentration** of alcohol in his breath;

That on (date) I obtained a sample of the breath of (name of person tested) and tested it in accordance with the prescribed checklist on a (name of device) which was functioning properly; and

That the tests indicated the breath of the person tested contained the following ~~percents by weight~~ **concentrations** of alcohol (grams per 210 liters of breath):

1st test 2nd test 3rd test

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date) (Declarant's Signature)

(Declarant's Title)

(Added to NAC by Com. on Testing for Intoxication by R112-97, eff. 5-26-98)

NAC 50.040 Form of affidavit regarding calibration of breath-testing device. (NRS 50.315) An affidavit referred to in subsection 3 of NRS 50.315 must be in substantially the following form:

State of Nevada }

}ss.

County of }

I,, being first duly sworn, depose and say:

That I am a forensic analyst of alcohol employed by (name of employer);

That I was certified by the director of the department of motor vehicles and public safety on (date) as a person competent to calibrate evidential breath-testing devices;

That on (date) I calibrated a (name of device) bearing serial number

..... which is located at the (name of law enforcement agency) in (city or county), Nevada;

That the (name of device) is certified by the committee on testing for intoxication, as designed and manufactured, to be accurate and reliable for the purpose of testing a person's breath to determine the ~~[percent by weight]~~ *concentration* of alcohol in the person's breath (grams per 210 liters of breath);

That the calibration was performed by verifying the response and accuracy of the device, as prescribed in the regulations of the committee on testing for intoxication, by (description of procedure used);

That the calibration was performed within the period required and that the device was otherwise maintained as required by the regulations of the committee on testing for intoxication; and

That upon completion of the calibration the (name and serial number of device) was operating properly.

Affiant's Signature

Affiant's Title

Subscribed and sworn to before me this

..... day of , 19

Notary Public

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 11-23-93; 9-9-94; R112-97, 5-26-98)

NAC 50.045 Form of declaration regarding calibration of breath-testing device. (NRS 50.315) A declaration referred to in subsection 3 of NRS 50.315 must be in substantially the following form:

I,, hereby declare:

That I am a forensic analyst of alcohol employed by (name of employer);

That I was certified by the director of the department of motor vehicles and public safety on (date) as a person competent to calibrate evidential breath-testing devices;

That on (date) I calibrated a (name of device) bearing serial number which is located at the (name of law enforcement agency) in (city or county), Nevada;

That the (name of device) is certified by the committee on testing for intoxication, as designed and manufactured, to be accurate and reliable for the purpose of testing a person's breath to determine the ~~[percent by weight]~~ **concentration** of alcohol in the person's breath (grams per 210 liters of breath);

That the calibration was performed by verifying the response and accuracy of the device, as prescribed in the regulations of the committee on testing for intoxication, by (description of procedure used);

That the calibration was performed within the period required and that the device was otherwise maintained as required by the regulations of the committee on testing for intoxication; and

That upon completion of the calibration the (name and serial number of device) was operating properly.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date) (Declarant's Signature)

(Declarant's Title)

(Added to NAC by Com. on Testing for Intoxication by R112-97, eff. 5-26-98)

NAC 483.634 Contents of courses; administration of examinations.

1. A course on traffic safety must include instruction in the following subjects:

- (a) The common sense of driving;
- (b) Use and maintenance of required safety equipment;
- (c) Defensive driving;
- (d) Established speed laws;
- (e) Proper use of lanes;
- (f) Backing up safely;
- (g) Intersection etiquette;
- (h) Passing;

- (i) The various demands of driving in the city, country or on the highway;
- (j) Hazardous conditions;
- (k) The effect of alcohol and controlled substances on the ability to drive;
- (l) Driver responsibility;
- (m) Traffic signs, signals and pavement markings;
- (n) Licensing control measures; and
- (o) Driving as a privilege rather than a right.

2. A course on the abuse of alcohol and controlled substances must include instruction in the following subjects:

- (a) The problem of driving under the influence of intoxicating liquor or controlled substances as it exists in this state and the United States, including relevant statistics;
- (b) The law against driving under the influence of intoxicating liquor or controlled substances in this state, including penalties, the specific prohibition against driving with *a concentration of alcohol of 0.10 or more gram [percent or more by weight] of alcohol per 100 milliliters of the blood of a person or per 210 liters of his breath [in the blood]*, implied consent to a test of a driver's breath, blood or urine, summary revocation of drivers' licenses and related matters;
- (c) The responsibilities and procedures of law enforcement agencies, the courts and the department regarding driving under the influence of intoxicating liquor or controlled substances;
- (d) The adverse effects of alcohol and controlled substances on bodily organs and the central nervous system, including the effects of abuse and addiction;
- (e) The adverse effects of alcohol and controlled substances on a person's ability to drive;
- (f) The possible effects of a conviction for driving under the influence of intoxicating liquor or controlled substances on a person's employment and personal life; and
- (g) The types of treatment which are available for abusers of alcohol and controlled substances.

