

## CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

### 40:30-1-3. Breath-alcohol analysis with Board approved devices

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein may be accomplished by any method, technique, or instrument approved by the Board in accordance with OAC 40:25-1-2.

(b) **Operating procedure(s).** Each such analysis shall include at least the following steps:

- (1) Determination that the subject's mouth has no presence of any substantial loose material(s), foreign substance(s), or any such substance(s). Metal, porcelain, or hard plastic items need not be removed.
- (2) Observation of the subject whose breath is to be tested sufficient to determine that, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, the subject shall not have ingested alcohol in any form or any other substance, vomited, or smoked. Such observation shall be carried out by the breath-alcohol analysis Operator or by any other qualified person.
- (3) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.
- (4) A blank analysis preceding analysis of each breath specimen.
- (5) Analysis of at least one control sample from a dry gas canister deployed by the agency in accordance with 40:25-1-3 to verify the calibration of the instrument at the time of the test. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters ( $\pm 0.01$  g/210L).
- (6) The operator performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the state driver licensing authority, and to other agencies and persons listed on the form.

(c) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath ( $\pm 0.03$ g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantive. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.

(d) **Maintenance.** Maintenance shall be performed on approved devices, equipped with an approved dry gas canister, at such time as the regulator of the pressurized dry gas canister fails to provide a gas sample for analysis or by the manufacturers stated expiration date, whichever occurs first. Such maintenance shall be performed by Board personnel and maintenance documentation shall consist of a bench check or validation report, a certificate of calibration and operation, and a mock subject test.

## CHAPTER 50. IGNITION INTERLOCK

### SUBCHAPTER 1. IGNITION INTERLOCK DEVICES, SERVICE CENTERS, TECHNICIANS

#### 40:50-1-1.1. Definitions

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Alcohol"** means Ethyl Alcohol, also called ethanol.

**"Anti circumvention feature"** means any feature or circuitry incorporated into the device that is designed to prevent activity that would cause the device not to operate as intended.

**"Board"** means the Administrative Offices of the Oklahoma Board of Tests for Alcohol and Drug Influence created by O.S. 47:759.

**"Board en banc"** means the sitting members of the Board as defined by O.S. 47:759 (A).

**"Breath alcohol test"** means the analysis of a person's expired alveolar breath to determine the alcohol concentration.

**"Calibration"** means the process of testing and adjusting a device to ensure accuracy.

**"Camera"** means a separate device to capture photos as required in this Chapter.

**"Circumvention"** means to bypass the correct operation of an interlock device by starting the vehicle, by any means, without first providing a breath alcohol test or providing a negative result confirmatory test.

**"Confirmatory test"** means a breath alcohol test required in response to a circumvention.

**"Certification"** means a status granted by the Board that permits a manufacturer to distribute a device in the state of Oklahoma.

**"Data storage system"** means a recording of all events monitored by the device.

**"Director"** means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

**"Extended Idle"** – means to suspend the device retest requirements in accordance with O.A.C. 40:50-1-3(e) after a negative startup test is completed.

**"Fee"** means a non-refundable administrative fee.

**"Free restart"** means a function of a device that will allow a vehicle to be restarted under the requirements in this title, without having to complete another breath alcohol test.

**"Ignition interlock device"** means a mechanism, which may include a camera, that prevents a vehicle from starting when the breath alcohol concentration of a breath alcohol test meets or exceeds the startup set point. Also referred to as "device".

**"Installation Authority"** means the Oklahoma agency or entity by statute or order requiring or authorizing installation of a device.

**"Ignition Interlock Maintenance and Calibration Fee"** means the fee collected from the participant, at the time of the performing calibration and maintenance as required by this title. This fee is to be remitted to the Board of Tests.

**"License"** means the permission granted by the Board to engage in specific activities of the ignition interlock program.

**"Manufacturer"** means the actual producer of the device.

**"Manufacturer representative"** means the individual designated by the manufacturer to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board with respect to device certification.

**"Monitor"** means the agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding ignition interlock program participants.

**"Negative result"** means a breath alcohol test result indicating the alcohol concentration is less than the specific point value for the purpose specified.

**"Operable vehicle"** means a motor vehicle with ability to drive forward under its own power and steer and can be legally driven on public roadways.

**"Permanent lockout"** means a condition wherein the device will not allow a breath alcohol test and therefore will not allow the vehicle to be started.

