

(d) Subject to the requirements at N.J.A.C. 13:51-1.4(e), reinstatement and recertification of an operator, whose certification is invalid, pursuant to N.J.A.C. 13:51-1.8(a), and to whom the requirements as set forth at N.J.A.C. 13:51-1.8(b) apply, requires satisfactory completion of training as set forth at N.J.A.C. 13:51-1.6(c).

(e) The Superintendent, or his or her designee, has the authority to disqualify or remove any person from training provided under this section.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote the section.
Amended by R.2001 d.440, effective November 19, 2001.
See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

In (a)1 and 2, amended N.J.A.C. references that precede “, requires” in the introductory paragraphs.

Case Notes

Recertification of breathalyzer operator whose certification has been suspended for less than one year for failure to recertify. *State v. Ernst*, 230 N.J.Super. 238, 553 A.2d 356 (A.D.1989), certification denied 117 N.J. 40, 563 A.2d 811.

13:51-1.7 Validity and duration of certification

(a) Initial certification of an operator will be documented by the issuance of a certificate and replica which shows that the operator has completed the required course of training, including the date of the initial course completion and type of approved instrument, or instruments, upon which the operator has been certified. Said certification, as evidenced by the certificate and replica, shall become valid upon satisfactory completion of training for initial certification, as described at N.J.A.C. 13:51-1.6(a), and shall remain valid throughout the remainder of the calendar year corresponding to the date of initial course completion and shall remain valid throughout the next two calendar years.

(b) Recertification of an operator will be deemed continued as valid upon the satisfactory completion of training for recertification, as described at N.J.A.C. 13:51-1.6(c). Recertification shall be valid throughout the remainder of the calendar year corresponding to the completion date of the recertification course and shall remain valid throughout the next two calendar years.

(c) Reinstatement and recertification of an operator whose certification has become invalid pursuant to N.J.A.C. 13:51-1.8(a), and who has been reinstated and recertified pursuant to N.J.A.C. 13:51-1.8(b) or (c), shall be deemed to be valid for all purposes as of, and from the date of, reinstatement and recertification. This reinstatement and recertification shall thereafter be valid throughout the remainder of the calendar year corresponding to the date of the reinstatement and recertification course and shall remain valid throughout the next two calendar years.

(d) The certification of an operator pursuant to N.J.A.C. 13:51-1.6(b), or the recertification of an operator pursuant to N.J.A.C. 13:51-1.6(c) or the reinstatement and recertification of an operator pursuant to N.J.A.C. 13:51-1.6(d), is considered validated when the replica is signed and dated by

a Breath Test Coordinator/Instructor and, for certifications under N.J.A.C. 13:51-1.6(b), when the name of the approved instrument is entered on the replica.

(e) Certification of an operator with a valid certification for an instrument approved at N.J.A.C. 13:51-3.5(a), other than the instrument upon which the operator was previously trained and certified, will be deemed as valid upon satisfactory completion of training, as described at N.J.A.C. 13:51-1.6(b), and shall remain valid for the term of the original and current valid certification.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote the section.

Case Notes

Recertification in one day counsel of breathalyzer operator whose certification has been suspended for less than one year for failure to recertify. *State v. Ernst*, 230 N.J.Super. 238, 553 A.2d 356 (A.D.1989), certification denied 117 N.J. 40, 563 A.2d 811.

13:51-1.8 Operator certification reinstatement

(a) The certification of an operator will become invalid on the day following the date set for expiration of the operator's present valid certification as set forth at N.J.A.C. 13:51-1.7, if the operator has not satisfied the requirement for recertification, as set forth at N.J.A.C. 13:51-1.6(c), before the expiration of said valid certification.

(b) An operator whose certification has become invalid for failing to be recertified, as set forth at N.J.A.C. 13:51-1.6(c), and whose certification has been invalid for less than one year, must attend and satisfy the requirements of the reinstatement and recertification course, as set forth at N.J.A.C. 13:51-1.6(d), conducted by the Division of State Police. Reinstatement and recertification under this subsection must be completed before one year from the expiration date set forth in (a) above, otherwise the operator must satisfy the requirements, as set forth at N.J.A.C. 13:51-1.8(c).