3. The time of instruction in a course on the abuse of alcohol and controlled substances must include subjects relating to:

- (a) The abuse of alcohol and controlled substances; and
- (b) Traffic safety and traffic laws which are primarily applicable to driving under the influence of intoxicating liquor or controlled substances.

4. The instructor of a course on the abuse of alcohol and controlled substances:

(a) May administer a preliminary written examination at the first meeting of the class to determine the knowledge of each student regarding driving under the influence of intoxicating liquor or controlled substances and the abuse of alcohol, controlled substances and other chemicals; and

(b) Shall administer a final written or oral examination, at least half of which is directly related to driving under the influence of intoxicating liquor or controlled substances.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety, eff. 12-27-93; A 9-6-96)

REPEAL ENTIRE NAC 484.605

~~[NAC 484.605 List of approved devices. (NRS 484.3882) The following preliminary breath-testing devices are approved and certified as being designed and manufactured to be accurate and reliable to determine the percent by weight of alcohol in a person's breath when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle:~~

~~1. Alcosensor pass-suspect fail model, manufactured by Intoximeters, Inc.~~

~~2. Alcosensor III, digital, manufactured by Intoximeters, Inc.~~

~~3. Alcosensor IV, manufactured by Intoximeters, Inc.~~

~~4. A.L.E.R.T. J-4 digifail model, manufactured by Alcohol Countermeasure Systems.~~

~~5. A.L.E.R.T. J-4 pass-suspect fail model, manufactured by Alcohol Countermeasure Systems.~~

~~6. A.L.E.R.T. J-4X software version 1.83, hardware revision 7, manufactured by Alcohol Countermeasure Systems.~~

~~7. Intoxilyzer 1400, manufactured by CMI, Inc.~~

~~8. SD-2, manufactured by CMI, Inc.~~

~~9. RBT IV, manufactured by Intoximeters, Inc.~~

~~10. PBA 3000, manufactured by LIFE-LOC, Inc.~~

~~11. Breathalyzer 7410, manufactured by Draeger.~~

~~(Added to NAC by Com. on Testing for Intoxication, eff. 9-26-86; A 11-23-93; 9-9-94; 1-18-96; R112-97, 5-26-98)]~~

NAC 484.615 Changes in list of approved devices. (NRS 484.3882)

1. Upon receipt of a petition from any interested person to make an addition to or deletion from the list of *certified* preliminary breath-testing devices, *maintained by the Committee on Testing for Intoxication*, [~~in NAC 484.605,~~] the director of the department of motor vehicles and public safety or his designee shall examine the petition on behalf of the committee on testing for intoxication.

2. The director or his designee may:

(a) Place the petition on the agenda for the committee's next regularly scheduled meeting;

(b) Order that the device be evaluated pursuant to subsection 4; or

(c) Deny the petition.

3. A person who is aggrieved by the denial of such a petition by the director or his designee may appeal in writing to the committee.

4. If a breath-testing device is to be evaluated, the director or his designee shall arrange for two of the fully equipped devices to be made available to a laboratory designated by him. The designated laboratory must have on its staff at least one certified forensic analyst of alcohol, who shall evaluate the device in accordance with established scientific methods and principles and determine whether the device, as designed and manufactured, is accurate and reliable to test a person's breath to determine the [~~percent by weight~~] *concentration* of alcohol in the person's breath when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle.

(Added to NAC by Com. on Testing for Intoxication, eff. 9-26-86; A 9-9-94; R112-97, 5-26-98)

NAC 484.621 Calibration of device used by law enforcement agency. (NRS 484.3884)

1. Each preliminary breath-testing device used by a law enforcement agency must be calibrated by the agency or a certified forensic analyst of alcohol at least once a year.

2. The calibration must include:

(a) Verification by the agency or certified forensic analyst of alcohol of the response and accuracy of the device at no less than three levels of alcohol within the range which corresponds to *a concentration* [~~percentage by weight~~] of alcohol in the breath from 0 to 0.4 *gram per 210 liters* [~~percent~~], inclusive; and

(b) The response of the device to breath samples which do not contain alcohol.

