

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

LCB File No. R174-18

July 25, 2018

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

AUTHORITY: §§1-23 and 28-31, NRS 484C.480; §§24 and 25, NRS 484C.620; §§26 and 27, NRS 484C.630.

A REGULATION relating to breath-testing devices; establishing and revising various provisions relating to ignition interlock devices; revising provisions relating to persons certified to calibrate breath-testing devices, the calibration of preliminary breath-testing devices and the certification of operators of evidential breath-testing devices; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a person is required to install an ignition interlock device in a motor vehicle that he or she operates in certain circumstances. (NRS 62E.640, 484C.210 and 484C.460) Existing law requires the Committee on Testing for Intoxication to adopt regulations which: (1) provide for the certification of ignition interlock devices; (2) prescribe the form and content of records respecting the calibration, installation, removal, inspection, maintenance and operation of ignition interlock devices; (3) prescribe standards and procedures for the proper installation, removal, inspection, calibration, maintenance and operation of ignition interlock devices; and (4) require the cost of installing or removing an ignition interlock device to be waived and the cost of leasing, calibrating or monitoring an ignition interlock device to be adjusted for certain persons. (NRS 484C.480)

Section 11 of this regulation: (1) requires that only ignition interlock devices that are included on a list of devices certified by the Committee may be installed in a vehicle; (2) sets forth the requirements that an ignition interlock device must meet to be certified by the Committee; and (3) requires an ignition interlock device to be recertified every 2 years. **Section 12** of this regulation establishes the circumstances in which the Committee is authorized to remove an ignition interlock device from the list of certified devices. **Section 28** of this regulation sets forth the information that must be included in a petition to make an addition to the list. **Section 31** of this regulation requires any ignition interlock device that was installed in a

vehicle before the effective date of this regulation and that does not meet the requirements established in this regulation to be replaced with an ignition interlock device that meets the requirements established in this regulation not later than 120 days after the date this regulation becomes effective.

Sections 13 and 14 of this regulation establish provisions relating to certain breath tests that must be taken. **Section 15** of this regulation establishes provisions relating to lockout overrides performed when an ignition interlock device enters into a mode in which it will not accept a breath test because of certain violations. **Section 29** of this regulation revises provisions relating to the calibration of ignition interlock devices.

Sections 16 and 17 of this regulation establish requirements relating to entities designated to provide certain services relating to ignition interlock devices. **Section 18** of this regulation requires such an entity to provide a program of orientation regarding the correct use of an ignition interlock device and the operation of a vehicle in which such a device is installed, and **section 19** of this regulation requires such an entity to issue to a driver who is required to install an ignition interlock device a certificate that contains certain information after the device is installed.

Section 20 of this regulation requires: (1) a person who is required to install an ignition interlock device to have the device inspected at least once every 30 days; and (2) certain information to be collected during each such appointment. **Section 21** of this regulation requires a chart of fees to be displayed in every facility that installs, replaces, repairs, removes or performs services on an ignition interlock device. **Section 22** of this regulation requires the manufacturer of an ignition interlock device to maintain all records for each driver using one of the manufacturer's devices and keep all such records for a period of 3 years after the date the device is removed.

Existing law requires the Committee to adopt regulations which: (1) establish methods for ascertaining the competence of persons to calibrate breath-testing devices and provide for the certification of those persons by the Department of Public Safety; and (2) prescribe the form and contents of records respecting the calibration of breath-testing devices. (NRS 484C.620) **Section 24** of this regulation revises the required documents that a person who is certified to calibrate breath-testing devices must submit when applying for recertification, and **section 25** of this regulation revises provisions relating to the collection of information during the calibration of a preliminary breath-testing device.

Existing law requires the Committee to adopt regulations which provide for the certification of operators of breath-testing devices. (NRS 484C.630) **Sections 26 and 27** of this regulation revise provisions relating to certain courses required to be completed for the certification or recertification of an operator of an evidential breath-testing device by removing the requirement that such courses be approved by the Peace Officers' Standards and Training Commission.