**"Positive result"** means a breath alcohol test result indicating the alcohol concentration meets or exceeds the specific point value for the purpose specified.

**"Power violation"** means failure to provide power to an Ignition Interlock device installed in a vehicle for a period of seventy-two (72) hours or more.

**"Proper Record Maintenance"** means the manufacturer's complete records on every participant for a period of five (5) years from the date of removal including, but not limited to, all data retrieved from the data storage system of a device. The Board, or its designee, shall have access to any and all records.

**"Reciprocity"** means the process by which the Board may defer to a foreign state's device standards and specifications when an interlock participant is required to meet an interlock requirement for more than one state simultaneously.

**"Reference sample device"** means any alcohol breath testing external control or device approved for use by the Board.

**"Retest"** means a breath alcohol test or tests required in accordance with O.A.C. 40:50-1-3(e).

**"Retest violation"** means failure to deliver a negative breath alcohol test result within the time frame prescribed by these rules.

**"Startup set point"** means an alcohol concentration at which, or above, the device would prevent the vehicle from starting.

**"Startup test"** means a breath alcohol test provided before the vehicle is started.

**"Tampering"** means any act or attempt to adjust, obscure, alter, interfere, disable, defeat or circumvent the installation or operation of the device and/or camera.

**"Technical non-compliance"** means the failure of the device to comply with one or more provisions of this title with regard to device performance that does not affect the device's ability to respond appropriately to a negative breath test or a breath alcohol test required by 40:50-1-3-(c), (e), or (g), or the ability of the device to satisfy the requirements of 40:50-1-3(b)(1) or 40:50-1-3(f).

**"Vendor"** means a licensed ignition interlock technician designated by the Manufacturer representative of a certified device to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board, excluding matters related to device certification.

### 40:50-1-3. Standards and specifications

(a) The provisions in this subsection only apply to the use of a device pursuant to an Installation Authority.

(b) The device shall:

(1) Permit a free restart of the motor vehicle within two (2) minutes after the engine has shut off without requiring a further breath alcohol test.

(2) Have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities and pictures for the period of time elapsed from one maintenance and calibration to the next. All daily driving activity records in this data storage system shall be maintained by the manufacturer or the licensed service center and shall be available to the Installation Authority, Monitor and/or the Board upon request.

(3) Display tamper seals and a warning label that states: "Any person attempting to physically disable, disconnect or wire around this device or who intentionally fails to return the device upon request by the owner may be guilty of a misdemeanor under Oklahoma law (47 O.S. §11-902a)." If the device consists of separate pieces (e.g. a handset and separate base unit) a separate warning label shall be placed on each piece.

(4) Incorporate a camera on all BOT IDAP participant installations that is not located in the handset and meets the following requirements:

(A) Each camera shall be mounted to the vehicle so that it does not obstruct the driver's view and provides a clear unobstructed view of the driver.

(B) Has a sufficiently wide angle that it will be possible to determine whether the individual blowing into the device is seated in the driver's seat.

(C) The technician shall take a reference image of the participant in the driver's seat during the installation appointment.

(D) The camera shall operate in all lighting conditions and take an image of the driver with sufficient clarity and resolution to allow driver identification.

(E) The camera shall capture an image on each of the following events:

(i) An attempted or successful breath alcohol test.

(ii) Each time the vehicle is started.

(iii) A circumvention.

(iv) A retest violation.

(c) The startup set point value for the device shall be an alcohol concentration of 0.025 g/210L.

(d) The positive result value for the device shall be an alcohol concentration of 0.025g/210L.

(e) A retest feature is required while a vehicle's engine is in operation.

(1) The first retest shall be required at a randomly variable interval ranging from five (5) to fifteen (15) minutes after passing the startup test and starting the vehicle's engine. Subsequent retests shall be required at a randomly variable interval ranging from fifteen (15) to forty-five (45) minutes from the previously requested test for the duration of the travel.

(2) The device shall allow five (5) minutes for the retest to be completed.

(3) The retest set point value shall be an alcohol concentration of 0.025 g/210L.

(4) An audible and/or visual indicator shall come on to alert the driver that a retest is in progress. Once a retest is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a retest violation in the data storage system, and

(C) Disable the free restart.

(f) A device may offer an "Extended Idle" feature after Board approval. An "Extended Idle" event may occur if:

(1) The driver activates the event through the device's handset or secure mobile application provided by the manufacturer; or

(2) The device automatically activates the event, so long as no movement is being detected.

(3) The event is not activated when a retest request is in progress.

