

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.2004 d.315, effective July 22, 2004.
See: 36 N.J.R. 1728(a), 36 N.J.R. 3885(a).

Chapter Expiration Date

Chapter 51, Chemical Breath Testing, expires on July 22, 2009.

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Chapter 51, Chemical Breath Testing, was repealed and Chapter 51, Chemical Breath Testing, was adopted as new rules by R.1982 d.187, effective June 21, 1982.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. 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Subchapter 4, Breath Test Instrument, General Maintenance and Administrative Recordkeeping, was adopted as R.2001 d.440, effective November 19, 2001. See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

Chapter 51, Chemical Breath Testing, was readopted as R.2004 d.315, effective July 22, 2004. See: Source and Effective Date.

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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., 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.

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

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

13:51-1.2 Definitions

For the purpose of this chapter, and subchapters 1, 2, 3 and 4 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.

"Calibrating unit" shall mean "Calibrating Units for Breath Alcohol Testers" as that phrase appears on, and as currently listed in, the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Highway Safety Programs: "Conforming Products List (CPL) of Calibrating Units for Breath Alcohol Testers" and "Model Specifications for Calibrating Units for Breath Alcohol Testers," (62 Federal Register 43416-43424, August 13, 1997), incorporated herein by reference, and as NHTSA may thereafter amend.

"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.