

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE

CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

[Authority: 47 O.S., § 759; 75 O.S., §§ 302, 305, and 307]

[Source: Codified 3-19-91]

40:1-1-1. Purpose

The rules set forth in this Chapter describe the organization, powers, duties, operations, and procedures of the Board with respect to its administration, rule-making, individual proceedings, and other activities.

[Source: Amended at 34 Ok Reg 95, eff 10-10-16 (emergency); Amended at 34 Ok Reg 841, eff 9-11-17]

40:1-1-2. Organization, powers, and duties

(a) **Statutory basis.** The Board of Tests for Alcohol and Drug Influence, in this Title called the Board, was recreated pursuant to Title 47, Section 759 of the Oklahoma Statutes, and is the successor agency to the Board of Chemical Tests for Alcoholic Influence.

(b) **Powers, authority, and duties.** The powers, authority, and duties of the Board are set forth in Title 47, Sections 751-761 of the Oklahoma Statutes, and in other applicable provisions of the Oklahoma Statutes.

[Source: Amended at 33 Ok Reg 1185, eff 9-11-16; Amended at 36 Ok Reg 1513, eff 9-14-19]

40:1-1-3. General course and method of operation

(a) **Office(s) of the board.** The principal Administrative Office of the Board shall be located at a site designated by the Board.

(b) **Transaction of business with the board by the public.** Members of the public and others desiring to contact or make inquiries and submissions to the Board may do so in person at the principal Administrative Office of the Board, during normal and usual business hours for State of Oklahoma agencies, or by mail addressed to: State Director of Tests for Alcohol and Drug Influence, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307 Oklahoma City, Oklahoma 73136, or through the Board's website at www.ok.gov/bot.

(c) Access to records.

(1) Copies of all Rules and Regulations adopted by the Board, and of all other written statements of policy or interpretations of general applicability by the Board, and of all final orders, decisions, and opinions of general applicability may be inspected, unless otherwise provided by law, at the principal Administrative Office of the Board during its normal business hours. Such records shall not be removed from the Board's office or the Board's custody and control for the purpose of inspection.

(2) Copies of Rules and Regulations adopted by the Board are also on file and available for public inspection in the Office of Administrative Rules, Office of the Secretary of State.

(d) **Meetings.** Meetings of the Board are conducted, in compliance with the Oklahoma Administrative Procedures Act, the Oklahoma Open Meeting Act and other applicable statutes, as follows:

(1) Meetings of the Board shall be presided over by the Chairman of the Board. In the absence of the Chairman, the Vice-Chairman will preside over

the meeting. In the event that the Chairman and Vice-Chairman are not present at a meeting, the Board may elect from its members a chairman pro tempore who shall preside at that meeting. All meetings of the Board shall be governed by applicable Oklahoma statutes unless otherwise required by law or otherwise voted. An affirmative vote by a simple majority of the members present at a meeting, at which a quorum exists, shall be necessary to adopt any motion presented before the meeting. Non-appointed or vacant positions on the Board will not be considered when determining if a quorum exists.

(2) Minutes or proceedings of all meetings of the Board shall be timely prepared and kept in accordance with the Open Meetings Act.

(e) Administration.

(1) The general conduct and administration of the affairs and functions of the agency, between meetings of the Board, shall be vested in the State Director of Tests for Alcohol and Drug Influence. The State Director of Tests for Alcohol and Drug Influence shall have authority to act appropriately on behalf and as agent of the Board, as permitted or required by law, on all matters within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(2) The Chairman, or in the absence of the Chairman, the Vice-Chairman, or in the absence of the Chairman and Vice-Chairman the Chairman pro tempore, shall have the following duties, responsibilities, and authority:

(A) Conduct meetings as set forth in these rules.

(B) Sign documents, on behalf of the Board, memorializing Board action.

(3) The State Director of Tests for Alcohol and Drug Influence shall have the following duties, responsibilities, and authority:

(A) Under the overall guidance of the Board, to conduct and administer the affairs and functions of the Board between meetings thereof.

(B) As permitted or required by law, to act appropriately on behalf and as agent of the Board on all matters within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(C) To function as the technical and administrative director of the State's program of testing for alcohol and drug influence in connection with traffic law enforcement, and of pertinent educational and training activities; and to provide direction, supervision, consultation, advice, and assistance as required on the technical and administrative aspects of such program and activities to all State and local agencies and officials.

(D) To administer, implement, enforce, and carry out the provisions of the Rules and the policies and procedures adopted by the Board.

(E) To attend meetings of the Board and render reports at such meetings, and otherwise when requested by the Board.

(F) To carry on correspondence and other communications on behalf and as an agent of the Board.

(G) To perform other duties and functions as directed from time to time by the Board, or as required by law, or as required properly to effectuate the provisions of the Chemical Tests Act (47 O.S., Sections 751-761) and other statutes within the purview of the

Board.

(f) **Seal.** The official seal of the Board shall consist of the words 'Board of Tests for Alcohol and Drug Influence-State of Oklahoma' in a circular band surrounding the official Star of the Great Seal of the State of Oklahoma.

[Source: Amended at 14 Ok Reg 1519, eff 7-1-97; Amended at 27 Ok Reg 2655, eff 8-26-10; Amended at 31 Ok Reg 771, eff 9-12-14; Amended at 33 Ok Reg 1185, eff 9-11-16; Amended at 35 Ok Reg 790, eff 9-14-18; Amended at 36 Ok Reg 1513, eff 9-14-19; Amended at 38 Ok Reg 1680, eff 9-11-21]

40:1-1-4. Policies and procedures for rule-making

(a) **General policies.** In proposing, considering, adopting, amending, or repealing Rules and Regulations and taking other actions of general applicability, the Board shall act in compliance with the Oklahoma Administrative Procedures Act, the Open Meeting Act, and other provisions of law.

(b) **Cumulative effect of rules.** The contents of this Chapter shall be cumulative to other Rules and Regulations of the Board, and shall not nullify, replace, or supersede other currently effective Rules and Regulations adopted by the Board.

(c) **Severability of rules.** The provisions of the various Sections of this Chapter, and of every other currently effective Rule and Regulation adopted by the Board, are severable. If any parts or provisions of any such Rule and Regulation shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of such Rule and Regulation.

(d) **Rule-making proposals.** Rule-making may be commenced by the Board on its own initiative. Any interested party may also petition the Board, in accordance with procedures set forth in this Chapter, to adopt, amend, or repeal a Rule and Regulation. The Board will afford all properly interested parties reasonable opportunity to submit views, data, information, or arguments concerning action proposed or under consideration by the Board on a Rule and Regulation or concerning a request that the Board promulgate, amend, or repeal a Rule and Regulation.

(e) **Rule-making petitions.** Petitions to the Board for promulgation, amendment, or repeal of a Rule and Regulation shall be in the following form and contain the following information.

(1) Petitions must be submitted in legible typewritten form, with the original copy submitted, and shall be submitted in person or by mail to the State Director of Tests for Alcohol and Drug Influence at the Board's principal Administrative Office.

(2) Petitions must clearly identify the submitting party or parties by name, address, official title, and complete business address; and must include a clear statement reflecting the interest of the submitter(s) in such petition and the action to which it pertains, and the real party(ies) of Interest if submission is by an agent or attorney.

(3) Every petition must clearly state that such petition is for promulgation of a new Rule and Regulation, or for the amendment of an existing Rule and Regulation, or for the repeal of an existing Rule and Regulation. A given petition may pertain to only one Rule and Regulation, and individual petitions are required for requested action on different Rules and Regulations.

(4) If the petition requests action on an existing Rule and Regulation, the complete verbatim text of the existing rule language shall be included in the petition, together with the exact change(s) or addition(s) or deletion(s) or repeal requested. If the petition pertains to promulgation of a new and

additional Rule and Regulation, the petition shall set forth in clear itemized form the specific detailed provisions which the Board is asked to consider.

(5) All petitions must clearly and separately state the factual basis, reasons, legal grounds, and public policy and technical justifications for each action requested of the Board. All available supporting documents, records, studies, and information bearing on the issue and available to the petitioner(s) must accompany the petition. The petition shall also contain or be accompanied by the names and addresses of all persons known to the petitioner(s) who are concerned with the subject matter of the petition.

(6) Petitions must be signed and endorsed by all petitioning parties, or their authorized legal representative(s); and such signature(s) and endorsement(s) must be duly attested to by a notary public.

(f) **Action on petitions.** All petitions shall be examined to determine whether the procedural requirements have been met and whether the facts, justifications and other submissions afford a reasonable basis for rule-making. Petitions found to be not in proper form or lacking the necessary reasonable basis for consideration by the Board will be returned to the submitter(s). Petitioner(s) will be notified of whether and, if so, when the Board will consider rule-making action on a given petition. Action on petitions accepted will be considered by the Board at a regularly scheduled meeting or at a special meeting, as appropriate. If a petition for consideration of rule-making by the Board is accepted, the proposed action(s) shall thereafter be treated by the Board identically to other rule-making procedures and in accordance with the Administrative Procedures Act.

[Source: Amended at 36 Ok Reg 1513, eff 9-14-19]

40:1-1-5. Rules of practice for individual proceedings

(a) **General policies.** This Section applies to Orders formulated by the Board and to Individual Proceedings of the Board, where those terms have the respective meaning set forth in Title 75, O.S., Section 250.3. In formulating orders or conducting individual proceedings, the Board shall act in compliance with the Oklahoma Administrative Procedures Act, and other applicable provisions of law, and otherwise in accordance with procedure and practices determined or designated by the Board.

(b) **Declaratory rulings and other orders.** Declaratory rulings as to the applicability of any Rule and Regulation or other order of the Board may be commenced and issued by the Board on its own initiative. Other orders, constituting all or part of an intermediate or final decision, and whether affirmative, negative, injunctive or declaratory in form [in matters other than rule-making and the exceptions provided for in 75 O.S., Section 250.3(17)] may also be made and issued by the Board on its own initiative. Any interested party may also petition the Board, in accordance with procedures set forth hereinafter, to make and issue a declaratory ruling, or to amend any such declaratory ruling, or to make and issue any other order as defined in this Section. The Board will afford all interested parties reasonable opportunity to request a declaratory ruling or other order and to submit views, data, information, or arguments in support of such a request.

(c) **Petitions for declaratory rulings and other orders.** Petitions to the Board for declaratory rulings or other orders, other than matters taken up by the Board on its own initiative, shall be in the following form and contain the following information:

(1) Petitions must be submitted in legible typewritten form, with the original copy submitted, and shall be submitted in person or by mail to the State Director of Tests for Alcohol and Drug Influence at the Board's

principal Administrative Office.

(2) Petitions must clearly identify the submitting party or parties by name, address, official title, and complete business address; and must include a clear statement reflecting the interest of the submitter(s) in such petition and the action to which it pertains, and the real party(ies) of interest if submission is by an agent or attorney.

(3) Every petition must clearly state that such petition is (a) for promulgation of a declaratory ruling as to applicability of any Rule and Regulation or order of the Board (which Rule and Regulation or other order shall be clearly and fully identified), or (b) for promulgation of any other order. A given petition may pertain to only one requested declaratory ruling or other order, and individual petitions are required for requested declaratory rulings or other orders on separate subjects.

(4) If the petition requests a declaratory ruling on a Rule and Regulation or any other order of the Board, the complete verbatim text of the existing rule or order language shall be included in the petition, together with the exact inquiry relating thereto. If the petition pertains to promulgation of a new order or amendment of an existing order, the petition shall set forth in clear itemized form the specific detailed matter(s) which the Board is asked to consider and the action(s) the Board is requested to take.

(5) All petitions must clearly and separately state the factual basis, reason, legal grounds, and public policy and technical justifications for each action requested of the Board. All available supporting documents, records, studies, and information bearing on the issue and available to the petitioner(s) must accompany the petition. The petition shall also contain or be accompanied by the names and addresses of all persons known to the petitioner(s) who are concerned with the subject matter of the petition.

(6) Petitions must be signed and endorsed by all petitioning parties, or their authorized legal representative(s); and such signature(s) and endorsement(s) must be duly attested to by a notary public.

(d) Action on petitions. All petitions shall be examined to determine whether the procedural requirements have been met and whether the facts, justifications and other submissions afford a reasonable basis for the requested declaratory ruling, other order, or other individual proceeding. Petitions found to be not in proper form or lacking the necessary reasonable basis for consideration by the Board will be returned to the submitter(s). Petitioner(s) will be notified whether and, if so, when the Board will consider a given petition. Action on accepted petitions will be considered by the Board at a regularly scheduled meeting or at a special meeting, as appropriate. If a petition for a declaratory ruling, other order, or other individual proceeding by the Board is accepted, the proposed action(s) shall thereafter be treated by the Board in full accordance with the Administrative Procedures Act. The Board may, in its discretion, refuse to make and issue a declaratory ruling or other order.

(e) Costs associated with Individual proceedings. If any party or parties in an individual proceeding before the Board desire and request stenographic or other recording of any hearing and the transcription into a written record of any such recording, the Board will make arrangements for such recording and transcription by a certified court reporter, upon written request for such action received by the Board not less than ten (10) days before the hearing date, and upon receipt of an appropriate cash deposit in an amount to be determined by the Chairman of the Board or by the State Director of Tests for Alcohol and Drug Influence. A copy of

any resulting written record of such hearings(s) shall be provided to the Board at the expense of the party or parties requesting such written record.

(f) **Hearings.** All hearings required in connection with individual proceedings by this Board shall be conducted in accordance with the provisions of the Oklahoma Administrative Procedures Act, and otherwise in accordance with procedures and practices determined or designated by the Board.

[Source: Amended at 33 Ok Reg 1185, eff 9-11-16; Amended at 36 Ok Reg 1513, eff 9-14-19]

40:1-1-6. Fees

Fee Schedule. The following is the schedule of fees for the Board of Tests for Alcohol and Drug Influence:

- (1) Initial Breath Test Operator Training (including \$2.00 portal fee) - \$62.00
- (2) Renewal Breath Test Operator Permit (including \$2.00 portal fee) - \$12.00
- (3) Nitrogen/Ethanol Canister Exchange (non-BOT owned instrument) - \$130.00
- (4) Certified Copies - \$1.00 per page
- (5) Non-certified copies - .25 per page
- (6) Electronic copies of records - \$15.00 per CD
- (7) Ignition Interlock Device Certification (including \$2.00 portal fee)- \$1,002.00 per device
- (8) Ignition Interlock Service Center License (including \$2.00 portal fee)- \$102.00
- (9) Initial Ignition Interlock Technician License (including \$2.00 portal fee) - \$37.00
- (10) Ignition Interlock Technician License Renewal (including \$2.00 portal fee) - \$27.00
- (11) Ignition Interlock Verification Form (including \$2.00 portal fee) - \$12.00
- (12) Ignition Interlock Maintenance and Calibration Fee - \$10.00.