Section 1. Chapter 484C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 22, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Agent” means the entity designated by a manufacturer of a device to provide services relating to the device, including, without limitation, the installation, replacement, calibration, maintenance and removal of a device.*

Sec. 4. *“Circumvention” means the bypassing of the correct operation of a device by starting a vehicle by any means without first providing a breath test.*

Sec. 5. *“Department” means the Department of Public Safety.*

Sec. 6. *“Device” has the meaning ascribed to it in NRS 484C.450.*

Sec. 7. *“Driver” means a person who is required to install a device in a motor vehicle pursuant to NRS 62E.640, 484C.210 or 484C.460.*

Sec. 8. *“Permanent lockout” means a device mode in which the device will not accept a breath test until a lockout override is performed pursuant to section 15 of this regulation.*

Sec. 9. *“Service center” means a facility where certain services relating to a device are performed, including, without limitation, the installation, replacement, calibration, maintenance and removal of a device.*

Sec. 10. *“Tamper” means an attempt to physically disable, disconnect, adjust or otherwise alter the proper operation of a device.*

Sec. 11. 1. A manufacturer shall only offer for installation or replacement a device that is included on the list of devices which are certified by the Committee pursuant to NRS 484C.610.

2. To be certified by the Committee, a device must:

(a) Be manufactured by a manufacturer that is certified by the International Organization of Standards to ISO 9001 and is responsible for the design, construction and production of devices.

(b) Prevent a vehicle from starting if the results of a breath test indicate that a person has a concentration of alcohol of 0.02 or more in his or her breath.

(c) Have a data storage system that has the capacity to facilitate the recording and maintenance of all daily driving activities for the period between each calibration test performed pursuant to NAC 484C.170.

(d) Be equipped with a camera that:

(1) Is electronically tethered to the device.

(2) Will not distract or impede the person driving the vehicle in any manner from the safe and legal operation of the vehicle.

(3) Is capable of producing a digital image, photograph or other identifiable verification of the person driving the vehicle in all lighting conditions.

(4) Captures a digital image or photograph of the person driving the vehicle:

(I) Not more than 5 seconds after the vehicle's engine starts;

(II) Each time a notification is given that a retest is in progress; and

(III) Each time a violation reset is recorded.

- (e) Record the date, time and results of each breath test taken.*
- (f) Store all digital images and recorded data in the device's data storage system.*
- (g) Be capable of:*
 - (1) Sampling 1.5 liters or more of expired breath; and*
 - (2) Adjusting the sample amount to 1.2 liters of expired breath with a medical recommendation and documentation by a physician.*
- (h) Except as otherwise provided in paragraph (c) of subsection 4 of section 13 of this regulation, allow a vehicle to restart within 2 minutes after the engine is shut off without requiring a subsequent breath test.*
- (i) Have an approved anti-circumvention feature that is activated at all times.*
- (j) Require a confirmatory test that is conducted in accordance with section 14 of this regulation if a circumvention is recorded.*
- (k) Require a retest that is conducted in accordance with section 13 of this regulation while the vehicle's engine is running.*
- (l) If the device records a circumvention or retest violation or the driver fails to have the device inspected at a service center within the period required by subsection 1 of section 20 of this regulation, display a violation reset.*
- (m) If the device records a violation reset, enter into and remain in a permanent lockout unless a lockout override is performed pursuant to section 15 of this regulation not more than 5 days after the permanent lockout occurred.*
- (n) Have tamper-proof seals and display, on each separate piece of the device, a warning label that includes the following statement:*

WARNING! ANY ADULT REQUIRED TO USE THIS DEVICE WHO TAMPERS WITH OR OPERATES A MOTOR VEHICLE WITHOUT THIS DEVICE SHALL BE PUNISHED IN ACCORDANCE WITH NRS 484C.470.