3. In order to be used, a preliminary breath-testing device must also be tested for accuracy each

month using a certified alcohol standard for calibration.

(Added to NAC by Com. on Testing for Intoxication, eff. 9-26-86; A 7-18-88; 11-23-93; 9-9-94; R112-97, 5-26-98)–(Substituted in revision for NAC 484.665)

REPEAL ENTIRE NAC 484.631

~~[NAC 484.631 List of approved devices. The following evidential breath testing devices are approved and certified as being designed and manufactured to be accurate and reliable for testing a person's breath to determine the percent by weight of alcohol in the person's breath:~~

~~1. Breathalyzer Model 900 A, manufactured by Smith & Wesson Electronics Company (Mechanical photoelectric).~~

~~2. Breathalyzer Model 1000, manufactured by Smith & Wesson Electronics Company (Mechanical photoelectric).~~

~~3. Gas Chromatograph Intoximeter Mark IV, manufactured by Intoximeters, Inc. (Gas chromatograph).~~

~~4. Gas Chromatograph Intoximeter Mark IV A, manufactured by Intoximeters, Inc. (Gas chromatograph).~~

~~5. Intoxilyzer Model 4011, manufactured by CMI, Inc. (Infrared absorption).~~

~~6. Intoxilyzer Model 4011A, manufactured by CMI, Inc. (Infrared absorption).~~

~~7. Intoxilyzer 4011A 27-10100, manufactured by CMI, Inc. (Infrared absorption).~~

~~8. Intoxilyzer 4011A 27-10100 with the optional capability of fixed filter calibration, manufactured by CMI, Inc. (Infrared absorption).~~

~~9. Intoxilyzer 4011AS, manufactured by CMI, Inc. (Infrared absorption).~~

~~10. Intoxilyzer Model 4011, manufactured by Omicron Systems Corporation (Infrared absorption).~~

~~11. Intoximeter 3000, manufactured by Intoximeters, Inc. (Infrared absorption).~~

~~12. BAC Verifier, manufactured by Verax Systems, Inc., manufacturing rights held by National Patent Analytical Systems, Inc. (Infrared absorption).~~

~~13. Intoxilyzer 5000, manufactured by CMI, Inc. (Infrared absorption).~~

~~14. BAC Datamaster, manufactured by National Patent Analytical Systems, Inc. (Infrared absorption).~~

~~15. Intoxilyzer 1400, manufactured by CMI, Inc. (Infrared absorption).~~

~~(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 3-11-86; 11-23-93; 9-9-94; 1-18-96) (Substituted in revision for NAC 484.600)]~~

NAC 484.635 Changes in list of approved devices. (NRS 484.3882)

1. Upon receipt of a petition from any interested person to make an addition to or deletion from the list of certified evidential breath-testing devices, *maintained by the Committee on Testing for Intoxication* ~~[in NAC 484.631]~~, the director of the department of motor vehicles and public safety or his designee shall examine the petition on behalf of the committee on testing for intoxication.

2. If the director or his designee finds that the device named in the petition is:

(a) On the list of qualified products meeting the requirements of the National Highway Traffic Safety Administration, or has been deleted from that list, and that cause otherwise exists, he may:

(1) Place the petition on the agenda for the committee's next regularly scheduled meeting; or

(2) Order that the device be evaluated pursuant to subsection 4.

(b) Not on the list of qualified products of the National Highway Traffic Safety Administration or that cause does not exist for the committee to consider the petition, he shall, within 30 days after receiving the petition, deny the petition in writing, stating his reasons.

3. A person who is aggrieved by the denial of such a petition by the director or his designee may appeal in writing to the committee.

4. If a breath-testing device is to be evaluated, the director or his designee shall arrange for two fully equipped devices to be made available to a forensic laboratory designated by him. The designated laboratory must have on its staff at least one certified forensic analyst of alcohol, who shall evaluate the device in accordance with established scientific methods and principles and determine whether the device, as designed and manufactured, is accurate and reliable for the purpose of testing a person's breath to determine the *concentration* ~~[percent by weight]~~ of alcohol in the person's breath.