[Source: Added at 31 Ok Reg 771, eff 9-12-14; Amended at 35 Ok Reg 790, eff 9-14-18]

CHAPTER 10. PERSONNEL

[Authority: 40 O.S., §§ 751 through 761]

[Source: Codified 3-19-91]

SUBCHAPTER 1. PURPOSE

40:10-1-1. Purpose

The rules in this Chapter pertain to persons involved in various aspects of the conduct of tests for alcohol and other intoxicating substances under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes. These rules address standards and qualifications of breath-alcohol test operators and supervisors, forensic alcohol and drug analysts, specimen collectors and other personnel, and regulate initial issuance, renewal and reinstatement of permits for such persons.

[Source: Amended at 14 Ok Reg 1521, eff 7-1-97; Amended at 37 Ok Reg 989, eff 9-11-20]

SUBCHAPTER 3. BREATH-ALCOHOL ANALYSTS

40:10-3-1. Qualifications and requirements for breath-alcohol operators (initial permits)

Qualifications and requirements for breath-alcohol operators (initial permits) are as follows:

- (1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, or the Board of Tests for Alcohol and Drug Influence. Employees of Federal or Tribal law enforcement agencies, tasked with conducting breath tests, may obtain a permit under the same conditions as employees of recognized Oklahoma law enforcement agencies, at the discretion of the Federal or Tribal law enforcement agency. Nothing in this rule requires the employees of Federal or Tribal law enforcement agencies to obtain a permit to conduct breath tests in support of Federal or Tribal enforcement.
- (2) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence.
- (3) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to operate Board approved breath test instrument(s).

[Source: Amended at 20 Ok Reg 2249, eff 7-11-03; Amended at 27 Ok Reg 2657, eff 8-26-10; Amended at 31 Ok Reg 773, eff 9-12-14; Amended at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-2. Qualifications and requirements for breath-alcohol specialist (initial permit) [REVOKED]

[Source: Amended at 20 Ok Reg 2249, eff 7-11-03; Amended at 27 Ok Reg 2657, eff 8-26-10; Amended at 31 Ok Reg 773, eff 9-12-14; Revoked at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-3. Qualifications and requirements for breath-alcohol operators (renewal permits)

Qualifications for breath-alcohol operators (renewal permits) are as follows:

- (1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, or the Board of Tests for Alcohol and Drug Influence. Employees of Federal or Tribal law enforcement agencies, tasked with conducting breath tests, may obtain a permit under the same conditions as employees of recognized Oklahoma law enforcement agencies, at the discretion of the Federal or Tribal law enforcement agency. Nothing in this rule requires the employees of Federal or Tribal law enforcement agencies to obtain a permit to conduct breath tests in support of Federal or Tribal enforcement.
- (2) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence.
- (3) Annual completion of a requalification or retraining course of instruction in breath alcohol analysis as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence.
- (4) Annual establishment, to the satisfaction of the State Director of Tests for Alcohol and Drug Influence, of the applicant's competence to operate Board approved breath test instrument(s).

[Source: Amended at 20 Ok Reg 2249, eff 7-11-03; Amended at 27 Ok Reg 2657, eff 8-26-10; Amended at 31 Ok Reg 773, eff 9-12-14; Amended at 33 Ok Reg 1188, eff 9-11-16; Amended at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-4. Qualifications and requirements for breath-alcohol specialist (renewal permits) [REVOKED]

[Source: Amended at 20 Ok Reg 2249, eff 7-11-03; Amended at 27 Ok Reg 2657, eff 8-26-10; Amended at 31 Ok Reg 773, eff 9-12-14; Revoked at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-5. Reinstatement of expired breath-alcohol analysis permits

Persons who otherwise meet the qualifications and requirements for issuance of a renewal Breath-Alcohol Analysis Operator Permit whose initial or renewal Permit has expired because of failure satisfactorily to complete a timely requalification course of instruction acceptable to the State Director of Tests for Alcohol and Drug Influence may regain eligibility for active and valid Permit status, for good cause and in the discretion of this Board, by the following Permit Reinstatement procedure.

- (1) Documentation that a valid Breath-Alcohol Analysis Operator Permit was issued to the applicant under authority of this Board, of the issue and expiration dates of said Permit, and that said Permit had not been revoked for cause.
- (2) Completion of a designated application form for Permit Reinstatement, inclusive of all required information.
- (3) Must be a qualified employee of a recognized Oklahoma law enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing.
- (4) Satisfactory completion of a requalification or retraining course of instruction in breath-alcohol analysis operation consisting of such theoretical and practical instruction and laboratory practice as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with the instructional staff.
- (5) Establishment, by written and practical examination, to the satisfaction of the State Director of Tests for Alcohol and Drug Influence of the applicant's respective competence to perform, or to conduct administrative maintenance on breath-alcohol testing devices.

[Source: Amended at 20 Ok Reg 2249, eff 7-11-03; Amended at 27 Ok Reg 2657, eff 8-26-10; Amended at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-6. Initial training of breath alcohol operators

(a) **Policies pertaining to initial training of breath-alcohol operators.** Initial training of breath-alcohol operators in the State of Oklahoma shall be conducted in accordance with the following policies:

- (1) The training shall be conducted by or under the authority of the Board of Tests for Alcohol and Drug Influence.
- (2) The training shall comply with all applicable and current rules of the Board of Tests for Alcohol and Drug Influence and shall be conducted in accordance with such pertinent practices, procedures, and directives as are established or set forth by the State Director of Tests for Alcohol and Drug Influence.

(b) **Authorized training entities and sites.**

- (1) Initial training of breath-alcohol operators may be conducted in the State of Oklahoma by employees of the Board or other suitable entities or individuals as determined by the State Director of Tests for Alcohol and Drug Influence. Other entities or individuals conducting Breath Alcohol

Operator training shall comply with the rules, policies and procedures of the Board regarding such training as well as the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence.

(2) Authorized training sites: Breath Alcohol Operator training may be conducted at any site, location, or facility that is suitable to provide the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence.

(c) **Instructors.** All initial training of breath-alcohol operators shall be conducted by instructors holding a valid Instructor Permit issued by authority of the Board of Tests for Alcohol and Drug Influence.

(d) **Instruction, curriculum, and training materials.**

(1) The course of instruction for initial training of breath-alcohol operators shall consist of appropriate theoretical and practical subject matter, practice in breath-alcohol testing and related activities, question-and-answer sessions, and written examinations and practical exercises.

(2) Such course of instruction shall be acceptable to the Board of Tests for Alcohol and Drug Influence, as determined by the State Director of Tests for Alcohol and Drug Influence.

(3) The foregoing training shall employ and utilize such information, texts, training materials, equipment, supplies, and procedures as are designated and approved therefor by the State Director of Tests for Alcohol and Drug Influence.

(e) **Examinations, and records.** To be eligible for an initial Breath Alcohol Operator Permit, Trainees must pass a written examination or examinations and satisfactorily complete practical exercises in accordance with the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence, including:

(1) One or more written examinations which shall cover the subject matter presented in the course of instruction.

(2) One or more practical examinations utilizing the equipment and apparatus covered in the course of instruction and demonstrating the trainee's ability properly to operate such apparatus and equipment.

[Source: Added at 9 Ok Reg 1801, eff 7-1-92; Amended at 14 Ok Reg 1521, eff 7-1-97; Amended at 31 Ok Reg 773, eff 9-12-14]

40:10-3-7. Instructors for breath-alcohol training courses

(a) **Policies pertaining to breath-alcohol training instructors.** The following policies apply to instructors for breath-alcohol training courses:

(1) Only the State Director of Tests for Alcohol and Drug Influence or persons possessing the qualifications set forth herein and holding an appropriate valid and current instructor permit shall conduct instruction and training within the State of Oklahoma in breath-alcohol analysis and related subjects under the jurisdiction and authority of this Board.

(2) Instructor permits shall be issued to qualified persons by authority of the Board of Tests for Alcohol and Drug Influence in such categories or combinations of categories as may, from time to time, be established by the Board.

(3) Instructors shall comply with this Board's rules and the policies, practices, procedures and directives for breath-alcohol analysis training established by authority of this Board, and with the other conditions and requirements set forth herein.

(b) **Qualifications of instructors.** Breath-alcohol training instructors shall possess the following qualifications:

- (1) Possession of a valid Breath Alcohol Operator Permit in accordance with OAC 40:10-3-1 or OAC 40:10-3-3.
- (2) Satisfactory completion of an instructor development course or school acceptable to the Board of Tests for Alcohol and Drug Influence, as determined by the State Director of Tests for Alcohol and Drug Influence, or equivalent background as determined by the State Director of Tests for Alcohol and Drug Influence.
- (3) Competence to conduct instruction and training and to administer examinations, in one or more appropriate categories of training in breath-alcohol analysis and closely related subject matter, as determined by the State Director of Tests for Alcohol and Drug Influence or the State Director's designated representative(s).

(c) **Instructor permits.** Instructor Permits shall be issued by authority of the Board of Tests for Alcohol and Drug Influence, in the categories established by the Board, to persons who meet the above qualifications and have satisfied the requirements set forth herein.

(1) **Requirements.** Requirements for issuance of Breath-Alcohol Training Instructor Permits are as follows:

- (A) Submission of a properly completed application form for the appropriate category or categories of Permits, together with the supporting documentation specified therein.
- (B) Participation in such conference(s) or exercise(s) for prospective breath-alcohol training instructors as may be conducted by the State Director of Tests for Alcohol and Drug Influence or the State Director's designated representative(s)

(2) **Period of validity.** Breath-Alcohol Training Instructor Permits shall be valid to a period of three (3) years from the date of issue, and shall be subject to earlier termination or revocation at the discretion of the Board of Tests for Alcohol and Drug Influence. Such permits shall be renewable in accordance with such terms and requirements as are established by the State Director of Tests for Alcohol and Drug Influence.

[Source: Added at 9 Ok Reg 1801, eff 7-1-92; Amended at 27 Ok Reg 2657, eff 8-26-10; Amended at 32 Ok Reg 1535, eff 9-11-15]

40:10-3-8. Qualifications and requirements for Independent breath-alcohol operators (initial permits) [REVOKED]

[Source: Added at 20 Ok Reg 2249, eff 7-11-03; Amended at 31 Ok Reg 773, eff 9-12-14; Revoked at 37 Ok Reg 989, eff 9-11-20]

40:10-3-9. Qualifications and requirements for Independent breath-alcohol Specialist (initial permit) [REVOKED]

[Source: Added at 20 Ok Reg 2249, eff 7-11-03; Revoked at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-10. Qualifications and requirements for Independent breath-alcohol operators (renewal permits) [REVOKED]

[Source: Added at 20 Ok Reg 2249, eff 7-11-03; Revoked at 37 Ok Reg 989, eff 9-11-20]

40:10-3-11. Qualifications and requirements for Independent breath-alcohol Specialist (renewal permits) [REVOKED]

[Source: Added at 20 Ok Reg 2249, eff 7-11-03; Revoked at 36 Ok Reg 1516, eff 9-14-19]

40:10-3-12. Reinstatement of expired independent breath-alcohol analysis permits [REVOKED]

[Source: Added at 20 Ok Reg 2249, eff 7-11-03; Revoked at 37 Ok Reg 989, eff 9-11-20]

40:10-3-13. Revocation of breath-alcohol operator permits

Revocation refers to the immediate cancellation of a permit.

(1) A breath alcohol operator permit may be revoked by the Board when, in the opinion of the Board, the operator no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules, or in any case where, in the opinion of the Board, continuance of licensure would not uphold the scientific integrity of the breath testing program.

(2) Upon revocation, the Board shall forward the notice and order of revocation of the breath alcohol operator permit to the operator and his/her employer specifying the basis for the revocation.

(3) The Board, in its sole discretion, shall determine the period of revocation.

(4) A revocation cancels any license issued to the breath alcohol operator for the period of revocation.

(5) During the period of revocation, the revoked breath alcohol operator shall cease any and all activities related to evidential breath testing in the state of Oklahoma.

(6) Licensure of a breath alcohol operator whose license has been revoked will require a written request from the applicant to the Board and successful completion of the original requirements for licensure outlined in this subsection.

(7) Revocation shall be for the purpose of maintaining the scientific integrity of the program and enforcing these rules.

[Source: Added at 37 Ok Reg 989, eff 9-11-20]

40:10-3-14. Appeal process

An appeal of any action issued under the requirements in this title may be made in the following manner:

(1) **The Director.**

(A) A request for appeal must be received at the administrative offices of the Board within 30 days of the date of action.

(B) Upon proper submission, the Director shall issue an administrative order sustaining or overruling the action within 30 days.

(2) **The Board en banc.**

(A) A request for appeal of an administrative order shall be received at the administrative offices of the Board within 30 days of the date of the administrative order.

(B) Upon proper submission, the Board *en banc* shall issue a final administrative order sustaining or overruling the administrative

order.

(3) **Appeal.** (An appeal of a final administrative order of the Board *en banc* may be made in accordance with the requirements in the Oklahoma Administrative Procedures Act, 75 O.S. 250, et seq.

[Source: Added at 37 Ok Reg 989, eff 9-11-20]

SUBCHAPTER 5. BREATH SAMPLE COLLECTION PERSONNEL

40:10-5-1. Qualifications for the collection of specimens of breath for determination of their alcohol concentration

Every individual possessing a valid unexpired permit, issued by the Board of Tests for Alcohol and Drug Influence, to perform tests for alcohol on specimens of breath as Breath-Alcohol Analysis Operator is hereby declared to be qualified to collect specimens of breath from human subjects for the determination of the alcohol concentration thereof. Every valid unexpired permit issued by this Board for the performance of tests for alcohol on specimens of breath shall be deemed, and is declared to be, a valid permit for the collection, by its holder, of specimens of breath from human subjects for the determination of the alcohol concentration thereof.

[Source: Amended at 20 Ok Reg 2249, eff 7-11-03; Amended at 36 Ok Reg 1516, eff 9-14-19]

SUBCHAPTER 7. FORENSIC ALCOHOL AND DRUG ANALYSTS

40:10-7-1. Qualifications and requirements for forensic alcohol analysts

(a) **Initial issuance of permits.** Persons performing analysis for alcohol of specimens of blood, or delayed analysis for alcohol of retained specimens of breath or of the retained alcohol content of specimens of breath, hereafter termed "forensic alcohol analysis," under the provision of Title 47, Oklahoma Statutes, shall possess at least the following qualifications and shall meet the following requirements, and shall be eligible for initial issuance of a Permit to perform such forensic alcohol analysis upon satisfying such qualifications and requirements. Such persons shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic alcohol analysts (initial permits) are as follows:

(A) Residence within the State of Oklahoma.