(c) An operator whose certification is invalid for failing to be recertified, as set forth at N.J.A.C. 13:51-1.6(c), or reinstated and recertified, as set forth at N.J.A.C. 13:51-1.6(d), and whose certification has been invalid for one year or more from the date of expiration set forth in (a) above, must attend and satisfy the requirements of the initial certification training course, as set forth at N.J.A.C. 13:51-1.6(a), conducted by the Division of State Police.

(d) Any test conducted to analyze a person's breath, pursuant to procedures and methods contained in this chapter, by an operator whose certification is suspended, revoked, or invalid at the time such test is conducted, shall be considered invalid for presentation in evidence or testimony in a court of law or administrative hearing.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

In (a), substituted “become invalid on the day following” for “be automatically suspended on” following “operator will”; rewrote (b) and (c); and in (d), substituted “, revoked, or invalid” for “or automatically suspended,” following “suspended”.

Case Notes

Recertification in one day course of breathalyzer operator whose certification has been suspended for less than one year for failure to recertify. *State v. Ernst*, 230 N.J.Super. 238, 553 A.2d 356 (A.D.1989), certification denied 117 N.J. 40, 563 A.2d 811.

13:51-1.9 Revocation of certificate

(a) The Attorney General may revoke an operator's certification after consideration of a request or recommendation for revocation by the Superintendent of State Police.

(b) A request or recommendation for revocation will be made to the Attorney General when an operator is determined to be ineffective or incompetent by the Superintendent of State Police.

(c) A request or recommendation that an operator's certification be revoked must be in writing and addressed to the Superintendent of State Police and must state the reason(s) for the request or recommendation for revocation. The replica certificate of the operator who is the subject of the request or recommendation must accompany the request or recommendation for revocation unless it is otherwise unobtainable.

(d) The following persons are authorized to initiate a request or recommendation for revocation:

1. A Breath Test Coordinator/Instructor; or
2. Chief of Police of the organized police department of which the operator is a sworn member; or
3. Executive head of the organized police department of which the operator is a sworn member.

(e) Upon receipt of a request or recommendation for revocation, the Superintendent of State Police shall cause a written Notice of Suspension to be delivered to the operator who is the subject of the request or recommendation. A copy of the Notice of Suspension shall also be delivered to the Chief of Police or executive head of the organized police department of which the operator is a sworn member. The Notice of Suspension shall state:

1. The effective date of suspension;
2. The reason(s) revocation has been requested or recommended;
3. The name and title of the person originating the request or recommendation for revocation; and
4. Information that the operator may request a hearing on the request or recommendation for revocation by serving the Superintendent of State Police with written notice of such request within 30 days of the date the notice of suspension was signed and dated by the Superintendent of State Police.

(f) Failure to request a hearing as set forth at N.J.A.C. 13:51-1.9(e) within the time allotted shall be considered an absolute waiver of any right to a hearing.

Amended by R.2001 d.440, effective November 19, 2001.
See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

13:51-1.10 Hearing and determination on a request or recommendation for revocation

(a) The purpose of a hearing is to assist the Superintendent of State Police in arriving at a determination on the request or recommendation for revocation as set forth at N.J.A.C. 13:51-1.9(b). Where no hearing is conducted the Superintendent of State Police may make his determination based on the written documentation supplied in the request or recommendation to revoke or other materials supplied in support or opposition thereto.

(b) The hearing will be conducted by the Superintendent of State Police or by an officer designated by him. The hearing officer may, at his discretion, cause the operator to be given a written or oral examination or a competency test or any combination of such tests to arrive at a determination. Such tests may be given by a Breath Test Coordinator/Instructor or other person so designated by the Superintendent or the hearing officer.

(c) Upon conclusion of the hearing or review when no hearing is requested, the Superintendent of State Police will recommend, in writing, to the Attorney General whether the operator's certification should be revoked, including the reasons to support such recommendation; or if the operator's certification should be reinstated and the reasons in support thereof. Reinstatement may be conditioned upon the suspended operator satisfying certain training or other requirements. The Attorney General shall determine, in his sole discretion, what conditions or other requirements must be met before reinstatement can become effective.

(d) An operator recommended for reinstatement with conditions or other requirements as set forth at N.J.A.C. 13:51-1.10(c), who fails to satisfy and successfully complete said conditions or other requirements within a reasonable period of time, may be recommended by the Superintendent of State Police to the Attorney General for revocation of the operator's certification.