3. To remain on the list of devices which are certified by the Committee, a device must be recertified by the Committee every 2 years.

4. As used in this section, “violation reset” means a feature of a device that activates a service reminder.

Sec. 12. 1. The Committee may remove a device from the list of devices which are certified by the Committee pursuant to NRS 484C.610 if:

(a) The manufacturer or agent violates any law or regulation relating to the device, including, without limitation, the installation, replacement, calibration, maintenance or removal of a device;

(b) The device is not recertified in accordance with subsection 3 of section 11 of this regulation; or

(c) Upon receipt of the written notice from a manufacturer pursuant to subsection 4.

2. If the Committee removes a device from the list, the Committee will provide a copy of the notice of revocation to the manufacturer.

3. A manufacturer may, within 10 days of receiving a notice pursuant to subsection 2, request an appeal from the Committee in writing.

4. If the manufacturer of a device that is certified by the Committee is no longer in business or changes ownership, the manufacturer shall immediately notify the Committee in writing.

Sec. 13. *1. After an initial breath test is taken for the purposes of starting a vehicle, a retest must be taken not less than 5 minutes and not more than 15 minutes after the vehicle's engine starts.*

2. For the duration of travel until the vehicle's engine is shut off, one or more subsequent retests must be taken at a random interval that is not less than 15 minutes and not more than 45 minutes after the previous retest.

3. When a retest begins, a distinct audible or visual indicator must alert the driver that a retest is in progress.

4. A retest must be completed within 6 minutes. If the driver fails to take a breath test that registers a concentration of alcohol lower than 0.02 in his or her breath within that period:

(a) A unique audible or visual indicator inside the passenger compartment of the vehicle will be activated and remain activated until the vehicle's engine is shut off;

(b) A retest violation will be recorded in the data storage system; and

(c) The restart feature allowed pursuant to paragraph (h) of subsection 2 of section 11 of this regulation will be disabled.

5. The device must not enter into a permanent lockout when a retest is in progress.

Sec. 14. *1. If a device records a circumvention, the driver must take a confirmatory breath test.*

2. *When a confirmatory breath test begins, a distinct audible or visual indicator must alert the driver that a confirmatory breath test is in progress.*

3. *A confirmatory breath test must be completed within 2 minutes. If the driver fails to take a breath test that registers a concentration of alcohol lower than 0.02 in his or her breath within that period, a unique audible or visual indicator inside the passenger compartment of the vehicle will be activated and remain activated until the vehicle's engine is shut off.*

4. *If a confirmatory breath test registers a concentration of alcohol lower than 0.02 in the driver's breath, the device will revert to the normal retest sequence in accordance with section 13 of this regulation.*

Sec. 15. 1. *If a device enters into a permanent lockout pursuant to paragraph (m) of subsection 2 of section 11 of this regulation, a lockout override may be performed only by the manufacturer or agent.*

2. *A lockout override must not be performed unless the manufacturer's lockout override procedure for the device model has been approved by the Committee in accordance with this section.*

3. *The Committee will approve a manufacturer's lockout override procedure for a device model if the manufacturer demonstrates compliance with the following requirements:*

(a) *A lockout override may only be performed on a device by entering a numeric lockout override code into the device. The lockout override code must be unique to the device, as evidenced by the device serial number.*

(b) *A lockout override must only remain valid for a period of 2 hours. If a breath test is not taken within that period, the device will revert to a permanent lockout.*

(c) Except as otherwise provided in paragraph (b), after a lockout override is performed, the device must continue to operate as normal.

4. Each lockout override performed pursuant to this section must be uniquely identified and recorded in the device's data storage system.