(B) Minimum age of 21 years.

(C) Good moral character.

(D) At least the educational and experience requirements stipulated for clinical laboratory technologists, in the fields of clinical chemistry or toxicology, in the current implementing Federal regulations applicable to laboratories pursuant to the Clinical Laboratory Improvement Amendments of 1988 (P.L. No. 100-578), Title 42, Part 405 et al., Code of Federal Regulations, which are adopted in this Section by reference.

(E) At least **six (6) months** of the pertinent, full-time laboratory experience and/or training shall have been in a laboratory or laboratories meeting nationally-recognized standards for clinical or forensic laboratories, and shall have been in

- (i) the field of blood-alcohol analysis or forensic toxicology or forensic chemistry or criminalistics, or
- (ii) other pertinent biomedical or forensic laboratory activities.

(F) Competence to perform forensic alcohol analysis.

(2) **Requirements.** Requirements for forensic alcohol analysts (initial permits) are as follows:

(A) Submission of a properly completed application form for initial issuance of Permits, obtainable from the Board, together with the supporting documentation specified therein.

(B) Adequate access to suitable laboratory facilities meeting nationally-recognized standards for clinical or forensic laboratories.

(C) Establishment of the applicant's competence to perform forensic alcohol analysis. Such competence establishment shall be accomplished in accordance with generally-recognized procedures in forensic toxicology.

(b) **Renewal of permits.** Persons performing analysis for alcohol of specimens of blood, or delayed analysis for alcohol of retained specimens of breath or of the retained alcohol content of specimens of breath, under the provisions of Title 47, Oklahoma Statutes, who hold a current, valid Forensic Alcohol Analysis Permit issued by authority of the Board of Tests for Alcohol and Drug Influence shall be eligible for renewal of a Forensic Alcohol Analysis Permit upon satisfying the following qualifications and requirements. Such persons shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic alcohol analysts (renewal permits) are as follows:

(A) Possession of all qualifications stipulated in this Rule for initial issuance of a Forensic Alcohol Analysis Permit.

(B) Continued competence to perform forensic alcohol analysis as defined above.

(C) Possession of a valid Forensic Alcohol Analysis Permit issued by authority of the Board of Tests for Alcohol and Drug Influence within the preceding twelve (12) months upon compliance with the Qualifications and Requirements then in force for initial issuance or for renewal of such Permit.

(2) **Requirements.** Requirements for forensic alcohol analysts (renewal permits) are as follows:

(A) Submission of a properly completed application form for renewal of Permits, obtainable from the Board, together with the supporting documentation specified therein.

(B) Continued adequate access to suitable laboratory facilities meeting nationally-recognized standards for clinical or forensic laboratories.

(C) Establishment, within one (1) year prior to renewal of the Forensic Alcohol Analysis Permit, of the applicant's continued competence to perform forensic alcohol analysis. Such continued competence establishment shall be accomplished in accordance with generally-recognized procedures in forensic toxicology.

(c) **Period of validity.** Forensic Alcohol Analysis Permits shall be valid for one (1) year from the date of issue, and shall be subject to earlier termination or revocation

at the discretion of the Board.

[Source: Amended at 14 Ok Reg 1521, eff 7-1-97; Amended at 18 Ok Reg 2329, eff 6-25-01]

40:10-7-2. Qualifications and requirements for forensic drug analysts

(a) **Initial issuance of permits.** Persons performing analysis for drugs and other intoxicating substances (as defined in 47 O.S., Section 751) of specimens of blood, saliva, or, urine, hereafter termed "forensic drug analysis," under the provision of Title 47, Oklahoma Statutes, shall possess at least the following qualifications and shall meet the following requirements, and shall be eligible for initial issuance of a Forensic Drug Analysis Permit to perform such forensic drug analysis upon satisfying such qualifications and requirements. Such persons shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic drug analysts (initial permits) are as follows:

- (A) Residence within the State of Oklahoma.
- (B) Minimum age of 21 years.
- (C) Good moral character.
- (D) At least the educational and experience requirements stipulated for clinical laboratory technologists, in the fields of clinical chemistry or toxicology, in the current implementing Federal regulations applicable to laboratories pursuant to the Clinical Laboratory Improvement Amendments of 1988 (P.L. No. 100-578), Title 42, Part 405 et al., Code of Federal Regulations, which are adopted in this Section by reference.
- (E) At least **six (6) month** of the pertinent, full-time laboratory experience and/or training shall have been in a laboratory or laboratories meeting nationally-recognized standards for clinical or forensic laboratories, and shall have been in
 - (i) the field of drug analysis or forensic toxicology or forensic chemistry or criminalistics, or
 - (ii) other pertinent biomedical or forensic laboratory activities.
- (F) Competence to perform forensic drug analysis.

(2) **Requirements.** Requirements for forensic drug analysts (initial permits) are as follows:

- (A) Submission of a properly completed application form for initial issuance of Permits, obtainable from the Board, together with the supporting documentation specified therein.
- (B) Adequate access to suitable laboratory facilities meeting nationally-recognized standards for clinical or forensic laboratories.
- (C) Establishment of the applicant's competence to perform forensic drug analysis. Such competence establishment shall be accomplished in accordance with generally-recognized procedures in forensic toxicology.

(b) **Renewal of permits.** Persons performing analysis for drugs and other intoxicating substances (as defined in 47 O.S., §751) of specimens of blood, saliva, or urine under the provisions of Title 47, Oklahoma Statutes, who hold a current, valid Forensic Drug Analysis Permit issued by authority of the Board of Tests for Alcohol and Drug Influence shall be eligible for renewal of a Forensic Drug Analysis Permit upon satisfying the following qualifications and requirements.

Such persons shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic drug analysts (renewal permits) are as follows:

(A) Possession of all qualifications stipulated in this Rule for initial issuance of a Forensic Drug Analysis Permit.

(B) Continued competence to perform forensic drug analysis.

(C) Possession of a valid Forensic Drug Analysis Permit issued by authority of the Board of Tests for Alcohol and Drug Influence within the preceding twelve (12) months upon compliance with the Qualifications and Requirements then in force for initial issuance or for renewal of such Permit.

(2) **Requirements.** Requirements for forensic drug analysts (renewal permits) are as follows:

(A) Submission of a properly completed application form for renewal of Permits, obtainable from the Board, together with the supporting documentation specified therein.

(B) Continued adequate access to suitable laboratory facilities meeting nationally-recognized standards for clinical or forensic laboratories.

(C) Establishment, within one (1) year prior to renewal of the Forensic Drug Analysis Permit, of the applicant's continued competence to perform forensic drug analysis. Such continued competence establishment shall be accomplished in accordance with generally-recognized procedures in forensic toxicology.

(c) **Period of validity.** Forensic Drug Analysis Permits shall be valid for one (1) year from the date of issue, and shall be subject to earlier termination or revocation at the discretion of the Board.

[Source: Amended at 14 Ok Reg 1521, eff 7-1-97; Amended at 18 Ok Reg 2330, eff 6-25-01]

SUBCHAPTER 9. BLOOD SPECIMEN COLLECTORS

40:10-9-1. Persons authorized to withdraw blood

(a) **Authority to withdraw blood.** Licensed medical doctors, licensed osteopathic physicians, registered nurses, licensed practical nurses, personnel licensed in accordance with 63 O.S. §1-2505 as Intermediate Emergency Medical Technician, Advanced Emergency Medical Technician, or Paramedic acting within the limits of protocols established by the applicable medical director and other persons designated by law (47 O.S., Section 752) or who otherwise hold a certification or designation as a phlebotomist and has been approved by the medical facility for which they are employed are authorized to withdraw blood for the purpose of determining the concentration of alcohol or other intoxicating substance therein, when acting at the request of a law enforcement officer or of an arrested person under the provisions of Title 47 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes.

(b) **Permits.** The current and valid license, registration, practice certificate or other official document entitling its holder to engage in the practice of the respective profession or practice, issued by the respective healing arts licensing body to any qualified practitioner enumerated above is deemed by the Board of Tests for Alcohol and Drug Influence to be a valid Permit to Withdraw Blood under the provisions of Title 47 and 3 O.S., Section 303 and 63 O.S., Section 4210A,

Oklahoma Statutes.

[Source: Amended at 31 Ok Reg 773, eff 9-12-14; Amended at 37 Ok Reg 989, eff 9-11-20]

CHAPTER 15. LABORATORIES AND FACILITIES

[Authority: 47 O.S., §§751 through 761]

[Source: Codified 3-19-91]

40:15-1-1. Purpose

The rules in this Chapter concern approval and regulation by the Board of forensic alcohol laboratories, forensic drug laboratories, and other facilities involved in tests for alcohol and other intoxicating substances under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes. They include qualifications and requirements for initial issuance and renewal of permits for such entities. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act) are exempt from these rules.

[Source: Amended at 14 Ok Reg 1525, eff 7-1-97; Amended at 37 Ok Reg 992, eff 9-11-20]

40:15-1-2. Forensic alcohol analysis laboratories

(a) **Approval.** Any laboratory in which analysis for alcohol of specimens of blood, hereafter termed "forensic alcohol analysis," is performed under the provisions of Title 47 or 3 O.S., Section 303 or 63 O.S., Section 4210A, Oklahoma Statutes, shall possess at least the following qualifications and shall meet the following requirements. Any laboratory complying with such qualifications and requirements shall be deemed by this Board to be a Forensic Alcohol Laboratory approved by the Board of Tests for Alcohol and Drug Influence, and shall be entitled to issuance of a Forensic Alcohol Laboratory Permit. Such laboratory shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic alcohol analysis laboratories (initial permits) are as follows:

(A) All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act), or permitted by the Board of Tests, may perform testing regardless of location.

(B) Possession of all current and valid Federal, State, and local licenses and permits required to engage in the activities and operations carried out by or in the laboratory, and compliance with all current Federal, State, and local requirements for such activities and operations.

(C) The laboratory shall be at least one (1) of the following:

(i) A clinical laboratory located within and operated and controlled by an institution which is currently licensed by the Oklahoma State Department of Health as a general hospital, and which is currently accredited as a general hospital by the Joint Commission on Accreditation of Healthcare Organizations. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(ii) A clinical laboratory which is currently Federally licensed and/or approved under the implementing Federal regulations applicable to laboratories pursuant to the Federal Clinical Laboratory Improvement Amendments of 1988 (P.L. No. 100-578) for the performance of clinical chemistry and/or toxicology procedures, Title 42, Part 405 et al., Code of Federal Regulations, adopted in this Section by reference. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(iii) A central or branch forensic laboratory operated and controlled by the Oklahoma State Bureau of Investigation.

(iv) A forensic laboratory operated and controlled by a county or municipal law enforcement agency.

(v) The Toxicology/Forensic Science Laboratories of The University of Oklahoma Health Sciences Center.

(D) The laboratory shall regularly employ or have on its permanent staff at least one (1) person holding a currently valid Forensic Alcohol Analysis Permit issued by the Board of Tests for Alcohol and Drug Influence.

(E) The laboratory shall have space, facilities, equipment, and apparatus adequate and appropriate for the performance of forensic alcohol analysis.

(2) Requirements. Requirements for forensic alcohol analysis laboratories (initial permits) are as follows:

(A) Submission of a properly completed application form for Initial Approval, obtainable from the Board, together with all supporting documentation specified therein.

(B) Maintenance of an adequate and appropriate quality assurance program and activities in forensic alcohol analysis, meeting nationally-recognized standards.

(C) Regular and satisfactory participation and performance in any program of proficiency testing in forensic alcohol analysis conducted by or on behalf of the Board of Tests for Alcohol and Drug Influence, or required by the Board.

(D) Regular and satisfactory participation and performance in any program of proficiency testing in clinical chemistry or toxicology in which the laboratory is voluntarily enrolled or required to be enrolled as a condition of Federal or state licensure or approval.

(b) Renewal of approval. Laboratories which have been approved by the Board of Tests for Alcohol and Drug Influence for performance of forensic alcohol analysis and which hold a current valid Forensic Alcohol Laboratory Permit shall be eligible for renewal of such Permit upon satisfying the following qualifications and requirements. Such laboratory shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) Qualifications. Qualifications for forensic alcohol analysis laboratories (renewal permits) are as follows:

(A) Possession of all qualifications stipulated in this Rule for Initial Approval as a Forensic Alcohol Laboratory.

(B) Possession of a valid Forensic Alcohol Laboratory Permit issued by authority of the Board of Tests for Alcohol and Drug Influence within the preceding twelve (12) months upon

compliance with the Qualifications and Requirements then in force for, Initial Approval or for Renewal of Approval as a Forensic Alcohol Laboratory.

(2) **Requirements.** Requirements for forensic alcohol laboratories (renewal permits) are as follows:

(A) Submission of a properly completed application form for Renewal of Approval, obtainable from this Board, together with all supporting documentation specified therein.

(B) Continued satisfactory participation and performance in the quality assurance and proficiency testing programs and activities stipulated in this Section as requirements for Initial Approval.

(c) **General conditions of approval.** The following general and continued conditions of Approval apply to every Forensic Alcohol Laboratory.

(1) Every such Laboratory may be inspected periodically, during its normal working hours, by the State Director of Tests for Alcohol and Drug Influence or by the State Director's duly authorized representative(s). Such inspection may include examination of the Laboratory's pertinent files and records, as well as its facilities.

(2) Every such Laboratory shall maintain a current file of all methods and procedures employed in such Laboratory for forensic alcohol analysis.

(3) Every such Laboratory shall maintain and retain at least the following records for a period of at least three (3) years from the date of origin of such records:

(A) An up-to-date record of persons in its employ or on its staff who are or were engaged in the performance of forensic alcohol analysis. Such records shall include, at least, the inclusive employment dates, qualifications of each such person, and any continuing education or training pertinent to forensic alcohol analysis received by each such person within or outside of the Laboratory.

(B) Records of specimens received by and subjected to forensic alcohol analysis within the Laboratory under the provisions of Title 47 or Title 3 or Title 63, Oklahoma Statutes, including all pertinent dates and times, identification of such specimens, results obtained and reported, and the identity of the person(s) who performed each such analysis.

(C) Records of the internal and external quality assurance programs and proficiency testing activities and results, in or pertinent to forensic alcohol analysis, in which the Laboratory participates or has participated.

(4) Every such Laboratory shall be operated and shall perform its forensic alcohol activities in substantial compliance with applicable nationally-recognized standards of good laboratory practice.

(5) In every such Laboratory, forensic alcohol analysis shall be performed only by methods and procedures approved by the Board of Tests for Alcohol and Drug Influence, and only by persons holding valid Forensic Alcohol Analysis Permits.

