

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., 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 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 State Police and the originals thereof shall be maintained by the Division of State Police.

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.

Case Notes

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 instruments for performing chemical analysis of a person's breath

(a) The Breathalyzer, Model 900, is an instrument approved by 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, for the testing of a person's breath by chemical analysis.

(b) The Breathalyzer, Model 900A, is an instrument approved by 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, for the testing of a person's breath by chemical analysis.

(c) The Dominator Albreath is an instrument approved by 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, for the testing of a person's breath by chemical analysis.

(d) The Alco-Tector is an instrument approved by 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, for 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).

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 for performing chemical analysis of a person's breath utilizing an approved instrument

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

1. The Breathalyzer, Model 900 and 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 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 off list may be used with this device and may be prepared by either the manufacturer of the Breathalyzer or the organization using the Breathalyzer. The check off list, if used, 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 N.J.A.C. 13:51-3.6(a)1. It is further determined that this instrument operates upon the same principal or theory as the Breathalyzer and utilize the same chemical compounds in the analysis process as the Breathalyzer.

2. The steps of operation in the check off list applicable to the Breathalyzer as found at N.J.A.C. 13:51-3.6(a)2 shall also apply to the operation of the Dominator Albreath when a check off list is employed.

(c) Alco-Tector:

1. The Alco-Tector, being an approved instrument, has been determined to operate on the same basic principle or theory and utilizes the same chemical compounds in the analysis process as the Breathalyzer as described at N.J.A.C. 13:51-3.6(a)1.

2. An operational check off list may be used with this device and may be prepared by either the manufacturer of the Alco-Tector or the organization using the Alco-Tector. The check off list, if used and prepared by an organization other than the manufacturer herein, shall contain, at least, the following information:

i. Preparation:

(1) Turn switch to "on", depress standby button, wait for thermometer to reach operating temperature of 120 to 130 degrees Fahrenheit;

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

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

ii. Purge:

(1) Depress purge button number 1 for flush, wait 30 or 45 seconds, depress bubbler button number 2;

(2) When red empty signal appears, wait 90 seconds, depress balance button number 3 and balance.

iii. Analysis:

(1) Set blood alcohol pointer on start line;

(2) Depress sample button number 4, take breath sample, depress bubbler button number 5, record time;

(3) When red empty signal appears, wait 90 seconds, depress red button number 6 and balance;

(4) Record answer; dispose of test ampoule, depress number 1 button for 30 to 45 seconds, depress number 2 button until red light appears, depress standby button.

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).

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.

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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).