Sec. 16. 1. *Except as otherwise provided in subsection 4, a service center may only install, replace or perform other services relating to a device if the device is included on the list of devices which are certified by the Committee pursuant to NRS 484C.610.*

2. Any person who installs, replaces or performs services on a device must:

(a) Have received appropriate formal training from the manufacturer on the make and model of the device; and

(b) Not have been convicted of:

(1) A gross misdemeanor, misdemeanor or crime involving fraud, theft or deceptive trade practices within the immediately preceding 2 years;

(2) Driving under the influence of alcohol or a controlled substance within the immediately preceding 5 years; or

(3) A crime of violence at any time.

3. A service center must have a designated waiting area for customers that is separate from the area where services are performed on a device. The designated waiting area must be shielded from the area where services are performed on a device so that a customer or any unauthorized person is unable to see the installation, replacement or servicing of a device.

4. Only the manufacturer of a device may perform repairs on the device.

5. As used in this section, “crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

Sec. 17. An agent must:

1. Before any work is performed for a driver:

(a) Provide a statement of charges to the driver that clearly specifies:

(1) The warranty details for the device;

(2) The monthly lease amount for the device;

(3) Any anticipated additional charges for routine calibration and service checks; and

(4) Any services or items that are provided without charge;

(b) Obtain the driver’s acceptance of the estimated charges; and

(c) Provide to the driver written notice of any changes in the statement of charges, regardless of who requested or directed the change.

2. Have someone available at the service center during normal working hours to answer questions or troubleshoot any mechanical issues related to the device or to replace an inoperable or malfunctioning device.

3. Provide to all drivers the service center’s hours of operation and a 24-hour telephone number to call in the event of an emergency with the device.

4. Ensure that a person who installs, replaces or performs services on a device receives appropriate formal training from the manufacturer on the make and model of the device.

5. Perform work on a vehicle in a responsible, workmanlike manner without causing any damage to or affecting the function or performance of the vehicle in any way other than the

way in which the vehicle is intended to function or perform with the device installed. If there is any damage to the function or performance of the vehicle that is caused by the installation of a device, the service center:

- (a) Must repair the damage;*
- (b) May use an authorized third-party vehicle service center to make the repairs; and*
- (c) Must assume all costs of the repairs and must not pass any such costs on to the customer.*

6. When the device is authorized to be removed from the vehicle, remove the device in such a way that the vehicle ignition and other systems may, aside from reasonable wear and tear, be operated in the same manner as before the device was installed.

Sec. 18. *1. An agent shall provide a program of orientation regarding the correct use of a device and the operation of a vehicle in which a device is installed.*

2. Any driver or other person who might operate a vehicle in which a device is installed may participate in the program.

3. The program must include training on all functions, operations and processes necessary to operate a vehicle while a device is installed.

4. An agent shall, upon request, provide any additional training that is needed by a driver or other person who might operate a vehicle in which a device is installed.

5. An agent shall provide the space and any audio-visual or computer equipment necessary for any training pursuant to this section.

Sec. 19. *After a device is installed in a vehicle, the agent shall issue a certificate to the driver and transmit a copy of the certificate to the Department of Motor Vehicles. The certificate must contain the following information:*

- 1. The name, address and telephone number of the driver.*
- 2. The make, model, year, vehicle identification number, license plate number and state of registration of the vehicle in which the device is installed.*
- 3. The date the device was installed and the name of the person who installed the device.*
- 4. The name and address of the service center where the device was installed.*
- 5. The make, model and serial number of the device that was installed.*
- 6. The period for which the driver is required to have the device installed.*
- 7. The scheduled frequency of service center appointments.*
- 8. The payment schedule.*
- 9. If the installation was ordered by a court, the name and location of the court.*

Sec. 20. *1. After a device is installed in a vehicle, a driver shall have the device inspected at a service center at least once every 30 days.*

2. An agent shall collect the following information during each service center appointment:

- (a) The name of the driver.*
- (b) The make, model, year, vehicle identification number, license plate number and state of registration of the vehicle in which the device is installed.*
- (c) The date the device was installed in the vehicle.*
- (d) The period for which the driver is required to have the device installed.*

- (e) If the installation was ordered by a court, the name and location of the court.*
- (f) The number of miles driven during the period since the last service center appointment.*
- (g) The charges and costs assessed to the driver for the service center appointment.*
- (h) The date of the next scheduled service center appointment.*

3. In addition to the information required to be collected pursuant to subsection 2, an agent shall collect the following information, if applicable:

(a) Any areas of discussion with the driver regarding problems with or questions about the device or the status of the driver in the program.