~~(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 3-11-86; 9-9-94; R112-97, 5-26-98) (Substituted in revision for NAC 484.610)~~

NAC 484.640 Certification as operator. (NRS 484.3886)

1. A person or his employer must apply to the department of motor vehicles and 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** ~~{percent by weight}~~ of alcohol in his breath 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 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** ~~{percent by weight}~~ of alcohol in his breath which has been approved by the peace officers' standards and training 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 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 valid for 3 years after the date of the certification.

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 3-11-86; 7-18-88; 11-23-93; 9-9-94; R112-97, 5-26-98)

NAC 484.650 Renewal of certificate as operator. The director of the department of motor vehicles and public safety 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 **or within the immediate six 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** ~~{percent by weight}~~ of alcohol in his breath 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 on and a determination of the applicant's proficiency in the operation of the specific devices for which renewal of certification will be granted.

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 3-11-86; 9-9-94)

NAC 484.660 Calibration of device used by law enforcement agency.

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 90 days.
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* ~~{percentage by weight}~~ of alcohol in the breath from 0 to 0.4 *gram per 210 liters* ~~{percent}~~, inclusive.

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 3-11-86; 9-9-94)

NAC 484.670 Duties of operator. (NRS 484.3884) 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 on testing for intoxication 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 which is certified to contain a specific concentration of alcohol within the range that corresponds to *a concentration* ~~{percentage by weight}~~ of alcohol in the breath from .05 to .20 *gram per 210 liters* ~~{percent}~~, inclusive.

(Added to NAC by Com. on Testing for Intoxication, eff. 10-26-83; A 3-11-86; 11-23-93; 9-9-94; R112-97, 5-26-98)

REPEAL ENTIRE NAC 484.701

~~[NAC 484.701 List of approved devices. (NRS 484.3882) The following devices are approved and certified as being designed and manufactured to be accurate and reliable to determine the percent by weight of alcohol in a person's breath when the test is taken to prevent an intoxicated person from starting a vehicle:~~

~~1. Intoxalock, manufactured by Consumer Safety Technology, Inc.~~

~~2. Draeger Interlock, manufactured by Draeger.~~

~~(Added to NAC by Com. on Testing for Intoxication, eff. 1-18-9; A by R112-97, 5-26-98)–
(Substituted in revision for NAC 484.607)]~~

NAC 484.705 Changes in list of approved devices. (NRS 484.3947)

1. Upon receipt of a petition from any interested person to make an addition to or a deletion from the list of *certified* devices, *maintained by the Committee on Testing for Intoxication*, that prevent an intoxicated person from starting a vehicle, the director or his agent shall examine the petition on behalf of the committee.

2. The director or his agent may:

(a) Place the petition on the agenda for the next regularly scheduled meeting of the committee;

(b) Order that the device be evaluated pursuant to subsection 4; or

(c) Deny the petition.

3. A person who is aggrieved by the denial of a petition may appeal in writing to the committee.

4. If a device is to be evaluated, the director or his agent shall arrange for two of the fully equipped devices to be made available to a forensic laboratory designated by him. The designated laboratory must have on its staff at least one certified forensic analyst of alcohol, who shall evaluate the device in accordance with established scientific methods and principles and determine whether the device, as designed and manufactured, is accurate and reliable to determine the concentration of alcohol in the person's breath.

(Added to NAC by Com. on Testing for Intoxication, eff. 1-4-91; A by R193-97, 5-26-98)–
(Substituted in revision for NAC 484.617)

NAC 484.715 Records of person who calibrates, maintains or repairs device. (NRS 484.3884)

1. The manufacturer or its agent who calibrates, maintains or repairs a device that prevents an intoxicated person from starting a vehicle shall enter, at or near the time of the activity, the following information on a form approved by the committee:

(a) For calibration of the device, the information must include:

(1) The date and time of the calibration;

(2) The name of the person performing the calibration;

(3) The response and accuracy of the device for each test that is performed;

(4) Verification that the device prevents the motor vehicle in which it is installed from starting if a breath alcohol level of 0.02 *gram [percent]* or more *per 210 liters of his breath* is detected; and

(5) The nature and extent of maintenance or repair performed on the device.

(b) For maintenance or repair of the device, the information must include:

- (1) The date and time of the maintenance or repair;
 - (2) The name of the person performing the maintenance or repair; and
 - (3) The nature and extent of maintenance or repair performed on the device.
2. The manufacturer or its agent shall retain the form and make it available upon request to the director or his designee.

(Added to NAC by Com. on Testing for Intoxication, eff. 1-4-91; A by R112-97, 5-26-98)–
(Substituted in revision for NAC 484.668)