(d) **Period of validity.** Forensic Alcohol Laboratory Approval and Forensic Alcohol Laboratory Permits shall be valid for one (1) year from the date of Approval or the date of Permit issuance, respectively, and shall be subject to earlier suspension, termination, or revocation at the discretion of the Board.

40:15-1-3. Forensic drug analysis laboratories

(a) **Approval.** Any laboratory in which analysis for drugs and other intoxicating substances in specimens of blood, hereafter termed "forensic drug analysis," is performed under the provisions of Title 47 or 3 O.S., Section 303 or 63 O.S., Section 4210A, Oklahoma Statutes, shall possess at least the following qualifications and shall meet the following requirements. Any laboratory complying with such qualifications and requirements shall be deemed by this Board to be a Forensic Drug Laboratory approved by the Board of Tests for Alcohol and Drug Influence and shall be entitled to issuance of a Forensic Drug Laboratory Permit. Such Laboratory shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic drug analysis laboratories (initial permits) are as follows:

(A) All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act), or permitted by the Board of Tests, may perform testing regardless of location.

(B) Possession of all current and valid Federal, State, and local licenses and permits required to engage in the activities and operations carried out by or in the laboratory, and compliance with all current Federal, State, and local requirements for such activities and operations.

(C) The laboratory shall be at least one (1) of the following:

(i) A clinical laboratory located within and operated and controlled by an institution which is currently licensed by the Oklahoma State Department of Health as a general hospital, and which is currently accredited as a general hospital by the Joint Commission on Accreditation of Healthcare Organizations. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(ii) A clinical laboratory which is currently Federally licensed and/or approved under the implementing Federal regulations applicable to laboratories pursuant to the Federal Clinical Laboratory Improvement Amendments of 1988 (P.L. No. 100-578), for the performance of clinical chemistry and/or toxicology procedures, Title 42, Part 405 et al., Code of Federal Regulations, adopted in this Section by reference. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(iii) A central or branch forensic laboratory operated and controlled by the Oklahoma State Bureau of Investigation.

(iv) A forensic laboratory operated and controlled by a county or municipal law enforcement agency.

(v) The Toxicology/Forensic Science Laboratories of The University of Oklahoma Health Sciences Center.

(D) The laboratory shall regularly employ or have on its permanent staff as least one (1) person holding a currently valid Forensic Drug

Analysis Permit issued by the Board of Tests for Alcohol and Drug Influence.

(E) The laboratory shall have space, facilities, equipment, and apparatus adequate and appropriate for the performance of forensic drug analysis.

(2) **Requirements.** Requirements for forensic drug analysis laboratories (initial permits) are as follows:

(A) Submission of a properly completed application form for Initial Approval, obtainable from the Board, together with all supporting documentation specified therein.

(B) Maintenance of an adequate and appropriate quality assurance program and activities in forensic drug analysis, meeting nationally-recognized standards.

(C) Regular and satisfactory participation and performance in any program of proficiency testing in forensic drug analysis conducted by or on behalf of the Board of Tests for Alcohol and Drug Influence, or required by the Board.

(D) Regular and satisfactory participation and performance in any program of proficiency testing in clinical chemistry or toxicology in which the laboratory is voluntarily enrolled or required to be enrolled as a condition of Federal or state licensure or approval.

(b) **Renewal of approval.** Laboratories which have been approved by the Board of Tests for Alcohol and Drug Influence for performance of forensic drug analysis and which hold a current valid Forensic Drug Laboratory Permit shall be eligible for renewal of such Permit upon satisfying the following qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic drug laboratories (renewal permits) are as follows:

(A) Possession of all qualifications stipulated in this Rule for Initial Approval as a Forensic Drug Laboratory.

(B) Possession of a valid Forensic Drug Laboratory Permit issued by authority of the Board of Tests for Alcohol and Drug Influence within the preceding twelve (12) months upon compliance with the Qualifications and Requirements then in force for Initial Approval or for Renewal of Approval as a Forensic Drug Laboratory.

(2) **Requirements.** Requirements for forensic drug analysis laboratories (renewal permits) are as follows:

(A) Submission of a properly completed application form for Renewal of Approval, obtainable from the Board, together with all supporting documentation specified therein.

(B) Continued satisfactory participation and performance in the quality assurance and proficiency testing programs and activities stipulated in this Section as requirements for Initial Approval.

(c) **General conditions of approval.** The following general and continued conditions of Approval apply to every Forensic Drug Laboratory.

(1) Every such Laboratory may be inspected periodically, during its normal hours, by the State Director of Tests for Alcohol and Drug Influence or by the State Director's duly authorized representative(s). Such inspection may include examination of the Laboratory's pertinent files and records, as well as its facilities.

(2) Every such Laboratory shall maintain a current file of all methods and procedures employed in such Laboratory for forensic drug analysis.

(3) Every such Laboratory shall maintain and retain at least the following records for a period of at least three (3) years from the date of origin of such records:

(A) An up-to-date record of persons in its employ or on its staff who are or were engaged in the performance of forensic drug analysis. Such records shall include, at least, the inclusive employment dates, qualifications of each such person, and any continuing education or training pertinent to forensic drug analysis received by each such person within or outside of the Laboratory.

(B) Records of specimens received by and subjected to forensic drug analysis within the Laboratory under the provisions of Title 47 or Title 3 or Title 63, Oklahoma Statutes, including all pertinent dates and times, identification of such specimens, results obtained and reported, and the identity of the person(s) who performed each analysis.

(C) Records of the internal and external quality assurance programs and proficiency testing activities and results, in or pertinent to forensic drug analysis,

(4) Every such Laboratory shall be operated and shall perform its forensic drug activities in substantial compliance with applicable nationally-recognized standards of good laboratory practice.

(5) In every such Laboratory, forensic drug analysis shall be performed only by methods and procedures approved by the Board of Tests for Alcohol and Drug Influence, and only by persons holding valid Forensic Drug Analysis Permits.

(d) Period of validity. Forensic Drug Laboratory Approval and Forensic Drug Laboratory Permits shall be valid for one (1) year from the date of Approval or the date of Permit issuance, respectively, and shall be subject to earlier suspension, termination, or revocation at the discretion of the Board.

[Source: Amended at 14 Ok Reg 1525, eff 7-1-97; Amended at 27 Ok Reg 2659, eff 8-26-10; Amended at 37 Ok Reg 992, eff 9-11-20]

CHAPTER 20. SPECIMENS

[Authority: 47 O.S., §§751 through 761]

[Source: Codified 3-19-91]

40:20-1-1. Purpose

The rules in this Chapter provide procedures for the selection, collection, handling, storage, forwarding, and disposition of specimens of blood, breath or other materials which are to be analyzed for alcohol and other intoxicating substances under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes.

[Source: Amended at 14 Ok Reg 1529, eff 7-1-97; Amended at 37 Ok Reg 995, eff 9-11-20]

40:20-1-2. Designation by law enforcement agencies of blood or breath to be tested for alcohol content

(a) Law enforcement agencies may designate either blood or breath as the specimen to be obtained and tested for the alcohol concentration thereof, but such designation

shall not affect the validity of an otherwise valid test. Such designation shall be submitted on agency letterhead to the principal administrative office of the Board for record keeping purposes.

(b) for any person physically incapable, by reason of illness or injury or other physical disability or unconsciousness, of submitting to and successfully completing a test or tests of breath for the alcohol concentration thereof, a test or tests of blood for the alcohol concentration thereof shall be an approved alternate test to be administered to such person.

[Source: Amended at 27 Ok Reg 2663, eff 8-26-10; Amended at 38 Ok Reg 1681, eff 9-11-21]

40:20-1-3. Collection, transfer, and retention of blood specimens

(a) **Collection of blood.** Collection of specimens of blood from living human subjects under the provisions of Title 47 and Title 3 Section 303 and Title 63 Section 4210A, Oklahoma Statutes shall be performed as set forth in this Section. The person, from whom blood is collected for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof, is referred to as the "Tested Person" for the purposes of this Section.

(1) **Collection of blood specimens - general conditions.**

(A) Blood specimens shall be collected by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, and these rules, to withdraw blood.

(B) The collection of blood from a person with hemophilia or from a person who is taking anticoagulant medications does not invalidate an otherwise valid test.

(2) **Procedures, techniques, and precautions.**

(A) Puncture site preparation and skin cleansing shall be performed without the use of alcohol.

(B) All blood specimens shall be collected directly in or immediately deposited into 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate. Such containers are hereby approved for the collection of blood for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof.

(C) Each tube containing a blood specimen shall be placed into a sealed container. A sealed container must be accompanied with a Blood Test Officers affidavit or contain at least the following information:

(i) Full name of the subject from whom the blood specimen was obtained

(ii) Date, time, and location where the blood specimen was obtained

(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.

(b) **Handling and disposition of state's blood specimen.** A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's Blood Specimen," shall be handled and processed as set forth hereinafter.

(1) Each State's Blood Specimen in its sealed container and employing other shipping or transport enclosures as required, shall be promptly dispatched or forwarded by the law enforcement agency to a central or branch forensic laboratory of the Oklahoma State Bureau of Investigation, or to another official Forensic Alcohol Laboratory or Forensic Drug Laboratory approved by the Board, as appropriate, accompanied by a request for determination of the presence and/or concentration of alcohol and/or other intoxicating substance in such blood specimen, as appropriate. The selection of the approved laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may dispatch or forward the State's Blood Specimen to the approved laboratory of its choice by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(3) The storage and dispatch or forwarding of the State's Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, maintain the chain of custody, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(c) Collection, transfers, and retention of retained blood specimens. Whenever a State's blood specimen is collected under the provisions of Title 47 or 3 O.S., Section 303 or 63 O.S., Section 4210A, Oklahoma Statutes, at the direction of a law enforcement officer and or for the purpose of determining the concentration of alcohol or other intoxicating substance thereof, an additional and separate blood specimen, whenever possible, shall be collected at the same time and by the same qualified person withdrawing the State's blood specimen. The resulting additional specimen is hereafter termed "Retained Blood Specimen." Such Retained Blood Specimens shall be collected, retained, transferred, and analyzed as set forth hereinafter.

(1) Collection of Retained Blood Specimens.

(A) Whenever possible, the additional blood specimen shall be withdrawn from the tested person without performing additional venipunctures, and shall be collected incident to and as a part of the entire blood collection process.

(B) The Retained Blood Specimen shall be collected in a manner identical to the State's Blood Specimen and as set forth heretofore in this Section.

(C) The tube containing the Retained Blood Specimen shall be placed into a sealed container. A sealed container must be accompanied with a Blood Test Officers affidavit or contain at least the following information:

(i) Full name of the subject from whom the blood specimen was obtained

(ii) Date, time, and location where the blood specimen was obtained

(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.

(2) Transfer of Retained Blood Specimens to an approved retention laboratory.

(A) Each Retained Blood Specimen, in a sealed container and employing other shipping or transport enclosures as required, shall be promptly transferred by the law enforcement agency to a Retention Laboratory approved by the Board of Tests for Alcohol and Drug Influence and designated for that purpose by the Board.

(B) Each Retained Blood Specimen so transferred shall be accompanied by substantially the following information, clearly associated with a given specimen:

(i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) transferring the blood specimen

(ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory

(iii) Full name of the subject from whom the blood specimen was obtained

(iv) Date, time and location of blood specimen collection

(v) Case or identification number assigned to the case or subject by the law enforcement agency

(vi) Signature, printed name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

(C) The law enforcement agency may transfer or forward the Retained Blood Specimen to the Approved Retention Laboratory designated by the Board by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(D) The transfer or forwarding of the Retained Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(E) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the law enforcement agency, or during the transfer process, or thereafter.

(3) Retention and storage of Retained Blood Specimens.

(A) Each Retained Blood Specimen, in a sealed envelope or other sealed container or enclosure, shall be kept and stored by the Approved Retention Laboratory designated by the Board for sixty (60) days from the date of collection, unless transferred prior thereto to a Board-approved Forensic Alcohol Laboratory or Forensic Drug Laboratory as hereinafter provided. After the expiration of sixty (60) days from the date of such collection, all such Retained Blood Specimens, other than those transferred to an approved Laboratory as hereinafter provided, may be promptly and safely destroyed by the Approved Retention Laboratory.

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage shall be

carried out in such a manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(C) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the Approved Retention Laboratory.

(4) Transfer of Retained Blood Specimens to a forensic alcohol laboratory or forensic drug laboratory.

(A) Upon written direction by the tested person or such person's agent to the Approved Retention Laboratory that has custody of the Retained Blood Specimen obtained from such person, received in accordance with such Approved Retention Laboratory's policies, practices and procedures and within sixty (60) days from the date of collection of the Retained Blood Specimen, the Approved Retention Laboratory shall promptly transfer the Retained Blood Specimen obtained from such person to any Forensic Alcohol Laboratory or Forensic Drug Laboratory, as appropriate, which is approved by the Board of Tests for Alcohol and Drug Influence and was selected by such person or such person's agent.

(B) The Approved Retention Laboratory may transfer the Retained Blood Specimen to the Forensic Alcohol Laboratory or Forensic Drug Laboratory by use of the U. S. Postal Service, personal delivery, or by any other appropriate means; provided, that neither the tested person nor any agent or attorney of such person shall have access to the Retained Blood Specimen during the transfer process, or thereafter.

[Source: Amended at 14 Ok Reg 1529, eff 7-1-97; Amended at 20 Ok Reg 2837, eff 6-5-03 (emergency); Amended at 21 Ok Reg 2653, eff 7-11-04; Amended at 27 Ok Reg 2663, eff 8-26-10; Amended at 31 Ok Reg 776, eff 9-12-14; Amended at 34 Ok Reg 95, eff 10-10-16 (emergency); Amended at 34 Ok Reg 841, eff 9-11-17; Amended at 37 Ok Reg 995, eff 9-11-20; Amended at 38 Ok Reg 1681, eff 9-11-21]

**40:20-1-4. Collection, retention, and transfer of specimens of breath-alcohol
[REVOKED]**

[Source: Amended at 9 Ok Reg 3537, eff 7-24-92 (emergency); Amended at 10 Ok Reg 1965, eff 6-1-93; Amended at 14 Ok Reg 1529, eff 7-1-97; Revoked at 20 Ok Reg 2253, eff 7-11-03]

CHAPTER 25. DEVICES, EQUIPMENT, AND REFERENCE STANDARDS

[Authority: 47 O.S., §§ 751 through 761]

[Source: Codified 3-19-91]

40:25-1-1. Purpose

The rules in this chapter concern approved devices, approved equipment, approved reference standards, and other items (as defined) used for or involved in tests for alcohol and other intoxicating substances under the provisions of 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A.