(b) Any failure by the driver to abide by the terms and conditions of the court order or lease agreement that the agent observes, including, without limitation, failure to appear for a scheduled service center appointment.

(c) Any permanent lockouts or violations recorded by the device and the reasons for such actions.

(d) Any records of noncompliance from the device, including, without limitation, any:

(1) Failure by the driver to take a required breath test; and

(2) Record that any of the incidents specified in subsection 1 of NRS 484C.470 have occurred.

(e) Any data from the device indicating that the driver attempted to start the vehicle with a concentration of alcohol of 0.04 or more in his or her breath.

(f) Any evidence of actual or attempted alteration, tampering, circumvention or removal.

4. An agent shall report any evidence of tampering, noncompliance or other violation to the Department and, if requested, to the court that ordered the installation of the device.

Sec. 21. 1. *A chart of fees must be displayed in a conspicuous location in every facility that installs, replaces, repairs, removes or performs services on a device.*

2. In accordance with paragraph (d) of subsection 1 of NRS 484C.480, a manufacturer or agent must waive the cost of installing or removing a device and charge a reduced fee to lease, calibrate or monitor a device if the driver meets the requirements set forth in subparagraph (1) or (2) of paragraph (d) of subsection 1 of NRS 484C.480. Such a waiver and reduction of costs must be displayed on the chart of fees.

Sec. 22. *A manufacturer shall:*

1. Maintain all records for each driver using one of the manufacturer's devices, including, without limitation, all records of daily driving activities and records relating to the calibration, installation, removal, inspection, maintenance and operation of the device.

2. Keep all such records for a period of 3 years after the date the device is removed.

3. Make all such records available upon request to the Director or his or her designee and the court that ordered the installation of the device.

Sec. 23. NAC 484C.010 is hereby amended to read as follows:

484C.010 As used in NAC 484C.010 to ~~[484C.180,]~~ *484C.170*, inclusive, *and sections 2 to 22, inclusive, of this regulation*, 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 484C.450.~~

~~—3.]~~ "Director" means the Director of the Department of Public Safety.

Sec. 24. NAC 484C.030 is hereby amended to read as follows:

484C.030 The Director or his or her designee shall renew the certificate of any person certified by him or her as a forensic analyst of alcohol who applies in writing to the Director for a renewal before the certificate expires and:

1. Successfully completes a course approved by the Committee, consisting of at least 8 hours of instruction on the subjects taught in the basic course described in paragraph (c) of subsection 2 of NAC 484C.020 and demonstrates the person's competence in calibrating breath-testing devices and in evaluating others on their competence in operating such devices; or

2. Submits to the Director or designee the following documents:

(a) A current resume of the person's education and other qualifications.

(b) Verification of attendance at no less than two seminars or training programs related to the influence of alcohol on drivers. The verification must include the dates of attendance, the names of the instructors and speakers, and a general description of the curriculum.

(c) ~~Proof of acceptance as an expert in the field of breath alcohol testing in no less than four courts of law. The proof must include the names of the courts, date of acceptance and the names of the cases for which the person was accepted as an expert.~~

~~(d)~~ Verification of continued activity in the field of breath alcohol testing since the person's previous certification.

Sec. 25. NAC 484C.080 is hereby amended to read as follows:

484C.080 1. Each person who calibrates, maintains or repairs a preliminary breath-testing device shall ~~enter,~~ *record*, at or near the time of the activity, the following information : ~~on a form approved by the Committee;~~

(a) Whether the calibration is done monthly or annually;

- (b) The date and time of the calibration;
 - (c) The name of the person performing the calibration; and
 - (d) The response and accuracy of the device for each test which is performed.
 - (e) The nature and extent of maintenance or repair performed on the device.
2. The ~~form~~ *information* must be retained by the agency.