13:51-1.11 Restoration of revoked certifications

The Attorney General may restore a revoked certification when he is satisfied that the cause for revocation has been removed. An operator whose certification is revoked may apply for a new operator's certification after the expiration of 12 months from the date of revocation, or final judgment thereon, whichever is later. Application shall be pursuant to the provisions of N.J.A.C. 13:51-1.4(a) and N.J.A.C. 13:51-1.5, but shall be subject to review by the Superintendent of State Police. The applicant must complete the training as set forth at N.J.A.C. 13:51-1.6(a); but may not commence such training until any other requirements imposed by the Superintendent of State Police are satisfied. Upon satisfactory completion of training and any other prerequisites, the Superintendent of State Police may recommend certification of the applicant to the Attorney General.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Changed N.J.A.C. reference in the third sentence.

13:51-1.12 Return, loss and/or replacement of replica

(a) If an operator's certification is suspended or revoked, pursuant to N.J.A.C. 13:51-1.9 and/or N.J.A.C. 13:51-1.10, or if the operator resigns, retires, or leaves the organized police department of which the operator is, or was, a member, for any reason, it shall be the responsibility of the Chief of Police or other executive head of the organized police department to retrieve the replica certificate from the operator and return that document to the Superintendent, in care of the Alcohol/Drug Test Unit in the Division of State Police, with a written explanation of the reason for the return.

(b) If a replica has been lost, or is otherwise in need of replacement, the Chief of Police or other executive head of the organized police department of which the operator is a member shall notify the Superintendent, in writing, in care of the Alcohol/Drug Test Unit of the Division of State Police of such loss or need for a replacement. Lost replicas must be reported immediately.

(c) A replica will be replaced for an operator when the operator's replica has been lost and duly reported as lost, or is otherwise in need of replacement, pursuant to N.J.A.C. 13:51-1.12(b). The replacement replica will bear the date of issuance of the replacement and bear the signatures, or facsimile signatures, of the Attorney General and the Superintendent of State Police. The reverse side of the replacement replica will show the date of the operator's original initial certification under N.J.A.C. 13:51-1.6(a) and, if applicable, N.J.A.C. 13:51-1.6(b), and the date of the operator's most recent recertification under N.J.A.C. 13:51-1.6(c), or reinstatement and recertification under N.J.A.C. 13:51-1.6(d).

(d) Only a Breath Test Coordinator/Instructor or other person duly authorized by the Superintendent is permitted to record information on a replica.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote the section.

13:51-1.13 (Reserved)

Repealed by R.2001 d.440, effective November 19, 2001.
See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).
Section was "Administration".

13:51-1.14 Determinations of status of an Operator or Breath Test Coordinator/Instructor

In any judicial proceeding, or other matter where the certification status of an Operator or a Breath Test Coordinator/Instructor is called into question, the records of the Attorney General, as maintained by the Division of State Police under this chapter, shall be prima facie evidence of

the status of a Breath Test Operator or Breath Test Coordinator/Instructor.

New Rule, R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

SUBCHAPTER 2. BREATH TEST COORDINATOR/INSTRUCTORS

13:51-2.1 Eligibility requirements and approval

(a) To be eligible as a Breath Test Coordinator/Instructor, a person must be a sworn member of the New Jersey Division of State Police, hold a valid Breath Test Operator's Certificate, and be a holder of:

1. A certificate in police training issued by an approved school; or
2. A certification from a duly accredited school of higher education.

(b) The Attorney General may waive the instructor certification requirement, if he is satisfied such person has equivalent background and experience to instruct breath test applicants and operators.

(c) The Attorney General's approval will be in the form of a letter to the person approved as a Breath Test Coordinator/Instructor and will be reflected on the operator's replica certificate by the words "Breath Test Coordinator/Instructor."

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote (a).

13:51-2.2 Training and functional qualifications

(a) A Breath Test Coordinator/Instructor will have specialized training, as prescribed by the Division of State Police, and have the knowledge to properly perform the following functions:

1. Preparation and checking of chemicals and other testing standards or materials used for testing;
2. Presentation of the scientific theory of approved instruments, methods of operation, and methods of chemical breath testing;
3. Inspection and maintenance of approved instruments;
4. Instruction in courses for operators and applicants;
5. Make a request or recommendation for revocation of an operator's certification;
6. Validate replica certificates of breath test operators, as provided at N.J.A.C. 13:51-1.7(d).

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote (a).