[Source: Amended at 14 Ok Reg 1533, eff 7-1-97; Amended at 20 Ok Reg 2839, eff 6-5-03 (emergency); Amended at 21 Ok Reg 2655, eff 7-11-04; Amended at 25 Ok Reg 1524, eff 6-12-08; Amended at 39 Ok Reg 810, eff 9-11-22]

40:25-1-1.1. Definitions

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

"Alcohol" means Ethyl Alcohol, also defined as ethanol.

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

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

"Device" means an object, machine, or piece of equipment made or adapted for a particular purpose, especially a piece of mechanical or electronic equipment that analyzes or measures, i.e. evidential breath alcohol analyzers such as the Intoxilyzer 8000 or other evidential toxicological measurement instrumentation.

"Equipment" means the technical equipment or machinery needed for a particular activity or purpose that does not analyze, i.e. breath alcohol simulator.

"Other intoxicating substances" means as defined in O.A.C. 40:40-1-2.

"Other items" means sanitary or other items that require no authorization or approval by the Board and are commonly used in the process of administering breath, oral fluid, or blood collections and do not impact the test analysis or results. Such item examples include but are not limited to hypodermic needles, iodine pads, mouthpieces, saliva traps, syringes, and other universal precaution items."

"Reference/uniform standard" means any external control or National Institute of Standards and Technology (NIST) traceable gas or solution/liquid.

[Source: Added at 39 Ok Reg 810, eff 9-11-22]

40:25-1-2. Approved evidential breath-alcohol measurement devices

The Intoxilyzer 8000, an automated analyzer, is hereby approved for determining the presence or concentration of alcohol in subject's breath.

[Source: Amended at 14 Ok Reg 1533, eff 7-1-97; Amended at 20 Ok Reg 2839, eff 6-5-03 (emergency); Amended at 21 Ok Reg 2655, eff 7-11-04; Amended at 24 Ok Reg 285, eff 11-1-06 (emergency)¹; Amended at 24 Ok Reg 2681, eff 6-4-07 (emergency)¹; Amended at 25 Ok Reg 1524, eff 6-12-08; Amended at 34 Ok Reg 98, eff 10-10-16 (emergency); Amended at 34 Ok Reg 844, eff 9-11-17; Amended at 37 Ok Reg 998, eff 9-11-20]

EDITOR'S NOTE: ¹Pursuant to 75 O.S., Section 253, the 11-1-06 emergency amendments to this Section 40:25-1-2 were scheduled to expire on 7-15-07, if not already superseded by a permanent action or by another emergency action(s) that retained the same 7-15-07 expiration date. If the emergency action expired, the text of the Section would then revert back to the permanent text that was effective prior to the 11-1-06 emergency action. As of 7-15-07, the Board had not superseded the 11-1-06 emergency amendments with a permanent action or with another emergency action that retained the 7-15-07 expiration date. However, on 6-4-07, the Board did issue another emergency action amending this Section, but cited a later expiration date of 7-15-08. Because this Section was not amended or revoked by permanent action in 2007, the text of the Section was not reprinted in the 2007 Supplement. However, the number and tagline of the Section were published, as well as annotations citing to the publication of the two emergency actions in the Oklahoma Register and the publication of the last effective permanent text of the Section in the 2006 Edition of the OAC. The Section was later amended by permanent action on 6-12-08.

40:25-1-2.1. Approved breath-alcohol measurement equipment and reference solutions

Devices or equipment listed on the current or supplemented *Conforming Products List of Calibrating Units for Breath Alcohol Testers* (72 FR 34747), published by the National Highway Traffic Safety Administration in conjunction with National Institute of Standards and Technology (NIST) traceable alcohol reference solutions are approved for use with the approved evidential breath-alcohol measurement device or any other approved breath alcohol screening devices.

[Source: Added at 38 Ok Reg 1684, eff 9-11-21]

40:25-1-3. Approved dry gas canisters

(a) Any National Institute of Standards and Technology (NIST) traceable alcohol reference appearing on the current or supplemented *Conforming Products List of Calibrating Units for Breath Alcohol Testers* [72 FR 34747], or its successor, published by the National Highway Traffic Safety Administration, pressurized dry gas canister labeled by the manufacturer with a target value of 0.080 BAC, (\pm)2% or .002, whichever is greater, is hereby approved for use in association with approved evidential breath alcohol measurement devices.

(b) The State Director of Tests, in accordance with the needs of the agency, may deploy dry gas canisters approved by this section for the purpose of performing calibration checks of approved evidential breath alcohol measurement devices.

(c) The State Director of Tests shall maintain a list of the dry gas canisters approved by this section that have been deployed by the agency.

[Source: Amended at 14 Ok Reg 1533, eff 7-1-97; Amended at 20 Ok Reg 2839, eff 6-5-03 (emergency); Amended at 21 Ok Reg 2655, eff 7-11-04; Amended at 22 Ok Reg 2341, eff 7-11-05; Amended at 24 Ok Reg 285, eff 11-1-06 (emergency)¹; Amended at 24 Ok Reg 2681, eff 6-4-07 (emergency)¹; Amended at 25 Ok Reg 1525, eff 6-12-08; Amended at 34 Ok Reg 98, eff 10-10-16 (emergency); Amended at 34 Ok Reg 844, eff 9-11-17; Amended at 39 Ok Reg 810, eff 9-11-22]

EDITOR'S NOTE: ¹Pursuant to 75 O.S., Section 253, the 11-1-06 emergency amendments to this Section 40:25-1-3 were scheduled to expire on 7-15-07, if not already superseded by a permanent action or by another emergency action(s) that retained the same 7-15-07 expiration date. If the emergency action expired, the text of the Section would then revert back to the permanent text that was effective prior to the 11-1-06 emergency action. As of 7-15-07, the Board had not superseded the 11-1-06 emergency amendments with a permanent action or with another emergency action that retained the 7-15-07 expiration date. However, on 6-4-07, the Board did issue another emergency action amending this Section, but cited a later expiration date of 7-15-08. Because this Section was not amended or revoked by permanent action in 2007, the text of the Section was not reprinted in the 2007 OAC Supplement. However, the number and tagline of the Section were published, as well as annotations citing to the publication of the two emergency actions in the Oklahoma Register and the publication of the last effective permanent text of the Section in the 2006 Edition of the OAC. The Section was later amended by permanent action on 6-12-08.

40:25-1-4. Disposable materials, supplies, and paraphernalia [REVOKED]

[Source: Amended at 33 Ok Reg 1189, eff 9-11-16; Revoked at 34 Ok Reg 98, eff 10-10-16 (emergency); Revoked at 34 Ok Reg 844, eff 9-11-17]

40:25-1-5. Requests for adoption of devices or equipment for breath-alcohol analysis

Any manufacturer of any device or equipment made for the purpose of analyzing the alcoholic content of breath, or for the purpose of simulating specimens of breath of known alcoholic content, may request this Board to adopt such device or equipment that appears on the applicable conforming products list released by the National Highway Traffic Safety Administration. The Board will consider said request upon submission of such information, instructions for use, exemplars, and other pertinent data as the Board may request. The Board may decline adoption on its own initiative.

[Source: Amended at 39 Ok Reg 810, eff 9-11-22]

CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

[Authority: 47 O.S., §§ 751 through 761]

[Source: Codified 3-19-91]

40:30-1-1. Purpose

The rules in this Chapter concern analysis of alcohol in specimens of breath under the provisions of 47 O.S., Sections 751–761 and 3 O.S., Section 303 and 63 O.S., Section 4210A. They include scientific and procedural safeguards to assure the validity and reliability of such tests, designate methods and procedures for breath-alcohol analysis approved by the Board, and prescribe and control other aspects of such tests.

[Source: Amended at 14 Ok Reg 1534, eff 7-1-97]

40:30-1-2. Breath-alcohol analysis with the Breathalyzer Model 900 and Model 900A [REVOKED]

[Source: Revoked at 20 Ok Reg 2254, eff 7-11-03]

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 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 ($\pm 0.01\text{g}/210\text{L}$).

(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 Oklahoma Department of Public Safety, 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 ($\text{g}/210\text{L}$), 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 ($\pm 0.03\text{g}/210\text{L}$) 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 the CMI Intoxilyzer 8000, 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 shall consist of a bench check report, a certificate of calibration and operation, and a mock subject test.

[Source: Amended at 9 Ok Reg 3539, eff 7-24-92 (emergency); Amended at 10 Ok Reg 1967, eff 6-1-93; Amended at 20 Ok Reg 2254, eff 7-11-03; Amended at 24 Ok Reg 286, eff 11-1-06 (emergency)¹; Amended at 24 Ok Reg 2682, eff 6-4-07 through 10-7-07 (emergency)²; Amended at 25 Ok Reg 391, eff 11-13-07 (emergency); Amended at 25 Ok Reg 1525, eff 6-12-08; Amended at 27 Ok Reg 2666, eff 8-26-10; Amended at 31 Ok Reg 778, eff 9-12-14; Amended at 36 Ok Reg 1519, eff 9-14-19; Amended at 37 Ok Reg 998, eff 9-11-20; Amended at 38 Ok Reg 1684, eff 9-11-21]

EDITOR'S NOTE: ¹Pursuant to 75 O.S., Section 253, the 11-1-06 emergency amendments to this Section 40:30-1-3 were scheduled to expire on 7-15-07, if not already superseded by a permanent action or by another emergency action(s) that retained the same 7-15-07 expiration date. If the emergency action expired, the text of the Section would then revert back to the permanent text that was effective prior to the 11-1-06 emergency action. As of 7-15-07, the Board had not superseded the 11-1-06 emergency amendments with a permanent action or with another emergency action that retained the 7-15-07 expiration date. However, on 6-4-07, the Board did issue another emergency action amending this Section, but cited a later expiration date of 7-15-08. Because this Section was not amended or revoked by permanent action in 2007, the text of the Section was not reprinted in the 2007 OAC Supplement. However, the number and tagline of the Section were published, as well as annotations citing to the publication of the two emergency actions in the Oklahoma Register and the publication of the last effective permanent text of the Section in the 2006 Edition of the OAC. [See also Editor's Note 2 below]

EDITOR'S NOTE: ²On 10-8-07, the Governor disapproved permanent amendments to this Section 40:30-1-3 that had been proposed by the agency to supersede the emergency amendments that became effective 6-4-07. When the Governor disapproves a proposed permanent rule, "any effective emergency rule which would have been superseded by [the] disapproved permanent rule [is] deemed null and void on the date the Governor disapproves the permanent rule" [75 O.S., § 303.2(A)(2)]. Therefore, on 10-8-07, the text of Section 40:30-1-3 reverted back to the permanent text that became effective 7-11-03, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by emergency action on 11-13-07.

40:30-1-3.1. Independent Breath-alcohol analysis with the Intoxilyzer Model 5000-D [REVOKED]

[Source: Added at 20 Ok Reg 2254, eff 7-11-03; Revoked at 37 Ok Reg 998, eff 9-11-20]

40:30-1-4. Analysis of retained breath-alcohol specimens [REVOKED]

[Source: Amended at 14 Ok Reg 1534, eff 7-1-97; Revoked at 20 Ok Reg 2254, eff 7-11-03]

CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD

[Authority: 47 O.S., §§ 751 through 761]

[Source: Codified 3-19-91]

40:35-1-1. Purpose

The rules in this Chapter concern analysis of alcohol in specimens of blood under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes. They include designation by the Board of approved methods and procedures for blood-alcohol analysis, and apply to analysis of the State's blood specimens and to retained blood specimens. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act) are exempt from these rules.

[Source: Amended at 14 Ok Reg 1535, eff 7-1-97; Amended at 37 Ok Reg 1000, eff 9-11-20]

40:35-1-2. Approved methods for blood-alcohol analysis

The Board of Tests for Alcohol and Drug Influence hereby declares the following, identified by reference sources and successors thereto incorporated herein by reference, to be satisfactory techniques for performance of chemical tests for alcohol in specimens of blood.

(1) **The Wallace and Dahl gas chromatographic method.** Wallace, J. E. And Dahl, E. V., Rapid Vapor Phase Method for Determining Ethanol in Blood and Urine by Gas Chromatography, Am. J. Clin. Path. 46; 152-154 (1960).

(2) **The Dubowski gas chromatographic method (automated).** Dubowski, K. M.; MANUAL FOR ANALYSIS OF ETHANOL IN BIOLOGICAL LIQUIDS, Report No. DOT-TSC-NHTSA-76-4 (HS 802208), U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590, January 1977. (Available from NTIS, Springfield, Virginia 22161.

(3) **The Dubowski gas chromatographic method (manual).** Dubowski, K. M.; Ethanol, in Methodology for Analytical Toxicology, I. Sunshine Ed., CRS Press, Cleveland 1979, pp. 149-154.

[Source: Amended at 14 Ok Reg 1535, eff 7-1-97; Revoked at 20 Ok Reg 2257, eff 7-11-03; Added at 21 Ok Reg 37, eff 10-8-03 (emergency); Added at 21 Ok Reg 2656, eff 7-11-04]

40:35-1-3. Analysis of blood specimens for alcohol

(a) **Methods and procedures.** Analysis of State's or retained blood specimens for alcohol may be carried out by any method or procedure approved by authority of the Board of Tests for Alcohol and Drug Influence.

(b) **Laboratory and analyst.** Analysis of a State's or retained blood specimen shall be carried out only and in its entirety in the Forensic Alcohol Laboratory, approved by the Board of Tests for Alcohol and Drug Influence, to which such retained blood specimen was originally sent or delivered by the law enforcement agency responsible for its collection. Such analysis shall be performed by a person holding a currently valid Forensic Alcohol Analysis Permit, issued by authority of the Board of Tests for Alcohol and Drug Influence.

(c) **Reporting results.** The results of analyses for alcohol of State's or retained blood specimens shall be reported in terms of the concentration of alcohol in the subject's blood, in grams per one hundred (100) milliliters of blood (g/100 mL), and shall be stated to the second or third decimal place (0.XX g/100 mL or 0.XXX g/100mL). Results of analyses of retained blood specimens which are within three-hundredths (0.030) grams of alcohol per one hundred (100) milliliters of blood of the results of the corresponding analysis performed upon the State's blood specimen obtained from the same subject shall be deemed confirmatory and substantiative of such blood-alcohol analysis results on the State's blood specimen, as a scientifically acceptable tolerance.

[Source: Amended at 14 Ok Reg 1535, eff 7-1-97; Amended at 33 Ok Reg 1190, eff 9-11-16]

CHAPTER 40. ANALYSIS OF OTHER INTOXICATING SUBSTANCES

[Authority: 47 O.S., §§ 751 through 761]

[Source: Codified 3-1-91]

40:40-1-1. Purpose

The rules in this Chapter concern analysis of blood and other specimens for "other intoxicating substances" (i.e., substances and drugs, other than ethyl alcohol) under the provisions of Title 47 O.S., Section 751-761 and Title 3 O.S., Section 303 and Title 63 O.S., Section 4210A, Oklahoma Statutes. They include standards, requirements, and conditions for performance of such tests, and prescribe specimens, parameters for initial and confirmatory analyses, quality assurance practices, and reporting practices. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act) are exempt from these rules.