Sec. 26. 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 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 of an evidential breath-testing device; and
- (b) Has successfully completed a course consisting 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 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. 27. 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 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 and]~~ the Committee.

Sec. 28. NAC 484C.160 is hereby amended to read as follows:

484C.160 1. Upon receipt of a petition from any interested person to make an addition to or a deletion from the list of devices ~~[which prevent an intoxicated person from starting a vehicle and]~~ which are certified by the Committee pursuant to NRS 484C.610, the Director or his or her ~~[agent]~~ *designee* shall examine the petition on behalf of the Committee. *A petition to make an addition to the list of devices must include:*

(a) The name, telephone number and address of the principal place of business of the manufacturer.

(b) The model name or model number of the device and the technical specifications of each model submitted for certification.

(c) Proof, dated within the immediately preceding 5 years and verified by an accredited laboratory, that the device meets or exceeds the current “Model Specifications for Breath Alcohol Ignition Interlock Devices” published in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation. As used in this paragraph, “accredited laboratory” means a laboratory that is accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement.

(d) A copy of the manufacturer’s current valid product liability insurance certificate that is issued by a provider of insurance authorized to transact business in this State.

(e) Written documentation or copies of:

(1) All forms, documents, manuals, written materials and audio-visual aids that are used in the:

(I) Training provided pursuant to section 18 of this regulation; or

(II) Marketing of the device.

(2) A quality assurance plan that describes the calibration process used to verify the accuracy of the device in accordance with NAC 484C.170.

(3) A device configuration profile in a format prescribed by the Committee.

(4) The training manual used to train a person authorized to install the device.

(5) The servicing and maintenance manual for the device.

(f) A declaration that:

(1) The manufacturer and the employees of the manufacturer will cooperate with the Department at all times, including, without limitation, allowing the Department to inspect the installation, use, removal, repair, calibration or performance of the device; and

(2) The manufacturer agrees to provide, upon request and in a format prescribed by the Committee, all downloaded device data, reports and information related to the device to the Department or a court that orders the installation of the device.

2. The Director or his or her ~~[agent]~~ *designee* may:

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

(b) Order that the device be ~~[evaluated]~~ *tested* pursuant to subsection 4; or

(c) Deny the petition ~~[]~~ *if it is found to be incomplete or does not otherwise meet the requirements set forth in this section.*

3. ~~[A person who is aggrieved by the denial of a petition]~~ *If a petition is denied, the manufacturer may request an appeal in writing to the Committee ~~[]~~ within 10 days of receiving written notification that the petition was denied.*

4. ~~[If a device is to be evaluated, the Director or his or her agent]~~ *Upon the request of the Committee, a manufacturer* shall ~~[arrange for]~~ *provide* two of the fully equipped devices ~~[to be made available to a]~~ *for field or* forensic laboratory ~~[designated by the Director or agent. The designated laboratory must have on its staff at least one]~~ *testing by a* 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.]~~

Sec. 29. NAC 484C.170 is hereby amended to read as follows:

484C.170 1. Each device ~~[that prevents an intoxicated person from starting a vehicle]~~ must be ~~[calibrated, tested and]~~ examined by the manufacturer or ~~[his or her]~~ agent *for correct calibration* at least once every 90 days ~~[.]~~ *by using a certified dry gas standard with an alcohol concentration between 0.03 and 0.05 grams per 210 liters of breath. The calibration process used by the manufacturer must have a mechanism to make adjustments for the elevation at which the dry gas is being used.*

2. ~~[The]~~ *Each time a calibration test is performed, the following information* must ~~[include:]~~ *be recorded in the device's data storage system:*

