

N.J.A.C. 13:51

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*** NEW JERSEY REGISTER, VOL. 42, NO. 7, APRIL 5, 2010 ***

TITLE 13. LAW AND PUBLIC SAFETY
CHAPTER 51. CHEMICAL BREATH TESTING

N.J.A.C. 13:51 (2010)

Title 13, Chapter 51 -- Chapter Notes

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TITLE 13. LAW AND PUBLIC SAFETY
CHAPTER 51. CHEMICAL BREATH TESTING
SUBCHAPTER 1. BREATH TESTING OPERATORS

N.J.A.C. 13:51-1.1 (2010)

§ 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.

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N.J.A.C. 13:51-1.2 (2010)

§ 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

N.J.A.C. 13:51-1.2

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.

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N.J.A.C. 13:51-1.3 (2010)

§ 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.

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N.J.A.C. 13:51-1.4 (2010)

§ 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 current certification is valid at the time of certification pursuant to this subsection 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

N.J.A.C. 13:51-1.4

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).

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N.J.A.C. 13:51-1.5 (2010)

§ 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.

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N.J.A.C. 13:51-1.6 (2010)

§ 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)1, 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;

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- 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(a)2, 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.

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N.J.A.C. 13:51-1.7

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N.J.A.C. 13:51-1.7 (2010)

§ 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, shall be valid upon satisfactory completion of training, as described at N.J.A.C. 13:51-1.6(b), from the date of the completion of the training for the remainder of that calendar year and for the next two calendar years.

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N.J.A.C. 13:51-1.8 (2010)

§ 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

N.J.A.C. 13:51-1.8

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.

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N.J.A.C. 13:51-1.9 (2010)

§ 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.

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N.J.A.C. 13:51-1.10 (2010)

§ 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.

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N.J.A.C. 13:51-1.11

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N.J.A.C. 13:51-1.11 (2010)

§ 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.

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N.J.A.C. 13:51-1.12 (2010)

§ 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.

N.J.A.C. 13:51-1.13

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N.J.A.C. 13:51-1.13 (2010)

§ 13:51-1.13 (Reserved)

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N.J.A.C. 13:51-1.14 (2010)

§ 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.

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SUBCHAPTER 2. BREATH TEST COORDINATOR/INSTRUCTORS

N.J.A.C. 13:51-2.1 (2010)

§ 13:51-2.1 Eligibility requirements and approval

N.J.A.C. 13:51-2.1

(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."

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N.J.A.C. 13:51-2.2 (2010)

§ 13:51-2.2 Training and functional qualifications

(a) A Breath Test Coordinator/Instructor shall have specialized training, as prescribed by the Division of State Police, and have the knowledge to properly perform the following functions:

1. Preparation and quality control 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, maintenance, repair and calibration 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).

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N.J.A.C. 13:51-3.1

SUBCHAPTER 3. APPROVED CHEMICAL BREATH TESTING METHODS, INSTRUMENTS AND METHODS OF OPERATION

N.J.A.C. 13:51-3.1 (2010)

§ 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.

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N.J.A.C. 13:51-3.2 (2010)

§ 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).

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N.J.A.C. 13:51-3.3

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N.J.A.C. 13:51-3.3 (2010)

§ 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. This training shall confer no ownership or licensing rights to any intellectual property or proprietary information or training materials on any participant unless set forth in an agreement between the relevant parties.

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N.J.A.C. 13:51-3.4 (2010)

§ 13:51-3.4 (Reserved)

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N.J.A.C. 13:51-3.5

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N.J.A.C. 13:51-3.5 (2010)

§ 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.

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N.J.A.C. 13:51-3.6 (2010)

§ 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.

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N.J.A.C. 13:51-4 (2010)

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N.J.A.C. 13:51-4.1 (2010)

§ 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.

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N.J.A.C. 13:51-4.2 (2010)

§ 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.

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N.J.A.C. 13:51-4.3 (2010)

§ 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 the 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 182 days after a calibration check conducted pursuant to (b)3i or ii above; and

iv. Thereafter, within 182 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.

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N.J.A.C. 13:51, Appx. (2010)

APPENDIX

