

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.

13:51-3.4 (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Repealed by R.2001 d.440, effective November 19, 2001.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 "Periodic inspection of approved instruments".

13:51-3.5 Approved methods of chemical breath testing and approved instruments for the testing of a person's breath by chemical analysis

(a) The Attorney General, pursuant to 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) and this subchapter, approves the following methods of chemical breath testing and the following instruments for use in the testing of a person's breath by chemical analysis.

1. Photometry is approved as a method of chemical breath testing.

i. The Breathalyzer, Model 900, is a Photometric instrument and is an approved instrument for use in the testing of a person's breath by chemical analysis.

ii. The Breathalyzer, Model 900A, is a Photometric instrument and is an approved instrument for use in the testing of a person's breath by chemical analysis.

iii. The Dominator Albreath is a Photometric instrument and is an approved instrument for use in the testing of a person's breath by chemical analysis.

2. Infrared analysis and electrochemical analysis, when utilized in a single approved instrument as a dual system of chemical breath testing, is approved as a method of chemical breath testing.

i. The Alcotest 7110 MKIII, is a chemical breath test instrument which employs both infrared analysis and electrochemical analysis as a dual system of chemical breath testing and is an approved instrument for use in the testing of a person's breath by chemical analysis.

Amended by R.1985 d.441, effective September 3, 1985.
See: 17 N.J.R. 1531(a), 17 N.J.R. 2141(b).

Deleted (e).

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 in (a), (b), (c), (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 the section.

Case Notes

Breathalyzers manufactured by purchaser of patent and manufacturing rights did not have to be recertified where prior certification was of breathalyzer and not the 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.

Failure to specifically approve particular manufacturers did not render results of breathalyzer test inadmissible. *State v. Samarel*, 231 N.J.Super. 134, 555 A.2d 40 (A.D.1989).

Finding that modified version of breathalyzer came within Attorney General's approval of breathalyzer; drunken driving conviction upheld. *State v. Yerkes*, 189 N.J.Super. 147, 458 A.2d 1345 (Law Div.1983).

Breathalyzer operator required to dispose of each test ampoule at the examination's conclusion; spot checking of a random ampoule is sufficient prima facie proof that chemicals in test ampoule were of proper kind and mixed in proper proportion. *State v. Dickens*, 130 N.J.Super. 73, 325 A.2d 353 (App.Div.1974).

13:51-3.6 Approved methods of operation for the testing of a person's breath by chemical analysis utilizing an approved instrument

(a) Breathalyzer, Model 900 and Breathalyzer, Model 900A:

1. The Breathalyzer, Model 900 and the Breathalyzer, Model 900A, both being approved instruments, have been demonstrated to contain functional and operational components that are the same or perform the same or similar operations or functions and operate utilizing the same principal or theory of chemical breath analysis and utilize the same chemical compounds interchangeably in the analysis process. The term "Breathalyzer" as utilized in this chapter shall mean both the Breathalyzer, Model 900 and the Breathalyzer, Model 900A.

i. Any operator or Breath Test Coordinator/Instructor whose certificate specifies Breathalyzer is deemed trained and certified on the Breathalyzer, Model 900 and Breathalyzer, Model 900A.

2. A Breathalyzer check list shall be used with this approved instrument. The sole purpose of a check list is to provide a record of the taking of breath samples of a person, consistent with the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b. The Breathalyzer check list is found in the text of the "Alcohol Influence Report Form" incorporated herein by reference as the chapter Appendix.

(b) Dominator Albreath:

1. The Dominator Albreath, being an approved instrument, has been determined to contain operational and functional components that are the same or perform the same or similar operations or functions as the Breathalyzer as described at (a)1 above. It is further determined that this instrument operates upon the same principal or theory as the Breathalyzer and utilizes the same chemical compounds in the analysis process as the Breathalyzer.

2. The check list applicable to the Breathalyzer, as found at (a)2 above, shall also apply to the operation of the Dominator Albreath. The Breathalyzer check list is found in the text of the "Alcohol Influence Report Form" in the chapter Appendix.

(c) Alcotest 7110 MKIII:

1. The Alcotest 7110 MKIII is equipped with an attached printer. The attached printer provides a printed record of the taking of the breath samples of a person and of the results of the chemical analyses of the samples of the breath taken in the form of an Alcohol Influence Report consistent with the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b.