[Source: Amended at 14 Ok Reg 1536, eff 7-1-97; Amended at 37 Ok Reg 1000, eff 9-11-20]

40:40-1-2. Analysis of other intoxicating substances in blood

(a) General conditions.

(1) The term "other intoxicating substance" shall mean any controlled dangerous substance as defined in Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

(2) Analysis of blood specimens for identification and/or quantitation of other intoxicating substances contained therein shall be performed in substantial compliance with the provisions of this Section.

(3) Forensic Drug Laboratories and Forensic Drug Analysts performing analysis of other intoxicating substances in specimens of blood shall comply substantially with applicable generally recognized standards of good laboratory practice.

(4) In the analysis of other intoxicating substances in specimens of blood, the laboratory and analyst(s) shall comply with generally recognized procedures and safeguards for forensic analytical toxicology. Appropriate measures shall be taken to safeguard the identity, integrity, and composition of all specimens and to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(5) Analysis of State's or retained blood specimens for other intoxicating substances may be carried out by any method or procedure approved by authority of the Board of Tests for Alcohol and Drug Influence.

(6) Analysis of blood or blood components for other intoxicating substances shall be performed in compliance with applicable Analysis Protocol(s) and Procedure(s) generally-recognized by competent authorities in forensic toxicology. Such Analysis Protocol(s) and Procedure(s) shall conform, to the extent applicable, to the criteria and specifications set forth hereinafter in this Section. Methods and tests for the analysis of other intoxicating substances set forth in such applicable Analysis Protocol(s) and Procedure(s) shall be deemed to be approved by the Board of Tests for Alcohol and Drug Influence.

(b) Facilities and analysts.

(1) Analysis of a State's or retained blood specimen shall be carried out only and in its entirety in a Forensic Drug Laboratory approved by the Board of Tests for Alcohol and Drug Influence.

(2) Such analysis shall be performed by qualified personnel employed by the laboratory.

(c) Specimens.

(1) Analysis of other intoxicating substances may be carried out upon specimens of whole blood or any of its components, including plasma and serum. A homogenized mixture of clotted blood and serum may also be used as a specimen.

(2) Blood specimens may contain adequate and appropriate anticoagulant(s) and preservative(s), but no other additives.

(d) Methods and procedures. Methods and procedures shall be carried out in compliance with ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accreditation.

(e) Quality assurance. Quality assurance shall be carried out in compliance with ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accreditation.

(f) Records and reports. Record keeping and reporting shall be carried out in compliance with ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accreditation.

[Source: Amended at 14 Ok Reg 1536, eff 7-1-97; Amended at 38 Ok Reg 1685, eff 9-11-21]

CHAPTER 45. RECORDS, REPORTS, AND INFORMATION

[Authority: 47 O.S., §§ 751 through 761]

[Source: Codified 3-19-91]

40:45-1-1. Purpose

The rules in this Chapter concern records, reports, and other information pertaining to tests for alcohol and other intoxicating substances, and associated matters, under the provisions of 47 O.S., Sections 751–761 and 3 O.S., Section 303 and 63 O.S., Section 4210A. They prescribe the style and contents and format for reporting and otherwise recording the results of such tests and for recording related matters, and provide for the designation of approved forms, logs, reports, documents and other records employed in connection with matters under the jurisdiction of this Board.

[Source: Amended at 14 Ok Reg 1539, eff 7-1-97]

40:45-1-2. Approved records, reports, logs, and other documents

Any Record, Report, Log, or other Form or Document specified or provided for in any Rule and Regulation adopted and promulgated by this Board, or otherwise employed in connection with matters under the jurisdiction of this Board, shall be such Record, Report, Log, or other Form or Document as is specified and approved for such purposes by the State Director of Tests for Alcohol and Drug Influence.

CHAPTER 50. IGNITION INTERLOCK DEVICES

Editor's Note: The Board of Tests for Alcohol and Drug Influence promulgated new permanent rules in this Chapter (40:50-1-1 through 40:50-1-9) in the 7-1-04 issue of the Register, with a scheduled effective date of 7-11-04 [see 21 Ok Reg 2657]. However, the agency had previously withdrawn the proposed rules from legislative review on 5-13-04 [see Notice of Withdrawn Rules published at 21 Ok Reg 1957].

BECAUSE THE PROPOSED RULES WERE WITHDRAWN BY THE AGENCY PRIOR TO THE END OF THE LEGISLATURE'S 30-LEGISLATIVE-DAY REVIEW PERIOD, THE RULES SHOULD NOT HAVE BEEN FILED BY THE AGENCY FOR PROMULGATION IN THE REGISTER. Upon discovery of this inconsistency, an Editor's Notice was published in the 8-16-04 issue of the Register [see 21 Ok Reg 3123]. The agency later promulgated new emergency rules at 40:50-1-1 through 40:50-1-9, effective 10-27-04 [see 22 Ok Reg 221], and superseded the emergency rules with permanent rules on 6-25-05 [see 22 Ok Reg 1714].

***Editor's Note:** On 11-1-06, the Board of Tests for Alcohol and Drug Influence issued emergency amendments to the following Sections in this Chapter: 40:50-1-1 through 40:50-1-5; 40:50-1-7 through 40:50-1-9; 40:50-1-11. Pursuant to 75 O.S., Section 253, the 11-1-06 emergency amendments were scheduled to expire on 7-15-07, if not already superseded by a permanent action or by another emergency action(s) that retained the same 7-15-07 expiration date. If the emergency action expired, the text of the Sections would then revert back to the permanent text that was effective prior to the 11-1-06 emergency action. As of 7-15-07, the Board had not superseded the 11-1-06 emergency amendments with a permanent action or with another emergency action that retained the 7-15-07 expiration date. However, on 6-4-07, the Board did issue another emergency action amending these same Sections, but cited a later expiration date of 7-15-08. Because these Sections were not amended or revoked by permanent action in 2007, the texts of the Sections were not reprinted in the 2007 OAC Supplement. However, the numbers and taglines of the Sections were published, as well as annotations citing to the publication of the two emergency actions in the Oklahoma Register and the publication of the last effective permanent text of the Sections in the 2006 Edition of the OAC. The Sections were later amended by permanent action in 2008.*

[Authority: 47 O.S., § 759]

[Source: Codified 6-25-05]

40:50-1-1. Explanation of terms and actions [REVOKED]

[Source: Added at 21 Ok Reg 2657, eff 7-11-04¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Revoked at 27 Ok Reg 2667, eff 8-26-10]

***EDITOR'S NOTE:**¹ See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.*

***EDITOR'S NOTE:**² See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.*

40:50-1-1.1. Definitions

The following words or terms, when used in this chapter, 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 test or passing a confirmatory test.

"Confirmatory test" means a breath 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.

"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.

"Penalty Fail" means a breath alcohol test resulting in a positive result that meets or exceeds the specific point value for the purpose specified.

"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.

"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).

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

"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 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.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 1536, eff 9-11-15; Amended at 33 Ok Reg 1190, eff 9-11-16; Amended at 34 Ok Reg 845, eff 9-11-17; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 37 Ok Reg 1001, eff 9-11-20; Amended at 39 Ok Reg 812, eff 9-11-22]

40:50-1-2. Device certification process

(a) No device may be used in the state of Oklahoma unless it has been approved by the Board in accordance with the requirements stated herein.

(b) A list of approved device models shall be maintained by the Board and available for public review at the administrative office of the Board during regular business hours or by accessing the Board website at www.ok.gov/bot.

(c) A manufacturer representative seeking certification of a device shall:

(1) Complete an application for certification of an ignition interlock device and remit the appropriate fee in accordance with procedures established by the Board.

(2) Provide proof, as deemed appropriate by the Board, the device for which certification is being sought in Oklahoma meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications (78 FR 26849).

(3) Provide a certificate of insurance, issued by an insurance company authorized to transact business in Oklahoma, specifying:

(A) A product liability policy with a current effective date;

(B) The name and model number of the device model covered by the policy;

(C) Policy coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate;

- (D) The manufacturer as the insured and the state of Oklahoma as an additional insured;
- (E) Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device; and
- (F) The manufacturer will notify the Board immediately upon notice of cancellation of the product liability policy.

(4) Provide a schedule of all fees that may be charged to a participant. A participant shall not be imposed or required to pay any unscheduled fee(s). Such submission of schedule of fees shall be on an approved form provided by the Board. Any modification to the schedule of fees shall be submitted to the Board at least thirty (30) days prior to implementation.

(5) Devices shall use fuel cell technology for breath alcohol testing and a camera in accordance with the requirements in this Chapter.

(6) Agree to ensure any service performed on a device installed pursuant to an Oklahoma Installation Authority shall be in compliance with all requirements in this title.

(7) Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service, repair, use, removal, interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by this title at no cost on behalf of the State of Oklahoma or any political subdivision.

(8) Shall authorize the Board of Tests to release records viewable by the agency to law enforcement representatives for investigative purposes on Board letterhead.

(9) Advise the Board whether the device for which certification is being sought in Oklahoma is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Oklahoma and if or when such action is or has been appealed in the other state and the outcome of the appeal.

(10) Upon request of the Board, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti circumvention features activated in a vehicle provided by the Board. Any service performed pursuant to this section, including but not limited to, installation, maintenance, calibration or removal shall be completed at no cost to the Board.

(11) Agree to only distribute Board approved solicitations related to the rules in this Chapter. Such requests for approval shall be submitted with a form provided and approved by the Board prior to distribution.

(d) The Board may conduct compliance testing on the device submitted for certification, at any time.

(e) Certification shall be for only one device model.

(f) Approved devices shall be recognizable, as such, upon visual inspection.

[Source: Added at 21 Ok Reg 2657, eff 7-11-04 ¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Amended at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 1536, eff 9-11-15; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 36 Ok Reg 1520, eff 9-14-19; Amended at 39 Ok Reg 812, eff 9-11-22]

EDITOR'S NOTE: ¹See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

EDITOR'S NOTE: ²See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-2.1. Approval and denial

- (a) The Board shall notify the applicant of certification of a device or of denial to certify the device within 10 days of such determination.
- (b) The Board may deny certification of a device upon finding any of the following:
 - (1) A Defect in the design, materials or workmanship causing the device to fail to function as intended.
 - (2) False or inaccurate information provided by the manufacturer, manufacturer representative or independent laboratory.
 - (3) Modification of the components or design of the device or modification of National Highway Traffic Safety Administration specifications that causes the device to no longer satisfy the current National Highway Traffic Safety Administration specifications.
 - (4) The device fails the compliance testing conducted by the Board.
 - (5) The device fails to meet the requirements for certification or is no longer in compliance with all the requirements in this title.
 - (6) Any final action against a device or manufacturer by other state administrators or agencies in the United States.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 38 Ok Reg 1688, eff 9-11-21]

40:50-1-2.2. Annual recertification

- (a) All certifications expire June 30th of each year unless revoked by the Board.
- (b) The annual recertification of a certified device shall be the same as the device certification process stated in this title. The Board shall designate a renewal period within which the annual recertification process shall be allowed.
- (c) Any request(s) to renew a device certification may be denied if there is pending action against the manufacturer, manufacturer representative or vendor for any violation of these rules or outstanding invoices payable to the Board.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10]

40:50-1-2.3. Revocation or suspension of certification

- (a) The Board may revoke or suspend certification of a device for any of the following reasons:
 - (1) A Defect in the design, materials or workmanship causing the device to fail to function as intended.
 - (2) A manufacturer's liability insurance coverage is terminated, cancelled or expired.
 - (3) A manufacturer no longer offers the device for installation.
 - (4) Receipt of a letter, on manufacturer letterhead, at the administrative offices of the Board requesting voluntary surrender of certification by the manufacturer of a certified device.
 - (5) Violation by a manufacturer, a manufacturer representative, vendor, licensed service center or licensed ignition interlock technician of any requirements in this title.
 - (6) The manufacturer, manufacturer representative, vendor, licensed service center or licensed ignition interlock technician fail to submit any report(s) in accordance with this title.
 - (7) False or inaccurate information provided by the manufacturer, manufacturer representative or independent laboratory relating to the performance of the device.

- (8) Modification of the components or design of the device or modification of National Highway Traffic Safety Administration specifications that causes the device to no longer satisfy the current National Highway Traffic Safety Administration specifications.
 - (9) The device fails to meet the requirements for certification or is no longer in compliance with all the requirements in this title.
 - (10) Changes in the ignition interlock device technology are such that continued certification of the device would, as determined by the Board, not be in the best interest of the state of Oklahoma.
- (b) The Board shall forward the notice and order of revocation or suspension of the certification of a device to the manufacturer representative.
- (1) The notice and order of revocation or suspension shall specify the basis for the action.
 - (2) The manufacture shall:
 - (A) On the effective date of an order of revocation or suspension, cause the immediate cessation of installations of any certified or decertified device.
 - (B) Be responsible for, and shall bear the cost of:
 - (i) Removal of the revoked device and facilitate the simultaneous installation of another certified device of the participant's choice, regardless of the manufacturer of the device being substituted or the location of the licensed service center chosen by the participant.
 - (ii) Retrieval of the revoked device if removed by a licensed service center representing a different manufacturer. Upon removal, the licensed service center removing the revoked device shall notify the manufacturer representative of the revoked device as to where the revoked device may be retrieved.
 - (iii) Reimburse the participant, within 30 days of removal of the revoked device, all monies paid by the participant for deposits, unrealized lease or advance payments remitted on behalf of the participant for unrealized services.
 - (iv) The manufacturer shall make every reasonable effort to notify all participants effected by the revocation of a certified device 30 days before the revocation will occur, or as soon as possible.
- (c) The Board will not consider certification of a device from a manufacturer that fails to comply with the provisions stated in this subsection.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 15369, eff 9-11-15; Amended at 38 Ok Reg 1688, eff 9-11-21]

40:50-1-2.4. Modification of a certified device

- (a) A manufacturer representative shall notify the Board at least 15 days before implementation of any modification, upgrade or alteration to any hardware, software or firmware of a device certified for use in this state. Said notification shall include:
- (1) A description and explanation of the modification, upgrade or alteration and satisfactory proof that these modifications, upgrades or alterations do not adversely affect the ability of the device to satisfy the requirements of this title, and

(2) A comprehensive plan of action for the phasing out of the use of the current device. This plan of action must be approved by the Board prior to the implementation of the plan of action.

(b) Any equipment in the possession of the Board that was retained pursuant to certification of the device shall be modified, upgraded or altered simultaneously with implementation.

