

## CHAPTER 51

## CHEMICAL BREATH TESTING

## Authority

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

## Source and Effective Date

R.1999 d.87, effective February 19, 1999.  
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

## Executive Order No. 66(1978) Expiration Date

Chapter 51, Chemical Breath Testing, expires on February 19, 2004.

## Chapter Historical Note

Chapter 51, Chemical Breath Testing, was filed and became effective prior to September 1, 1969.

Chapter 51, Chemical Breath Testing, was repealed and Chapter 51, Chemical Breath Testing, was adopted as new rules by R.1982 d.187, effective June 21, 1982. See: 14 N.J.R. 376(a), 14 N.J.R. 660(a).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1987 d.229, effective April 27, 1987. See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1991 d.505, effective September 16, 1991. See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1996 d.480, effective September 16, 1996. See: 28 N.J.R. 3710(a), 28 N.J.R. 4487(a).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1999 d.87, effective February 19, 1999. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. BREATH TESTING OPERATORS

## 13:51-1.1 Purpose of subchapter

This subchapter prescribes the requirement for certification of a person to conduct chemical analysis of the breath of a person arrested pursuant to N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 39:3-10.25, 12:7-46, 2A:4A-23 or 12:7-55 et seq., the conditions under which certification can occur and the general rules for holders of certificates, pursuant to the statutory requirements 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), hereinafter denoted as N.J.S.A. 39:4-50.3; or P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25), hereinafter denoted as N.J.S.A. 39:3-10.25; or P.L. 1986, c.39, Sec. 8 (N.J.S.A. 12:7-56), hereinafter denoted as N.J.S.A. 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 list of 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. citations.  
Administrative correction.  
See: 24 N.J.R. 857(a).  
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.S.A. references.

## 13:51-1.2 Definitions

For the purpose of this chapter, and subchapters 1, 2, and 3 thereof, the terms set forth herein are defined as follows:

"Alcohol Influence Report Form" and "check list" are interchangeable terms and shall mean the record required, pursuant to N.J.S.A. 39:4-50.2(b), 39:3-10.24b, or 12:7-55b.

"Approved instrument" shall mean a device or instrument approved by the Attorney General, at N.J.A.C. 13:51-3.5, for use in 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.

“Approved methods of chemical breath testing” shall mean those methods, approved by the Attorney General at N.J.A.C. 13:51-3.5, of testing and 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.

“Approved methods of operation” shall mean those steps or operations, approved by the Attorney General at N.J.A.C. 13:51-3.6, for use in the chemical analysis, on an approved instrument, 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.

“Approved school” shall mean police training academies and schools as approved by the Police Training Commission pursuant to N.J.S.A. 52:17B-67 et seq.; the Training Academy of the Division of State Police; and any similar academy, training center or school operated by, on behalf of, or for a law enforcement agency of the United States of America.

“Breath Test Coordinator/Instructor” shall mean a person who meets the eligibility requirements as set forth at N.J.A.C. 13:51-2 and is duly appointed thereunder.

“Breath Test Operator,” “Chemical Breath Test Operator” or “Operator” are interchangeable terms and shall mean a law enforcement officer who is certified as a Chemical Breath Test Operator to perform analysis of an arrested person’s breath utilizing an approved method of chemical breath testing, an approved instrument, and an approved method of operation (as defined herein) and as set forth at N.J.A.C. 13:51-3.5 and 3.6, and pursuant to the provisions of N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56.

“Calendar year” shall mean all days of a year commencing with and including January 1 of a specific year and continuing through and including December 31 of the same year.

“Certification” shall mean the approval by the Attorney General of a person as an operator (as herein defined) and shall mean said person is qualified and competent to perform chemical breath test analysis utilizing an approved method of chemical breath testing and an approved instrument (as defined herein) and as set forth at N.J.A.C. 13:51-3 as authorized by N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56.

“Chemical analysis” shall mean the determination of the concentration of Ethanol (Ethyl Alcohol) in the breath wherein the concentration in grams of ethanol per 210 liters of breath will be reported as a percent, that is, 0.10 grams/210 liter equals 0.10 percent. Direct photometric measurement of ethanol, indirect photometric measurement of reaction products of ethanol and chemical reagents, chromatographic or electrochemical methods or a combination of these will all be considered “chemical analysis.”

“Electrochemical analysis” shall mean the use of a catalytic conversion of Ethanol (Ethyl Alcohol) in the breath into acetaldehyde, acetic acid or carbon dioxide and the measurement of voltages generated in the reaction.

“Infrared analysis” shall mean the determination of the concentration of Ethanol (Ethyl Alcohol) by measurement of the absorption of infrared light of specific wavelength as the light passes through a cell of fixed length through which breath is flowing.

“Law enforcement officer” shall mean: a police or other law enforcement officer of the State of New Jersey who has completed the Basic Course for Police Officers as approved by the Police Training Commission, pursuant to the provisions of N.J.S.A. 52:17B-67 et seq., and the regulations adopted thereto; all sworn members of the Division of State Police; and law enforcement officers established by the laws of the United States of America.