2. A Breath Test Operator shall, consistent with his or her training, employ the following steps or procedures to set-up, operate and conclude the administration of breath tests on the Alcotest 7110 MKIII:

i. Verify the instrument power switch is in the "On" position, the display screen is illuminated, and the calibrating unit power switch is in the "On" position. If the instrument power switch is in the "Off" position, turn the power switch to the "On" position. If the calibrating unit power switch is in the "Off" position, turn the power switch to the "On" position;

ii. When the word "Ready" appears on the display screen, push the Start button to begin the test. If the word "Stand-by" appears on the display screen, then push the Start button and wait for the word "Ready" to appear. When the word "Ready" appears on the display screen, push the Start button to begin the test;

iii. Follow the instructions on the display screen.

Amended by R.1985 d.441, effective September 3, 1985.

See: 17 N.J.R. 1531(a), 17 N.J.R. 2141(b).

Deleted (d).

Correction: (a)2i(3): added "open;"

See: 21 N.J.R. 171(e).

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), rewrote the introductory paragraph of 2; and rewrote (c).

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) and (b), rewrote 2; rewrote (c).

Case Notes

State Police Coordinator certifications satisfied the spot checking requirement for admission of breathalyzer readings; production of assay certificates was not required. *State v. Maure*, 240 N.J.Super. 269, 573 A.2d 186 (A.D.1990), appeal granted 122 N.J. 377, 585 A.2d 382, affirmed 123 N.J. 457, 588 A.2d 383.

Breathalyzers manufactured by purchaser of patent and manufacturing rights did not have to be recertified where prepurchase certification was of breathalyzer and not the 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.

Testing of breathalyzer machine using a reference ampoule and testing ampoule was not sufficient random testing. *State v. Dohme*, 229 N.J.Super. 49, 550 A.2d 1232 (A.D.1988).

Right to challenge presumption that breathalyzer ampoules stamped with same batch number are filled from source with constant composition. *State v. Dohme*, 229 N.J.Super. 49, 550 A.2d 1232 (A.D.1988).

Right of trooper to opine that breathalyzer test results in coordinator's certificate were within manufacturer's printed tolerances. *State v. Dohme*, 229 N.J.Super. 49, 550 A.2d 1232 (A.D.1988).

Finding that modified version of breathalyzer came within Attorney General's approval of breathalyzer; drunken driving conviction upheld (also citing former N.J.A.C. 13:51-21). *State v. Yerkes*, 189 N.J.Super. 147, 458 A.2d 1345 (Law Div.1983).

SUBCHAPTER 4. BREATH TEST INSTRUMENT, GENERAL MAINTENANCE AND ADMINISTRATIVE RECORDKEEPING

Authority

N.J.S.A. 39:4-50.3, 39:3-10.25 and 12:7-56.

Source and Effective Date

R.2001 d.440, effective November 19, 2001.

See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

13:51-4.1 Purpose of subchapter

This subchapter sets forth various procedures for the general maintenance of approved instruments, and related administrative recordkeeping associated with the functions established by this chapter and to the extent as may otherwise be required by law.

13:51-4.2 Administration and records

(a) The Division of State Police shall maintain administrative files of records made pursuant to this chapter. These files may be maintained in either a paper or electronic or other form as deemed appropriate by the Superintendent. Administrative files shall include:

1. Documentation of the certification status of all persons currently and previously certified as:

i. A Breath Test Operator, pursuant to N.J.A.C. 13:51-1.6, 1.7, 1.8, 1.9, 1.10 and 1.11; or

ii. A Breath Test Coordinator/Instructor pursuant to N.J.A.C. 13:51-2; and

2. Documentation of periodic inspections or calibration checks of approved instruments pursuant to N.J.A.C. 13:51-4.3.

(b) Persons seeking access to these files must submit a written request to the Criminal Justice Records Bureau, Division of State Police, Division Headquarters, River Road, PO Box 7068, West Trenton, New Jersey 08628-0068. The written request must clearly identify the document or documents for which access is requested and the request must contain the name and mailing address of the person making the request and a telephone number at which the requestor can be contacted, if necessary.

13:51-4.3 Periodic inspection or calibration check of approved instruments

(a) The following concern the periodic inspection of approved photometric instruments:

1. All approved instruments which employ the photometry approved method of chemical breath testing, as set forth in N.J.A.C. 13:51-3.5(a)1, when used in this State in connection with taking of breath samples under the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b, or in connection with the prosecution of a person 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, 12:7-55 or 2A:4A-23, shall be periodically inspected.

