

CHAPTER 51

CHEMICAL BREATH TESTING

Authority

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

Source and Effective Date

R.1991 d.505, effective September 16, 1991.
See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Executive Order No. 66(1978) Expiration Date

Chapter 51, Chemical Breath Testing, expires on September 16, 1996.

Chapter Historical Note

Chapter 51, Chemical Breath Testing, was filed and became effective prior to September 1, 1969. Amendments to the original filing were adopted as R.1970 d.84, effective July 9, 1970. See: 2 N.J.R. 50(f), 2 N.J.R. 67(e). R.1972 d.10, effective January 24, 1972. See: 3 N.J.R. 267(a), 4 N.J.R. 27(b). R.1973 d. 354, effective December 17, 1973. See: 5 N.J.R. 390(a), 6 N.J.R. 21(c). R.1980 d.8, effective January 7, 1980. See: 11 N.J.R. 21(a), 12 N.J.R. 91(a). Amendments that replaced the entire text with new language were adopted as 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 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 was readopted as R.1991 d.505. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. BREATH TESTING OPERATORS

- 13:51-1.1 Purpose of subchapter
- 13:51-1.2 Definitions
- 13:51-1.3 Certification
- 13:51-1.4 Prerequisite for application for certification
- 13:51-1.5 Application for operator's certification
- 13:51-1.6 Requirements for certification
- 13:51-1.7 Duration of certification
- 13:51-1.8 Suspension and reinstatement of operator's certification
- 13:51-1.9 Revocation of certificate
- 13:51-1.10 Hearing and determination on a request or recommendation for revocation
- 13:51-1.11 Restoration of revoked certifications
- 13:51-1.12 Return, loss and/or replacement of replica
- 13:51-1.13 Administration

SUBCHAPTER 2. BREATH TEST COORDINATOR/INSTRUCTORS

- 13:51-2.1 Eligibility requirements
- 13:51-2.2 Training and functional qualifications

SUBCHAPTER 3. APPROVED INSTRUMENTS AS METHODS OF CHEMICAL BREATH TESTING

- 13:51-3.1 Purpose of subchapter
- 13:51-3.2 Application for approval
- 13:51-3.3 Training Breath Test Coordinator/Instructors
- 13:51-3.4 Periodic inspection of approved instruments
- 13:51-3.5 Approved instruments for performing chemical analysis of a person's breath

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

SUBCHAPTER 1. BREATH TESTING OPERATORS

13:51-1.1 Purpose of subchapter

This subchapter prescribes the requirements 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., N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:3-10.24, N.J.S.A. 39:3-10.25, N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46, N.J.S.A. 2A:4A-23 or N.J.S.A. 12:7-54 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).

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:

"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., N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:3-10.24, N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23.

"Approved methods" 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 of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., N.J.S.A. 39:3-10.13, N.J.S.A. 39:3-10.20, N.J.S.A. 39:3-10.24, N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23 on an approved instrument.

"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. It shall also include the Training Academy of the Division of State Police and

any similar such academy, training center or school operated by or for the Department of Defense of the United States of America.

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

“Calendar year” shall mean all days of a year commencing with and including January 1 of a specific year and continuing through to 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 and an approved instrument as defined in this subchapter and as set forth at N.J.A.C. 13:51-3 as authorized by N.J.S.A. 39:4-50.3, N.J.S.A. 39:3-10.25 or N.J.S.A. 12:7-56.

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

“Operator” shall mean a person who is certified as a Chemical Breath Test Operator to perform analysis of an arrested person’s breath utilizing an approved method and an approved instrument, as defined in this subchapter and as set forth at N.J.A.C. 13:51-3 and pursuant to the provisions of N.J.S.A. 39:4-50.3, N.J.S.A. 39:3-10.25 or N.J.S.A. 12:7-56.

“Operator’s certificate” 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 police agencies established by the laws of the United States of America within the Department of Defense.

“Recertification” shall mean the extension 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 in this section and which shall bear the signatures or facsimile signatures of the Attorney General and the Superintendent of State Police 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 as set forth at N.J.A.C. 13:51-3, maintenance of a passing course average and passing a written examination.

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”.

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, N.J.S.A. 39:3-10.25 or N.J.S.A. 12:7-56, unless such operator has been issued a valid operator’s certificate which is current 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 an 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.

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”.

13:51-1.4 Prerequisite for application for certification

An applicant for certification as an operator must be a sworn, full-time member of an organized police department for a minimum of one year after graduation from an approved school; except that members of a police or law enforcement agency of the Department of Defense of the United States of America may apply at any time after graduation from an approved school.

13:51-1.5 Application for operator’s 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 full-time member.

13:51-1.6 Requirements for certification

(a) Initial certification requires satisfactory completion of training consisting of a minimum of five days of training prescribed and conducted by the Division of State Police. Such training shall include:

1. Instruction in the metric system;