“Operation of an approved instrument” shall mean operation of an approved instrument (as defined herein), using approved methods of operation (as defined herein) for that approved instrument.

“Operator’s Certificate,” “Breath Test Operator’s Certificate” or “Chemical Breath Test Operator’s Certificate” are interchangeable terms and shall mean a certificate issued under the authority of the Attorney General which bears the signatures or facsimile signatures of the Attorney General and the Superintendent of State Police.

“Organized police department” shall include all police and law enforcement agencies of the State of New Jersey; and all municipal and county police agencies of the various municipalities and counties of the State of New Jersey as established by law; and law enforcement agencies established by the laws of the United States of America.

“Photometric instrument” shall mean all approved instruments at N.J.A.C. 13:51-3.5(a).

“Photometry” shall mean the determination of the concentration of Ethanol (Ethyl Alcohol) in the breath by the measurement of the change in absorption of light of fixed wavelength by a solution of an oxidant which reacts with Ethanol from a fixed volume of breath.

“Recertification” shall mean the continuation of the certification of an operator upon compliance with the training as required by this subchapter.

“Replica” shall mean a document which is an operator’s certificate (as defined herein) and which shall bear the signatures or facsimile signatures of the Attorney General and the Superintendent of State Police, and where authorized by this chapter, the signature or initials of a Breath Test Coordinator/Instructor, and which is of a size that permits it to be carried in the pocket, purse, wallet, etc., and includes replacements thereof as set forth at N.J.A.C. 13:51-1.12(c).

“Satisfactory completion of training” shall mean demonstrated competence of operation of chemical breath test analysis methods and devices or instruments approved by the Attorney General at N.J.A.C. 13:51-3.

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 to “approved instrument”, “approved methods”, “calendar year”, “operator” and “replica”.

Amended by R.1991 d.505, effective October 7, 1991.

See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Added N.J.S.A. cites to “approved instrument”, “approved methods”, “certification”, “operator”.

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.

### 13:51-1.3 Certification

(a) For the purpose of prosecution, no operator may conduct a valid analysis of an arrested person’s breath under the provisions of N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56, unless such operator has been issued a valid operator’s certificate which is valid at the time of the analysis of an arrested person’s breath and which attests that such operator is then qualified and competent to conduct such analysis utilizing an approved method and an approved instrument as set forth at N.J.A.C. 13:51-3.

(b) Certification of a person as a Breath Test Operator shall be by recommendation of the Superintendent of the State Police to the Attorney General upon the satisfactory completion of training as more fully set forth at N.J.A.C. 13:51-1.6.

(c) Certificates or replica certificates bearing the signature or facsimile signature of the Superintendent and the Attorney General shall be considered as bearing valid signatures and are not required to bear the signature or facsimile signature of the individual currently holding the office of Superintendent or Attorney General.

(d) Certification of a person as a Breath Test Operator is a training certification only. Certification does not mean that a Chief of Police or other executive head of the organized police department of which the Operator is a sworn law enforcement officer must employ or otherwise assign that person to duties consistent with the certification. The decision to assign a law enforcement officer to specific duties is a decision that is solely within the authority and discretion of the employing authority.

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 (a), 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 (a), substituted “valid” for “current” following “which is”; and added (c) and (d).

### 13:51-1.4 Prerequisites for certification

(a) Except as otherwise specified in this section, for initial certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(a), an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department;
2. Be a graduate of an approved school; and
3. Have served as a law enforcement officer for a minimum of one year from the date of swearing in or graduation, whichever is later.

(b) Sworn law enforcement officers of an organized police department of the United States of America may apply for initial certification as a Breath Test Operator at any time after graduation from an approved school.

(c) For certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(b), on 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, an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department; and
2. Be a Breath Test Operator, whose certification is valid for an instrument approved at N.J.A.C. 13:51-3.5(a).

(d) For continuation of a certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(c), an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department; and
2. Be a Breath Test Operator, whose certification is valid.

(e) For continuation of a certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(d), an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department; and
2. Be a Breath Test Operator, whose certification is invalid due to expiration and who is otherwise subject to the provisions of N.J.A.C. 13:51-1.8(b).

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.

### 13:51-1.5 Application for certification

Application shall be made in writing to the Division of State Police by the Chief of Police or other executive head of the organized police department of which the applicant is a sworn law enforcement officer.

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 "law enforcement officer" for "full-time member" at the end.

### 13:51-1.6 Certification training requirements

(a) Initial operator certification requirements are as follows:

1. Subject to the requirements at N.J.A.C. 13:51-1.4(a), initial certification of an applicant, to become an operator for breath test instruments approved at N.J.A.C. 13:51-3.5(a), requires satisfactory completion of a minimum of five days of training as prescribed and conducted by the Division of State Police. Such training shall include:

- i. Instruction in the metric system;
- ii. Instruction in mathematical calculations as required;
- iii. Statutory and case law;
- iv. Instruction and training in the operation of the approved instrument;
- v. Laboratory practice with air samples passed through test solutions of alcohol and air samples taken from human subjects;
- vi. Written examinations; and
- vii. Successful completion of a test for competency.