(4) The event automatically disables after one (1) hour, or upon detection of vehicle movement, or by the driver disabling the event through the device's handset or secure mobile application provided by the manufacturer.

(5) The device immediately requests a retest and resumes normal retest requirements after the event is disabled. If the vehicle is turned off during the event, the free restart feature shall be disabled.

(6) The device records the event in the data storage system.

(fg) The device shall have an approved anti circumvention feature(s) activated at all times.

(gh) The device shall require a confirmatory test in response to a circumvention.

(1) The device shall allow two (2) minutes for the confirmatory test to be completed.

(2) The confirmatory test set point value shall be an alcohol concentration of 0.025 g/210L.

(3) An audible and/or visual indicator shall come on to alert the driver that a confirmatory test is in progress. Once a confirmatory test is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a circumvention violation in the data storage system, and

(C) Disable the free restart.

(4) Once the confirmatory test is passed, the device shall enter the normal retest sequence as provided by these rules.

(hi) The device shall have a breath sample collection volume limit at or above 1.2 Liters unless an alternative configuration has been approved by the Board.

(ij) In addition to the standards and specifications listed herein, the Board or its designee may impose additional requirements, as needed, depending upon design and functional changes in device technology and to ensure that the device functions properly and reliably.

#### **40:50-1-3.2. Reporting requirements**

(a) Reportable violations are as follows:

(1) Three (3) positive result startup tests within a fifteen (15) minute time frame.

(2) A circumvention.

(3) A retest violation.

(4) Tampering.

(5) Permanent lockout.

(6) A power violation.

(b) If required by the Installation Authority and/or Monitor, reportable violations shall be reported in the form and/or format designated by the Installation Authority and/or Monitor, within five business days, banking holidays excepted, after a maintenance and calibration service, violation reset service or removal of the device.

(c) The manufacturer shall ensure proper record maintenance.

(d) The manufacturer shall report to the Board, in the form and format designated by the Board:

(1) Device installations.

(2) Device removals.

(3) Any violation reset.

(4) Maintenance and calibration performed on an ignition interlock device as required by these rules.

### **SUBCHAPTER 3. IMPAIRED DRIVING ACCOUNTABILITY PROGRAM (BOT IDAP)**

#### **40:50-3-1.1. Definitions**

Ignition Interlock Device definitions found in O.A.C. 40:50-1-1.1. shall also apply to BOT IDAP inclusive of the additional definitions specific to the program listed below. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Active ignition interlock day"** means any twenty-four (24) hour period, (12 a.m. to 11:59 p.m.), in which the device is installed in a Participant's Program Vehicle, is not in permanent lockout, and is provided the required operational power.

**"BOT IDAP"** means the Impaired Driver Accountability Program established in 47 O.S. §6-212.5.

**"BOT IDAP certificate of completion"** means the Director approved certificate issued by the Board to an IDAP participant confirming the person has met the criteria required for program completion.

**"Program fee"** means the non-refundable statutory fee pursuant to 47 O.S. §6-212.5 plus any merchant or convenience fee for online or electronic transactions.

**"Program participation"** means a minimum of fifteen (15) breath alcohol tests each thirty (30) calendar day period from the date of installation completed by the participant.

**"Program vehicle"** means the vehicle in which an ignition interlock device is installed on behalf of a participant as reflected by the Installation Verification Form.

**"Compliance download service"** means a unique data retrieval service conducted by a licensed or approved technician at a licensed or approved service center that requires no maintenance and calibration services.

#### **40:50-3-2. Application - eligibility - enrollment**

(a) A person seeking enrollment into BOT IDAP shall apply on a form approved by the Director and at such time of application shall also submit a copy of the Oklahoma Order of Revocation ~~or a copy of the Oklahoma Impaired Driving Affidavit~~ pertaining to the person's arrest. Applicants whose driving privileges are otherwise ineligible shall not be enrolled in BOT IDAP and shall be directed to consult his/her driver licensing authority for assistance. Enrollment into BOT IDAP does not grant driving privileges and shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive. Any person subject to driver license revocation for an impaired driving arrest occurring on or after November 1, 2022 may enroll pursuant to this section, if eligible. BOT IDAP is available for Class D driving privileges only.