Case Notes

Inspection certificates of breathalyzer were admissible evidence as business records and reports of a public official; admission into evidence in instant case error due to State's failure to authenticate records or lay foundation for business records qualification. *State v. McGearry*, 129 N.J.Super. 219, 322 A.2d 830 (App.Div.1974).

SUBCHAPTER 3. APPROVED CHEMICAL BREATH TESTING METHODS, INSTRUMENTS AND METHODS OF OPERATION

13:51-3.1 Purpose of subchapter

Pursuant to the provisions of P.L. 1966, c.142, Sec. 3, as amended by P.L. 1971, c.273, Sec. 1 (N.J.S.A. 39:4-50.3), P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25) and P.L. 1986, c.39, Sec. 8 (N.J.S.A. 12:7-56); hereinafter denoted N.J.S.A. 39:4-50.3, N.J.S.A. 39:3-10.25 or N.J.S.A. 12:7-56, respectively, the provisions of this subchapter set forth the instruments, methods of chemical breath testing and methods of operation approved by the Attorney General for the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46 or 2A:4A-23.

Amended by R.1987 d.229, effective May 18, 1987.
See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added N.J.S.A. cites.
Amended by R.1991 d.505, effective October 7, 1991.
See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Added to list of N.J.S.A. cites.
Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Substituted “, methods of chemical breath testing and methods of operation” for “and methods” following “instruments”.

13:51-3.2 Application for approval

(a) The Superintendent of the Division of State Police is designated by the Attorney General as the official to whom all applications for approval of instruments, methods and operational functions shall be made.

(b) Primarily, evaluation will be dependent upon test results reflecting reliability for satisfactory specificity, precision and accuracy. The instrument and component parts necessary for operation shall be supplied at the expense of the applicant.

(c) Any evaluating reports by the applicant, other governmental agencies or entities, including, but not limited to, agencies or entities in other states, the Federal government, or of another sovereign nation, or independent investigating groups shall be forwarded, with the instrument, along with operating servicing and maintenance manuals, schematic drawings and other detailed information.

(d) The applicant shall make every reasonable effort to provide information on litigation involving the judicial acceptance of the instrument, or challenges to the reliability or operability of the instrument, heard by, or pending before, courts of any other jurisdictions (state or Federal) in the United States of America. Such information shall include, but not be limited to, reported and unreported decisions, transcripts of relevant testimony, reports of experts, published studies or other similar materials, and such other materials as the Superintendent may request.

(e) Upon completion of evaluation of an instrument, method and/or operational function, the Superintendent shall recommend approval or rejection of the same to the Attorney General. The Attorney General, upon review of the recommendations, shall approve or reject the instrument, method and/or operational function pursuant to law (N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56).

Amended by R.1987 d.229, effective May 18, 1987.
See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added N.J.S.A. 12:7-56.
Amended by R.1991 d.505, effective October 7, 1991.
See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

In (d), added “N.J.S.A. 39:3-10.25”.
Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
In (c), inserted “, other governmental agencies or entities, including but not limited to, agencies or entities in other states, the Federal government, or of other sovereign nation,” following “applicant”; inserted a new (d); and recodified former (d) as (e).

Case Notes

Breathalyzers manufactured by successor corporation did not have to be recertified where prior approval was by model and not manufacturer. *State v. Laurick*, 231 N.J.Super. 464, 555 A.2d 1133 (A.D.1989), certification granted 117 N.J. 52, 563 A.2d 819, reversed 120 N.J. 1, 575 A.2d 1340, certiorari denied 111 S.Ct. 429, 498 U.S. 967, 112 L.Ed.2d 413.

Fact that manufacturer was not on approved list, did not render inadmissible results of tests on its breathalyzer. *State v. Samarel*, 231 N.J.Super. 134, 555 A.2d 40 (A.D.1989).

13:51-3.3 Training Breath Test Coordinator/Instructors

(a) Upon approval of an instrument, method and/or operational function, as described in N.J.A.C. 13:51-3.2, appropriate technical personnel designated by the applicant shall train an initial class consisting of Breath Test Coordinator/Instructors, at the expense of the applicant.

(b) The initial training course shall include: the history of the instrument; nomenclature of the operational controls; detailed operating instructions, including operation and maintenance of all related computer software and hardware and any related equipment; nomenclature of all parts and their functions, maintenance and repair of the instrument; and class participation in the operation of the instrument. Class participation shall include laboratory practice on the instrument, with air passed through test solutions of alcohol. The values of the test solutions of alcohol shall be both known and unknown to the participants.