(a) *The date and time of the calibration test.*

(b) *The name of the person who performed the calibration test.*

(c) *The results of the calibration test.*

(d) Verification by the manufacturer or ~~[his or her]~~ agent of the response and accuracy of the device . ~~[at no less than two levels of alcohol, within the range that corresponds to a concentration of alcohol in the breath of 0.02 to 0.10 grams, inclusive, of alcohol per 210 liters~~

~~of breath.]~~ The accuracy of the device must be within 10 percent *or 0.005 grams per 210 liters of breath of the certified concentration* of the ~~[value of the]~~ *dry gas* standard ~~[alcohol solution for each level.~~

~~—(b)] , whichever is greater.~~

(e) The response of the device to breath samples that do not contain alcohol.

~~[(e)]~~ (f) Verification that the device prevents the motor vehicle in which it is installed from starting if ~~[the]~~ *a person has a* concentration of alcohol ~~[in a person's breath is equal to or greater than]~~ *of* 0.02 grams ~~[of alcohol per 210 liters of]~~ *or more in his or her* breath.

3. ~~[Each device must meet the following requirements established by the Committee:]~~ *If the results of a calibration test determine that the accuracy of the device is not within the range required by paragraph (d) of subsection 2, the device must:*

(a) ~~[Ability to sample a minimum volume of expired breath that is required to test a person's breath;]~~ *Be adjusted until its accuracy is within the required range; or*

(b) ~~[Ability to test a minimum concentration of alcohol in the breath that is required to prevent the motor vehicle from starting and a minimum concentration of alcohol in the breath that is required for subsequent tests of the person's breath while the person is driving the motor vehicle;~~

~~—(c) Requirements for calibrating a device before installation;~~

~~—(d) Options for restricting the hours of operation of the vehicle;~~

~~—(e) The frequency with which the device will require a person's breath to be tested while driving the motor vehicle; and~~

~~—(f) The ability of the device to prevent a person who has the device installed in his or her motor vehicle from starting the vehicle if the person:~~

~~—(1) Fails to submit the device for a mandatory calibration;~~

~~—(2) Tampers with the device; or~~

~~—(3) Receives a result on the test of the person’s breath that is at or above a prohibited level.] Except as otherwise provided in subsection 4, not be used to test a person’s breath to determine the concentration of alcohol therein.~~

4. ~~[If any evidence of tampering with the device is found, the device must not be used.] A device that is not used for breath tests pursuant to paragraph (b) of subsection 3 may only be used again if the device is repaired by the manufacturer and meets all applicable requirements after such repair.~~

5. *Dry gas alcohol standards must:*

(a) *Be certified to a known reference value and traceable to the NIST Traceable Reference Material (NTRM) program of the National Institute of Standards and Technology.*

(b) *Appear on the “Conforming Products List of Calibrating Units for Breath Alcohol Testers” published in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation.*

(c) *Within plus or minus 0.005 grams per 210 liters of breath of the adjusted reference value.*

6. *Dry gas alcohol standard tanks must:*

(a) *Be stored in accordance with the gas manufacturer’s recommendations and maintained in proper working order.*

(b) Have a certificate of analysis that contains:

(1) The components and the concentration of the reference value of the gas;

(2) An expiration date that is not more than 3 years after the date of preparation; and

(3) The lot or batch number.

Sec. 30. NAC 484C.180 is hereby repealed.

Sec. 31. Any device which was installed in a vehicle before the effective date of this regulation and which does not meet the requirements established in this regulation must be replaced with a device that meets the requirements established in this regulation not later than 120 days after the effective date of this regulation. As used in this section, “device” has the meaning ascribed to it in NRS 484C.450.

TEXT OF REPEALED SECTION

484C.180 Records of person who calibrates, maintains or repairs device. (NRS 484C.480, 484C.620)

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 driver of the motor vehicle in which it is installed from starting the motor vehicle if a breath alcohol level of 0.02 gram or more per 210 liters of the driver's 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 or her designee.