2. The periodic inspections shall be performed by a Breath Test Coordinator/Instructor.

3. The results of each periodic inspection shall be recorded on forms provided by the Superintendent of the Division of State Police.

i. An original, duplicate original, or copy of each periodic inspection shall be maintained by the Division of State Police pursuant to N.J.A.C. 13:51-4.2(a)2.

ii. An original, duplicate original, or copy of each periodic inspection performed under this subsection, of an approved instrument under the custody and control of an organized police department, other than an approved instrument under the custody and control of the Division of State Police, shall be maintained by the organized police department having custody and control of the approved instrument.

(b) The following concern calibration check, infrared analysis and electrochemical analysis instruments:

1. All approved instruments which employ the infrared analysis and electrochemical analysis approved method of chemical breath testing, as set forth in N.J.A.C. 13:51-3.5(a)2, when used in this State in connection with taking of breath samples under the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b, or in connection with the prosecution of a person 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, 12:7-55 or 2A:4A-23 shall be subject to a calibration check.

2. A calibration check shall be performed by a Breath Test Coordinator/Instructor.

3. A calibration check shall be performed when an approved instrument:

i. Is initially placed into service;

ii. Is returned to service after repair;

iii. Within 365 days after a calibration check conducted pursuant to (b)3i or ii above; and

iv. Thereafter, within 365 days after any calibration check conducted pursuant to (b)3i, ii, or iii above or after a discretionary calibration check conducted pursuant to (b)4 below.

4. A calibration check may be performed at any time a Breath Test Coordinator/Instructor, in the exercise of his or her discretion, deems a calibration check is necessary or otherwise appropriate.

5. The results of each calibration check shall be recorded on forms and in the manner specified by the Superintendent of the Division of State Police.

i. An original, duplicate original, or copy of each calibration check shall be maintained by the Division of State Police pursuant to N.J.A.C. 13:51-4.2(a)2.

ii. An original, duplicate original, or copy of each calibration check, performed under this subsection, of an approved instrument under the custody and control of an organized police department, other than approved instruments under the custody and control of the Division of State Police, shall be maintained by the organized police department having custody and control of the approved instrument.

APPENDIX

ALCOHOL INFLUENCE REPORT FORM, BREATHALYZER CHECK LIST

NAME OF POLICE DEPARTMENT - ALCOHOL INFLUENCE REPORT FORM

Defendant (First name)		(Initial)	(Last name)	Case Number	Sequential File No.
Age	Sex	Weight	Eyes	Arrested by	

CHEMICAL BREATH TEST INFORMATION

Instrument: Breathalyzer, Model 900 Breathalyzer, Model 900A Dominator Albreath

	Instrument Serial Number	Ampoule Control Lot Number	Purge % Results	Samples Taken Date / Time	Blood Alcohol % Results
Test #1					
Test #2					
Test #3					
Test #4					

BREATHALYZER CHECK LIST - N.J.A.C. 13:51-3.6(a)2

Mark all applicable boxes with an "X" or a check mark.

Set Up Phase Verify Power switch is turned "On". If the power switch is in the "Off" position, turn the switch "On".

TESTS

#1	#2	#3	#4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	N/A*	N/A*	N/A*
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Preparation Phase

- Instrument temperature: Verified temperature, thermometer reached 50°C, plus or minus 3°C.
- Reference Ampoule: Gauged; Inserted in left hand holder.
- Test Ampoule: Gauged; Opened; Verified volume; Inserted in right hand holder.
- Bubbler: Inserted into test ampoule; Connected to outlet.
- Light turned on; Instrument balanced, Blood Alcohol Pointer set on Start Line.

Purge Phase

- | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6. Turned control knob to the "Take" position; Flushed; Turned control knob to the "Analyze" position. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 7. Purge: When red empty signal appeared, waited 90 seconds; Light turned on; Instrument balanced. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 8. Purge Result Recorded. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 9. Blood Alcohol Pointer set on Start Line. |

Analysis Phase

- | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 10. New mouthpiece inserted in breath tube. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 11. Take Breath Sample: Turned control knob to the "Take" position; Took breath sample from defendant; Turned control knob to the "Analyze" position. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 12. Date & Time Recorded. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 13. When red empty signal appeared, waited 90 seconds; Light turned on; Instrument balanced. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 14. Breath Test Result Recorded. |

Second or subsequent breath tests

- | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 15. Test ampoule removed; properly disposed. Power switch remained "On". Return to Step 1, start next breath test. |
|--------------------------|--------------------------|--------------------------|--------------------------|--|

*Steps marked with an "N/A" are only performed on the first breath test, and do not have to be repeated on any subsequent breath tests.

Breath Test Operator

Copy Given to Subject

Rank Signature Badge # Date Time

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