(c) Material modifications to a certified device, as determined by the Board, may require certification pursuant to this title.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 36 Ok Reg 1520, eff 9-14-19]

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) Effective November 1, 2022, incorporate a camera on all initial new 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 penalty fail point 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 initial breath 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) A distinct 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) The device shall have an approved anti circumvention feature(s) activated at all times.
- (g) 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.
- (h) A breath sample collection volume limit at or above 1.2 Liters unless an alternative configuration has been approved by the Board.
- (i) 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.

[Source: Added at 21 Ok Reg 2657, eff 7-11-04 ¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Amended at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 15369, eff 9-11-15; Amended at 33 Ok Reg 1190, eff 9-11-16; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 37 Ok Reg 1001, eff 9-11-20; Amended at 39 Ok Reg 812, eff 9-11-22]

EDITOR'S NOTE: ¹See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

EDITOR'S NOTE: ²See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-3.1. Violation reset

(a) A violation reset shall be activated by any of the following:

- (1) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame.
- (2) A circumvention.
- (3) A retest violation.

(b) When a violation reset is activated, the device will initiate a unique audible and/or visual cue that will warn the driver that the device will enter a permanent lockout in five (5) days. This event will be uniquely recorded in the data storage system and will simultaneously start a countdown that culminates in the permanent lockout. A licensed ignition interlock technician shall remedy a permanent lockout in person. However, the Director may approve standards and procedures for an override lockout. For the purposes of this section, override lockout means a method of overriding a lockout condition by providing a breath sample indicating a negative result.

(c) Anytime a device is submitted pursuant to a violation reset the licensed ignition interlock technician shall perform a violation reset service consisting of, but not limited to:

- (1) Performing maintenance and calibration in accordance with this title, and
- (2) Retrieving all data contained in the data storage system. Proper record maintenance shall be ensured as required in this title.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 15369, eff 9-11-15; Amended at 36 Ok Reg 1520, eff 9-14-19; Amended at 37 Ok Reg 1001, eff 9-11-20]

40:50-1-3.2. Reporting requirements

(a) Reportable violations are as follows:

- (1) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame.
- (2) A circumvention.
- (3) Three (3) retest violations constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.
- (4) Removal of the device.
- (5) Tampering.
- (6) Permanent lockout.

(b) Reportable violations shall be reported to the Installation Authority and/or Monitor, in the form and/or format designated by the Board, 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 reportable violations.
- (4) Maintenance and calibration performed on an ignition interlock device as required by these rules.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 15369, eff 9-11-15; Amended at 33 Ok Reg 1190, eff 9-11-16; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 36 Ok Reg 1520, eff 9-14-19; Amended at 37 Ok Reg 1001, eff 9-11-20]

40:50-1-4. Miscellaneous requirements [REVOKED]

[Source: Added at 21 Ok Reg 2657, eff 7-11-04¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Revoked at 27 Ok Reg 2667, eff 8-26-10]

*EDITOR'S NOTE:*¹ See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

*EDITOR'S NOTE:*² See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-4.1. Installation requirements

The device shall be installed according to the following guidelines:

- (1) Initial device installations shall only be performed in a service center duly licensed by the Board.
- (2) The only person(s) allowed to install or observe the installation of the device are ignition interlock technicians duly licensed by the Board or manufacturer training representatives conducting installation trainings who are conditionally authorized by the Board.
- (3) A designated waiting area that is separate from the installation area is to be provided for the participant.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.
- (5) Installations shall be completed on operable vehicles, as defined in this title.
- (6) The ignition interlock technician shall perform maintenance and calibration on the device in accordance with this title.
- (7) Upon completion of an installation of a device and all the components required for the device to function as required by these rules, the licensed ignition interlock technician shall provide the participant with installation verification in the form and/or format designated by the Board.
- (8) Upon completion of the installation of a device required for compliance with an Installation Authority(s), the licensed ignition interlock technician shall:
 - (A) Provide the participant with installation verification in the form and/or format designated by the Board, and
 - (B) Remit the appropriate fee.
- (9) Outside the State of Oklahoma, upon completion of the installation of a device required for compliance with an Installation Authority(s), the technician or service center appropriately authorized pursuant to their jurisdictional authority, shall:
 - (A) Apply to the Director for authority to issue installation verification in the form and/or format designated by the Board, and
 - (B) Remit the appropriate fee.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 37 Ok Reg 1001, eff 9-11-20; Amended at 39 Ok Reg 812, eff 9-11-22]

40:50-1-5. Maintenance and calibration

(a) The maintenance and calibration of a device shall be completed according to the following guidelines:

- (1) The device shall enter a permanent lockout if the device has not been checked for calibration accuracy within sixty-five (65) days subsequent to the last check for calibration accuracy.

(2) The maintenance and calibration of the device shall only be performed by ignition interlock technicians duly licensed by the Board who shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred.

(3) The maintenance and calibration will consist of, but not be limited to, a check of the device to determine:

(A) The device is configured to the specifications required in this title.

(B) The anti circumvention features are activated and properly functioning.

(C) The device is in calibration.

(D) The device is installed in an operable vehicle as defined in this title.

(i) The device shall be subjected to a calibration confirmation test. This test shall consist of introducing a sample from a calibration standard approved by these rules into the device.

(I) Calibration standard(s) shall be an alcohol concentration equivalent to a range of 0.020 g/210L to 0.050 g/210L plus or minus (+/-) 0.005 g/210L of the stated alcohol concentration.

(II) Only dry gas calibration standards appearing on the Conforming Products List of Calibrating Units for Breath Alcohol Testers (77 FR 64588) published by the National Highway Traffic Safety Administration may be employed in the maintenance and calibration of the ignition interlock device.

(III) Calibration standards shall be operated in accordance with the manufacturer's recommendations, unless modified by the Board or its designee, and shall be maintained in proper working order. This includes, but is not limited to, any required altitude adjustment.

(IV) Preparatory documentation (such as a certificate of analysis) stating the alcohol concentration on the calibration gas standard must be available for inspection while the gas standard is being utilized.

(ii) The calibration confirmation test shall verify the accuracy of the ignition interlock device to be within plus or minus (\pm) 0.01 g/210L of the stated alcohol concentration, unless modified by the Board en banc.

(iii) Should the ignition interlock device fail the calibration confirmation test:

(I) The ignition interlock device shall be recalibrated so as to restore accuracy before the device may be placed into service.

(II) That information shall be provided to the Board or its designee and/or the Installation Authority and/or the monitor upon request.

(iv) If the device fails to meet the requirements in this section, the device shall be removed from service and simultaneously replaced with a device that successfully meets the requirements in this section. All data contained in the data storage of the device being replaced shall be retrieved upon replacement. Records may be maintained electronically.

(b) The manufacturer's software utilized in a licensed service center by the licensed ignition interlock technician shall be capable of performing, documenting and reporting the result of this calibration confirmation test. All data contained in the data storage system shall be retrieved anytime the device is submitted to maintenance and calibration. Records may be maintained electronically. Upon completion of maintenance and calibration of the device, the licensed ignition interlock technician shall provide the participant a report showing the maintenance and calibration of the device.

(c) Outside the State of Oklahoma, maintenance and calibration of a device required for compliance with an Installation Authority, shall be completed in accordance with the rules in this section with the exception that the technician and service center performing applicable services shall be appropriately authorized pursuant to their jurisdictional authority.

[Source: Added at 21 Ok Reg 2657, eff 7-11-04 ¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Amended at 27 Ok Reg 2667, eff 8-26-10; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 36 Ok Reg 1520, eff 9-14-19; Amended at 37 Ok Reg 1001, eff 9-11-20; Amended at 39 Ok Reg 812, eff 9-11-22]

EDITOR'S NOTE: ¹See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

EDITOR'S NOTE: ²See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-6. Approval, denial, and withdrawal of approval [REVOKED]

[Source: Added at 21 Ok Reg 2657, eff 7-11-04 ¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Revoked at 27 Ok Reg 2667, eff 8-26-10]

EDITOR'S NOTE: ¹See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

40:50-1-6.1. Removal requirements

The device shall be removed according to the following guidelines:

- (1) The only person(s) allowed to remove or observe the removal of the device are ignition interlock technicians licensed by the Board.
- (2) A designated waiting area that is separate from the removal area is to be provided for the participant.
- (3) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.
- (4) All data contained in the data storage system shall be retrieved in conjunction with removal of the device. Records may be maintained electronically.
- (5) Upon completion of the removal of the device, harness, relay and all third party materials used to initially install the device, the licensed ignition interlock technician shall:

- (A) Provide the participant a report showing the removal of the device, and
 - (B) Notify the Board in the form and/or format designated by the Board.
 - (C) Notify the installation and monitoring authority in the form and format designated by the Board.
- (6) Outside the State of Oklahoma, the technician or service center appropriately authorized pursuant to their jurisdictional authority, shall upon completion of the removal of the device, harness, relay and all third party materials used to initially install the device:
- (A) Provide the participant a report showing the removal of the device, and
 - (B) Notify the Board in the form and/or format designated by the Board.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 34 Ok Reg 845, eff 9-11-17; Amended at 37 Ok Reg 1001, eff 9-11-20; Amended at 39 Ok Reg 812, eff 9-11-22]

40:50-1-7. Service center licensing process

- (a) All service centers located in the state of Oklahoma must be licensed by the Board in accordance with the requirements stated herein.
- (b) A service center shall be located in a fixed facility which:
 - (1) Is staffed at all times with at least one (1) ignition interlock technician duly licensed by the Board or prominently displays the days and times at which the ignition interlock technician is on duty at the location and ignition interlock services are available, and
 - (2) Properly and successfully accommodates installation, maintenance and calibration, removal and any other necessary services related to a specific device.
- (c) Each service center shall be inspected annually by a designated representative of the Board. Additional inspections may be performed as needed or as directed by the Board.
- (d) A vendor shall inform the Board of a licensed service center change of address within fifteen days of the change by accessing the Board website.
- (e) A vendor seeking licensure for a service center shall initiate a service center license application and remit the appropriate fee by accessing the Board website.
- (f) The applicant shall complete the service center license application.
- (g) Each application for licensure shall be for a single service center. Separate service center applications are required for additional service centers.
- (h) Prior to issuance of a license, an on-site evaluation may be required by the Board to ensure compliance with the requirements in this title.
- (i) The licensed service center shall prominently display a fee schedule reflecting any and all fees related to ignition interlock services.

[Source: Added at 21 Ok Reg 2657, eff 7-11-04 ¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Amended at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 15369, eff 9-11-15; Amended at 33 Ok Reg 1190, eff 9-11-16; Amended at 35 Ok Reg 791, eff 9-14-18]

EDITOR'S NOTE: ¹See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

EDITOR'S NOTE: ²See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-7.1. Approval and denial

(a) The Board shall notify the vendor and applicant of licensure of a service center or of denial to license a service center within 10 days of such determination. The Board may deny licensure of a service center upon finding of any of the following:

- (1) Any false or inaccurate information provided on the service center application.
- (2) Failure to meet all criteria stated in this title.
- (3) Violation or noncompliance of any rules stated in this title.
- (4) Violation of any law of this state that applies to the service center.
- (5) Previous action against the service center such that, in the opinion of the Board, licensure would not uphold the scientific integrity of the device program.

(b) Any request(s) to license additional service centers may be denied if there is pending action against a licensed service center for any violation of these rules.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10]

40:50-1-7.2. Annual renewal

(a) All service center licenses expire June 30th of each year unless inactivated, suspended or revoked by the Board.

(b) The process of license renewal of a service center shall be the same as the service center licensure process stated in this title. The Board shall designate a renewal period within which the license renewal process shall be allowed.

(c) No license shall be renewed if there is pending action against the service center manager or service center for any violation of these rules or outstanding invoices payable to the Board.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10]

40:50-1-7.3. Inactivation, suspension, and revocation

(a) **Inactivation.** Inactivation refers to the voluntary or temporary discontinuance of a license.

- (1) A service center license may be inactivated by the Board:
 - (A) Upon request from the vendor or service center manager, or
 - (B) If the service center no longer employs at least one (1) licensed ignition interlock technician.
- (2) A licensed service center whose license has expired or no longer meets all the requirements for licensure shall be inactivated.
- (3) Upon inactivation, the Board shall forward the notice and order of inactivation of the service center license to the vendor and service center manager specifying the basis for the inactivation.
- (4) Inactivation shall be used for administrative program control to safeguard the scientific integrity of the device program.

(b) **Suspension.** Suspension refers to the immediate curtailment of a license.

- (1) Suspension of a service center license may be initiated by a designated representative of the Board when, because of unreliability, incompetence, or violation of these rules, the service center is not in compliance with the provisions stated in these rules or when, in the opinion of the designated representative of the Board, the continuance of such licensure would not uphold the scientific integrity of the device program and enforcing these rules.

(2) Upon suspension the designated representative of the Board shall provide the vendor and service center manager with a notice and order of

suspension of the service center license specifying the basis for the suspension.

(3) The Board, in its sole discretion, shall determine the period of suspension.

(4) A suspension curtails any license issued to the service center for the period of suspension until reinstatement of the license.

(5) Suspension issued by the Board may prohibit the issuance of official installation verification forms, or the provision of calibration and maintenance services, or both.

(6) Suspension shall be for the purpose of maintaining the scientific integrity of the device program and enforcing these rules.

(7) Licensure of a service center whose license has been suspended will require a written request from the applicant to the Board and successful completion of the original requirements for licensure outlined in this subsection.

(c) **Revocation.** Revocation refers to the immediate cancellation of a license.

(1) A service center license may be revoked by the Board when, in the opinion of the Board, the service center no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules, or in any case where, in the opinion of the Board, continuance of licensure would not uphold the scientific integrity of the ignition interlock program.

(2) A revocation cancels any license issued to the service center for the period of revocation.

(3) The Board, in its sole discretion, shall determine the period of revocation.

(4) Upon revocation, the Board shall forward the notice and order of revocation of the service center license to the vendor and service center manager specifying the basis for the revocation.

(5) During the period of revocation, the revoked service center shall cease any and all activities related to the installation, maintenance and calibration, removal and any other services related to any device in the state of Oklahoma.

(6) Licensure of a service center whose license has been revoked will require a written request from the applicant to the Board and successful completion of the original requirements for licensure outlined in this subsection.

(7) Revocation shall be for the purpose of maintaining the scientific integrity of the device program and enforcing these rules.

(d) A manufacturer shall be responsible for providing continuing service by a licensed service center during the installation period, without interruption, should a service center's license be inactivated or revoked. The vendor, on or before the effective date of an order for inactivation or revocation shall cause the immediate cessation of installation, maintenance and calibration, removal and any other services related to any device at the inactivated or revoked service center. Any inactivated or revoked service center shall not be able to generate official installation verification forms.