2. Subject to the requirements at N.J.A.C. 13:51-1.4(a), initial certification of an applicant, to become an operator for breath test instruments approved at N.J.A.C. 13:51-3.5(b), requires satisfactory completion of a minimum of three days of training as prescribed and conducted by the Division of State Police. Such training shall include:

- i. Statutory and case law;
- ii. Instruction and training in the operation of the approved instrument;
- iii. Laboratory practice with air samples passed through test solutions of alcohol and air samples taken from human subjects;
- iv. Written examinations; and
- v. Successful completion of a test for competency.

(b) Subject to the requirements at N.J.A.C. 13:51-1.4(c), certification of an operator, whose certification is valid, on 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, requires satisfactory completion of a minimum of one day of training as prescribed and conducted by the Division of State Police. Such training shall include:

1. Statutory and case law;

2. Instruction and training in the operation of the approved instrument;

3. Laboratory practice with air samples passed through test solutions of alcohol;

4. A written examination; and

5. Successful completion of a test for competency.

(c) Subject to the requirements at N.J.A.C. 13:51-1.4(d), recertification of an operator, whose certification is valid, requires satisfactory completion of a minimum one day of training as prescribed and conducted by the Division of State Police. Such training shall include:

1. Statutory and case law;
2. Instruction and training in the operation of the approved instrument;
3. Laboratory practice with air samples passed through test solutions of alcohol;
4. A written examination; and
5. Successful completion of a test for competency.

(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.

#### 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.

#### **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 Administration

Administrative files will be maintained by the Division of State Police, Alcohol/Drug Test Unit, and will include the present and past status of all persons certified as operators. These files may be maintained in either a paper or electronic or other form as deemed appropriate by the Superintendent.

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).  
Inserted a reference to the Alcohol/Drug Test Unit in the first sentence, and added a second sentence.

### 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).

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## 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. McGeary*, 129 N.J.Super. 219, 322 A.2d 830 (App.Div.1974).

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## 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.

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 Periodic inspection of approved instruments

Periodic inspection of all approved instruments used in this State 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 or 2A:4A-23 shall be made by a Breath Test Coordinator/Instructor. The results of such periodic inspections shall be recorded on forms provided by the Superintendent of the Division of State Police and an original, duplicate original, or copy thereof, shall be maintained by the Division of State Police. Other than inspections of instruments under the custody and control of the Superintendent, an original, duplicate original, or copy thereof, shall be maintained by the organized police department having custody and control of the inspected instrument.

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).

Deleted a reference to N.J.S.A. 12:7-34.19 in the first sentence, substituted “on original, duplicate original, or copy” for “the originals” following “Police and” in the second sentence, and added a third sentence.

## Case Notes

There was no requirement that breath testing device be recertified every 30 days. *State v. Sandstrom*, 277 N.J.Super. 354, 649 A.2d 901 (A.D.1994).

State Police Coordinator certifications satisfied the spot checking requirement for the 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.

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).

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. McGeary*, 129 N.J.Super. 219, 322 A.2d 830 (App.Div.1974).

### 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 may be used with this approved instrument. The sole purpose of a check list is to record the operational steps used by the breath test operator in taking the breath samples of a defendant. The check list, if used, shall be incorporated on the form required pursuant to N.J.S.A. 39:4-50.2(b), 39:3-10.24b, or 12:7-55b, and shall contain at least the following items:

i. Preparation:

(1) Turn Switch to "on"; wait until thermometer shows 50 degrees Centigrade plus or minus three degrees;

(2) Gauge reference ampoule and place in left hand holder;

(3) Gauge test ampoule; open; insert bubbler and connect to outlet.

## ii. Purge:

- (1) Turn to "take"; flush; turn to "analyze";
- (2) When red empty signal appears, wait 90 seconds; turn on light; balance.

## iii. Analysis:

- (1) Set scale Pointer on start line;
- (2) Turn to "take"; take breath sample; turn to "analyze";
- (3) When red empty signal appears, wait 90 seconds; turn on light; balance;
- (4) Record answer; dispose of test ampoule; turn to "off".

## (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 steps of operation in the check list applicable to the Breathalyzer, as found at (a)2 above, shall also apply to the operation of the Dominator Albreath when a check list is employed.

## (c) Alcotest 7110 MKIII:

1. An Alcotest 7110 MKIII check list may be used with this approved instrument. The sole purpose of a check list is to record the operational steps used by the breath test operator in taking the breath samples of a defendant. The check list, if used, shall be incorporated on the form required pursuant to N.J.S.A. 39:4-50.2(b), 39:3-10.24b, or 12:7-55b, and shall contain at least the following items:

- i. Verify the instrument power switch is in the On position and that the display screen is illuminated. If the instrument power switch is in the Off position, turn the instrument 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;

iv. At the conclusion of the administration of the tests, remove the test tape and record the reportable value on the check list. If there is no reportable value, record the reason under Remarks;

v. Attach the test tape to the check list.

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).

## 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).