(b) Fully enrolling in BOT IDAP consists of:

- (1) Payment of the program fee to the Board; and
- (2) Presentation or reporting\* (using the online enrollment portal) of an Ignition Interlock Installation reflecting an Oklahoma approved device with camera is currently installed on the vehicle the participant will operate; and
- (3) Presentation of the signed "BOT IDAP Participant's Agreement" or acknowledgment and agreement using the online enrollment portal.

(c) The commencement date of the participant's program shall be the day all of the following conditions are satisfied:

- (1) The Board receives all documents and fees meeting BOT IDAP enrollment criteria; and
- (2) No earlier than the date of interlock installation and arrest date for the offense requiring completion of BOT IDAP. Prior interlock program days shall not be credited toward a subsequent program period.

(d) Multiple program periods shall run consecutively.

(e) Participants may enroll in more than one (1) BOT IDAP. A participant must complete the program in which they are currently enrolled before commencing any subsequent program period. In no instance will a participant's credit for time in one (1) BOT IDAP be credited toward any other BOT IDAP.

(f) The BOT IDAP participant agreement shall be signed or acknowledged using the online enrollment portal by the participant and shall include the following information:

- (1) The participant's first and last name; and
- (2) Participant's driver license number; and
- (3) Participant's program length requirement; and
- (4) The list of Ignition Interlock violations and criteria for program completion or failure as defined by the Board; and
- (5) An explanation of the consequences of violations of the Ignition Interlock program; and
- (6) The date upon which the BOT IDAP Participant Agreement was signed; and
- (7) Participant's signature or online enrollment portal acknowledgment.

(g) A confirmation of enrollment form approved by the Director shall be delivered to the participant via his/her preferred contact method upon fully enrolling. It is the participant's responsibility to provide his/her preferred contact method.

#### **40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022**

(a) A BOT IDAP Certificate of Completion shall be issued to participants meeting the following criteria:

- (1) The participant has met the active ignition interlock day requirements pursuant to O.A.C. 40:50-3-3; and
- (2) The participant has met the participation requirements pursuant to O.A.C. 40:50-3.3; and
- (3) The last ninety (90) active ignition interlock days must be free of miscellaneous program violations in this section and reportable violations found in 40:50-1-3.2, excluding power violations, pursuant to 47 O.S. §6-212.5 A(4) for license revocations pursuant to 47 O.S. § 6-205.1. For purposes of retest violations:

(A) three (3) or more alcohol related retest violations occurring during the last ninety (90) active ignition interlock days shall constitute a reportable violation, or

(B) six (6) or more non-alcohol related retest violations occurring during the last ninety (90) active ignition interlock days shall constitute a reportable violation.

(b) Upon reaching the tentative completion date provided to the participant in the confirmation of enrollment form, a participant is eligible to submit a request for an IDAP Certificate of Completion. A denial of IDAP Certificate of Completion notice shall be issued to participants whose requests do not meet criteria as defined in 40:50-3-5. Such notice shall contain the finding that caused the denial and a notice of right to appeal and shall be delivered to the participant via his/her preferred contact method. It is the participant's responsibility to provide his/her preferred contact method.

(c) Miscellaneous Program violations: An additional arrest for DUI/APC prior to completion of the Participant's BOT IDAP, at the date of discovery by the Board, shall be treated as a violation and shall have the same weight as reportable violations found in 40:50-1-3.2 when evaluating the requirements for an IDAP Certificate of Completion.

(d) Program failure: Participants that are deemed to have failed the program or voluntarily discontinue participation in the program shall receive no credit for time served beginning from enrollment. Interlock days served prior to the program failure date are invalid for credit towards re-enrollment. Participants that fail the program or choose to discontinue participating in the program are authorized to re-enroll in BOT IDAP. The following actions will result in program failure:

- (1) removal of the device from the Program Vehicle and failure to reinstall a device in a substitute Program Vehicle within sixty (60) days; or
- (2) participants reported to be operating a vehicle not equipped with an ignition interlock device by law enforcement citation after the Board has issued documented warning to the participant that they are unauthorized to do so. Failure to



have received the documented warning shall not be a valid argument of defense for administrative appeals pursuant to 40:50-3-6.

**40:50-3-5.1. Program completion criteria for participants enrolled prior to November 1, 2022**

Persons enrolled in IDAP prior to November 1, 2022 must submit an application for ignition interlock history and must meet or exceed his/her tentative program completion date as reflected on the application. The applicant is responsible for providing the program completion date. The applicant shall receive the completed history application via their preferred method of contact. The applicant shall be responsible for presenting ~~required documentation to the Board~~ the completed report to the driver licensing authority.