(e) If the inactivated or revoked service center is being replaced by the manufacturer, the new licensed service center must be located within 40 driven miles, as determined by the Board, of the service center that was inactivated or revoked. Failure of the manufacturer to license a new service center in accordance

with this paragraph within 30 days of the inactivation or revocation will subject the manufacturer to the provisions of paragraph (f) of this rule. All reasonable efforts shall be made by the manufacturer representative to obtain participant records and data from the service center being replaced and provide them to the new licensed service center. The new licensed service center shall credit each participant all monies paid to the inactivated or revoked service center by the participant for deposits, unrealized lease or services.

(f) If the new licensed service center is not located within 40 driven miles, as determined by the Board, of the inactivated or revoked service center or the inactivated or revoked service center is not being replaced within the timeframe established by paragraph (e) of this rule, the manufacturer shall:

(1) Make all reasonable efforts to obtain participant records and data from the service center being inactivated or revoked.

(2) Be responsible for, and shall bear the cost of:

(A) Removal of the installed device and facilitate the simultaneous installation of another certified device of the participant's choice, regardless of the manufacturer of the device being substituted or the location of the licensed service center chosen by the participant.

(B) Retrieval of the device removed by a licensed service center representing a different manufacturer. Upon removal, the licensed service center removing the original device shall notify the vendor, as soon as possible, of the original device as to where the original device may be retrieved.

(3) Reimburse the participant, within 30 days of removal of the original device, all monies paid to the inactivated or revoked service center by the participant for deposits, unrealized lease or advance payments remitted on behalf of the participant for unrealized services.

(4) The manufacturer shall make every reasonable effort to notify all participants effected by the inactivation or revocation of a service center's license 30 days before the inactivation or revocation will occur, or as soon as is possible.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 1536, eff 9-11-15; Amended at 33 Ok Reg 1190, eff 9-11-16; Amended at 35 Ok Reg 791, eff 9-14-18]

40:50-1-8. Ignition interlock technician

(a) No person may perform any service(s) related to any device in this state without being duly licensed by the Board.

(b) An applicant who has been convicted of, or plead guilty or *nolo contendere*, to an alcohol related traffic offense or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for licensure as an ignition interlock technician may not be eligible for licensure. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(c) An applicant must be at least eighteen (18) years of age.

(d) An applicant must possess a valid driver license without any requirements for ignition interlock.

(e) A vendor seeking licensure for an ignition interlock technician shall initiate an ignition interlock technician license application and remit the appropriate fee by accessing the Board website at www.ok.gov/bot.

(f) The applicant shall:

(1) Complete the ignition interlock technician license application.

- (2) Complete and score an 80% or higher on a knowledge and skills examination administered by the Board.
- (3) Submit a criminal history report certified within the immediately preceding thirty (30) days from either the Oklahoma State Bureau of Investigation or, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.

(g) Each application for licensure shall be for a single ignition interlock technician. Separate ignition interlock technician applications are required for additional ignition interlock technicians.

[Source: Added at 21 Ok Reg 2657, eff 7-11-04¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1029, eff 4-11-08 (emergency); Amended at 25 Ok Reg 1527, eff 6-12-08; Amended at 25 Ok Reg 1029, eff 4-11-08 through 7-14-09 (emergency)³; Amended at 27 Ok Reg 2667, eff 8-26-10; Amended at 34 Ok Reg 845, eff 9-11-17; Amended at 35 Ok Reg 791, eff 9-14-18; Amended at 36 Ok Reg 1520, eff 9-14-19; Amended at 37 Ok Reg 1001, eff 9-11-20]

*EDITOR'S NOTE:*¹ See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

*EDITOR'S NOTE:*² See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

*EDITOR'S NOTE:*³ This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 40:50-1-8 reverted back to the permanent text that became effective 6-12-08, as was last published in the 2008 OAC Supplement, and re-published in the 2009 OAC Supplement, and remained as such until amended by permanent action on 8-26-10.

40:50-1-8.1. Approval and denial

(a) The Board shall notify the vendor and applicant of licensure of an ignition interlock technician or of denial to license an ignition interlock technician within 10 days of such determination.

(b) The Board may deny licensure of an ignition interlock technician upon finding of any of the following:

- (1) Failure to complete and score an 80% or higher on the examination covering the regulatory aspects of the Oklahoma device program.
- (2) Any false or inaccurate information provided on the ignition interlock technician application.
- (3) Failure to meet all criteria stated in this title.
- (4) Violation or noncompliance of any rules stated in this title.
- (5) Previous or current action against the ignition interlock technician such that, in the opinion of the Board, licensure would not uphold the scientific integrity of the device program.

(c) Any request(s) to license additional ignition interlock technicians may be denied if there is pending action against a licensed ignition interlock technician for any violation of these rules.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10]

40:50-1-8.2. Annual renewal

(a) All ignition interlock technician licenses expire June 30th of each year unless inactivated, suspended or revoked by the Board.

(b) The process of license renewal of an ignition interlock technician shall be the same as the ignition interlock technician licensure process stated in this title except

submission of a criminal history report shall be by affidavit of the applicant. The Board shall designate a renewal period within which the license renewal process shall be allowed.

(c) No license shall be renewed if there is pending action against the ignition interlock technician for any violation of these rules or outstanding invoices payable to the Board.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10]

40:50-1-8.3. Inactivation, suspension, and revocation

(a) **Inactivation.** Inactivation refers to the voluntary or temporary discontinuance of a license.

(1) Inactivation of an ignition interlock technician license may be initiated by the Board:

(A) Upon request from the vendor, service center manager or ignition interlock technician.

(B) If the ignition interlock technician is no longer employed by a licensed service center representing the same manufacturer under which the current ignition Interlock technician license was issued.

(C) If an ignition interlock technician's license has expired or,

(D) The ignition interlock technician no longer meets all the licensing requirements.

(2) The Board shall provide the ignition interlock technician, vendor and service center manager with a notice and order of inactivation of the ignition interlock technician license specifying the basis for the inactivation.

(3) Inactivation shall be used for administrative program control to safeguard the scientific integrity of the device program.

(4) The renewal of an inactivated ignition interlock technician license shall be the same, unless modified by the Board, as the ignition interlock technician licensure process stated in this title.

(b) **Suspension.** Suspension refers to the immediate and temporary cancellation of a license.

(1) Suspension of an ignition interlock technician license may be initiated by a designated representative of the Board when, because of unreliability, incompetence, or violation of these rules, the ignition interlock technician is not in compliance with the provisions stated in these rules or when, in the opinion of the designated representative of the Board, the continuance of such licensure would not uphold the scientific integrity of the device program.

(2) The Board shall provide the ignition interlock technician, vendor and service center manager with a notice and order of suspension of the ignition interlock technician license specifying the basis for the suspension.

(3) The Board, in its sole discretion, shall determine the period of suspension.

(4) A suspension curtails any license issued to the ignition interlock technician for the period of suspension until reinstatement of the license.

(5) Suspension issued by the Board may prohibit the issuance of official installation verification forms or the provision of calibration and maintenance services, or both.

(6) Licensure of an ignition interlock technician whose license has been suspended will require a written request from the applicant to the Board and

successful completion of the original requirements for licensure outlined in this subsection.

(7) Suspension shall be for the purpose of maintaining the scientific integrity of the device program and enforcing these rules.

(c) **Revocation.** Revocation refers to the immediate cancellation of a license.

(1) An ignition interlock technician license may be revoked by the Board when, in the opinion of the Board, the ignition interlock technician no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules, or in any case where, in the opinion of the Board, continuance of licensure would not uphold the scientific integrity of the ignition interlock program.

(2) Upon revocation, the Board shall forward the notice and order of revocation of the ignition interlock technician license to the ignition interlock technician, vendor and service center manager specifying the basis for the revocation.

(3) The Board, in its sole discretion, shall determine the period of revocation.

(4) A revocation cancels any license issued to the ignition interlock technician for the period of revocation.

(5) During the period of revocation, the revoked ignition interlock technician shall cease any and all activities related to the device in the state of Oklahoma.

(6) Licensure of an ignition interlock technician whose license has been revoked will require a written request from the applicant to the Board and successful completion of the original requirements for licensure outlined in this subsection.

(7) Revocation shall be for the purpose of maintaining the scientific integrity of the device program and enforcing these rules.

[Source: Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 32 Ok Reg 1536, eff 9-11-15; Amended at 35 Ok Reg 791, eff 9-14-18]

40:50-1-9. Ignition interlock inspector [REVOKED]

[Source: Added at 21 Ok Reg 2657, eff 7-11-04¹; Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)²; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)²; Amended at 25 Ok Reg 1527, eff 6-12-08; Revoked at 27 Ok Reg 2667, eff 8-26-10]

*EDITOR'S NOTE:*¹ See first Editor's Note at beginning of this Chapter and Editor's Notice at 21 Ok Reg 3123.

*EDITOR'S NOTE:*² See second Editor's Note at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-10. Appeal process

An appeal of any action issued under the requirements in this title may be made in the following manner:

(1) **The Director.**

(A) A request for appeal must be received at the administrative offices of the Board within 30 days of the date of action.

(B) Upon proper submission, the Director shall issue an administrative order sustaining or overruling the action within 30 days.

(2) **The Board *en banc*.**

(A) A request for appeal of an administrative order shall be received at the administrative offices of the Board within 30 days of the date of the administrative order.

(B) Upon proper submission, the Board *en banc* shall issue a final administrative order sustaining or overruling the administrative order.

(3) An appeal of a final administrative order of the Board *en banc* may be made in accordance with the requirements in the Oklahoma Administrative Procedures Act, 75 O.S. 250, et seq.

[Source: Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 27 Ok Reg 2667, eff 8-26-10]

40:50-1-11. Approved ignition interlock devices [REVOKED]

[Source: Added at 22 Ok Reg 221, eff 10-27-04 (emergency); Added at 22 Ok Reg 1714, eff 6-25-05; Amended at 24 Ok Reg 287, eff 11-1-06 (emergency)¹; Amended at 24 Ok Reg 2683, eff 6-4-07 (emergency)¹; Amended at 25 Ok Reg 1527, eff 6-12-08; Revoked at 27 Ok Reg 2667, eff 8-26-10]

EDITOR'S NOTE: ¹See Editor's Note ??? at beginning of this Chapter for additional information about these two emergency actions.

40:50-1-12. Reciprocity

(a) Reciprocity may be granted by the Board in its sole discretion when consistent with applicable statutes and regulations and beneficial to the public safety and welfare.

(b) The Board may set policies and procedures for the consideration of requests for reciprocity.

(c) Reciprocity must be requested in writing by the person affected or their attorney on a form provided by the Board.

(d) Requests for reciprocity shall be granted or denied by the Board in writing.

[Source: Added at 32 Ok Reg 1536, eff 9-11-15]

CHAPTER 55. SCREENING DEVICES

[Authority: 47 O.S., §759]

[Source: Codified 9-11-17]

SUBCHAPTER 1. ALCOHOL SCREENING DEVICES

40:55-1-1. Approved devices

Devices listed on the current *Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids* (77 FR 35745) or the *Conforming Products List of Evidential Breath Alcohol Measurement Devices* (82 FR 50940), or conforming to the *Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids* (73 FR 16956) or the *Model Specifications for Evidential Breath Alcohol Measurement Devices* (58 FR 48705), published by the National Highway Traffic Safety Administration are approved for use as alcohol screening devices for law enforcement use to aid in the detection of impaired drivers.

[Source: Added at 34 Ok Reg 847, eff 9-11-17; Amended at 35 Ok Reg 799, eff 9-14-18]

40:55-1-2. Operating Procedure

(a) **Authorized use.** Alcohol screening devices approved by these rules shall be used as a presumptive preliminary breath test. The operator of the alcohol screening

device, or the law enforcement agency employing the operator, shall determine the appropriate timing for use of the alcohol screening device during impaired driving investigations.

(b) **Operation.** Alcohol screening devices approved by these rules shall be operated in accordance with the manufacturer's instructions. In addition to any manufacturer's instructions, the operator of the alcohol screening device shall observe the subject for at least 15 minutes prior to obtaining a breath sample to confirm that the subject has not ingested any substance, vomited, or smoked during that time.

[Source: Added at 34 Ok Reg 847, eff 9-11-17]

40:55-1-3. Calibration check and calibration

(a) **Authorized personnel.** The calibration, or calibration check, may be performed by the operator, a designated member of the law enforcement agency employing the operator, or a third party in accordance with the manufacturer's instructions.

(b) **Calibration check interval and procedure.** Alcohol screening devices approved by these rules shall be checked for calibration accuracy annually. Calibration accuracy shall be within (\pm) 0.005 g/210L of the value of the reference method at the time of the calibration check. Calibration checks shall be performed in accordance with the manufacturer's instructions.

(c) **Calibration procedure.** Calibrations shall be performed in accordance with the manufacturer's instructions when a calibration check falls outside (\pm) 0.005 g/210L of the value of the reference method at the time of the calibration check.

[Source: Added at 34 Ok Reg 847, eff 9-11-17]

SUBCHAPTER 2. DRUG SCREENING DEVICES

40:55-2-1. Approved method

The approved method for drug screening devices for use in the field by law enforcement officers is oral fluid testing accomplished by immunoassay lateral flow testing devices.

[Source: Added at 34 Ok Reg 847, eff 9-11-17]

40:55-2-2. Approved devices

The following devices are approved for use as drug screening devices:

- (1) Draeger Drug Test 5000
- (2) Alere DDS-2 or Abbott SoToxa

[Source: Added at 34 Ok Reg 847, eff 9-11-17; Amended at 37 Ok Reg 1005, eff 9-11-20]

40:55-2-3. Operating Procedure, use, precautions, and maintenance

(a) **Authorized use.** Oral fluid drug screening devices approved by these rules shall be used as presumptive tests. The operator of the oral fluid screening device, or the law enforcement agency employing the operator, shall determine the appropriate timing for use of the oral fluid screening device during impaired driving investigations. The drug screening device results do not imply impairment in and of themselves. All precautions for the safety of the subject as prescribed by the manufacturer shall be adhered to.

(b) **Training.** The operator of the oral fluid drug screening device shall be trained in the use of the approved drug screening device in accordance with the manufacturer's specifications. A law enforcement agency may adopt and carry out

such trainings.

(c) **Operation.** Oral fluid screening devices approved by these rules shall be operated in accordance with the manufacturer's instructions. Use of expired oral fluid test cartridges is prohibited. In addition to any manufacturer's instructions, the operator of the oral fluid screening device shall observe the subject for at least 15 minutes prior to obtaining an oral fluid sample to confirm that the subject has not ingested any substance, vomited, or smoked during that time.

(d) **Maintenance.** Approved drug screening devices shall be maintained in accordance with the manufacturer's instructions.

[Source: Added at 34 Ok Reg 847, eff 9-11-17; Amended at 39 Ok Reg 816, eff 9-11-22]