STATE OF OKLAHOMA
BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE

Dr. Kenneth E. Blick, Ph.D.
Chairman

Post Office Box 36307
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Joshua Smith
Director

SPECIAL MEETING 03/10/2021
AGENDA

1. Call to Order and Roll Call

2. Statement of Compliance with the Open Meetings Act
   a. Posting and special notices sent out on March 4, 2021

3. Approval of Minutes
   a. November 10, 2020 Regular Board Meeting

4. Director's Report

5. Comments from interested parties for the petition for Declaratory Ruling or Other Order regarding Disposable Materials, Supplies And Paraphernalia submitted by DPS
   a. Department of Public Safety or designee
   b. District Attorney's Council or designee
   c. Mr. Stephen Fabian or designee
   d. Mr. Brian Morton or designee

6. Discussion and possible action for Declaratory Ruling or Other Order regarding Disposable Materials, Supplies And Paraphernalia to all parties

   *Actions the Board may take include but are not limited to adopting the proposed order, amending the order, or continuing the matter.

   "It is unclear whether the matter before the Board is properly a declaratory ruling or other order. Nevertheless, the Board is authorized by OAC 40:1-1-5 to issue "other orders . . . whether affirmative, negative, injunctive, or declaratory in form." To the extent that this ruling or other order may be construed to be a rule that was not properly promulgated, both a declaratory ruling and "orders by an agency" are expressly excluded from the definition of "rule" in the Administrative Procedures Act. 75 O.S. § 250.3(17)(b) and (e)."

7. Discussion and possible action on proposed Permanent Rulemaking
   a. OAC Title 40 Chapter 1
   b. OAC Title 40 Chapter 20
   c. OAC Title 40 Chapter 25
   d. OAC Title 40 Chapter 30
   e. OAC Title 40 Chapter 40
   f. OAC Title 40 Chapter 50

8. Chairman's Report

9. Public Comments – In accordance with the Open Meetings Act, no action will be taken on public comments.

10. New Business as defined and in accordance with 25 O.S. § 311

11. Adjournment

1. Call to Order and Roll Call

2. Statement of Compliance with Open Meetings Act

3. Approval of Minutes

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State Director

The agenda for this meeting was posted in accordance with Title 25 Section 311.A.9, at the Administrative Offices of the Board of Tests for Alcohol and Drug Influence, 3600 North Martin Luther King Avenue, Building 9, Oklahoma City, OK, 73111.

Regular Meeting AT OKLAHOMA CITY, OKLAHOMA
Of the Board of Tests for Alcohol and Drug Influence
Oklahoma Department of Public Safety Complex,
W.C. Sarg Smith Classroom
3600 North Martin Luther King Avenue, Oklahoma City, OK, 73111

Tuesday November 10, 2020
10:00 A.M. CDT

MINUTES

(BOARD MEMBERS/STAFF ATTENDED THE MEETING IN PERSON AND VIA VIDEO/TELE-CONFERENCE USING GOTOMEETINGS. THE PUBLIC WAS ALLOWED TO ATTEND IN PERSON AND WAS PROVIDED DIRECTIONS TO ATTEND VIA GOTOMEETINGS. AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR WAS IN EFFECT FOR A STATE OF EMERGENCY DUE TO THE COVID-19 PANDEMIC. THE MEETING WAS HELD IN COMPLIANCE WITH 25 O.S. § 307.1.)

BOARD MEMBERS PRESENT:
Dr. Kenneth Blick, OU Health Science - Chair
Dr. Jarrad Wagner, OSU Health Science - Vice Chair
Sheriff Chris West, Sheriffs and Peace Officers Association
Kevin Kramer, State Bureau of Investigations
Dr. S. Terence Dunn, Department of Health
Director Jesus Campa, Council on Law Enforcement Education and Training

STAFF PRESENT:
Josh Smith, Director
Jenifer Steiner, Business Manager
David Barnett, Interlock Administrator
Magan Stow, Interlock Assistance Rep

1. Call Meeting to Order

Action Taken: Dr. Blick called the meeting to order at approximately 10:10 a.m. Roll was taken; six members were present representing a quorum.

2. Statement of Compliance with the Open Meeting Act

Dr. Blick gave statement of compliance for the record.

3. Approval of Minutes for the regular meetings held February 25, 2020 and May 12, 2020:

Action Taken: Dr. Wagner motioned to approve the minutes for the regular meetings held February 25, 2020 and May 12, 2020. Kevin Kramer second the motion.

A roll call vote was taken with the following results Dr. Blick voted yes, Dr. Wagner voted yes, Director Campa abstained, Dr. Dunn voted yes, Kevin Kramer voted yes, Sheriff West voted yes

4. Director's Report

Director Smith gave a brief update on the Administration, Breath-Testing, Interlock, and Training Programs. The director also let the Board know he will have some rule amendments that will be published for public review and comment and that he would ensure all Board members would receive all comments and proposed rules prior to the next meeting. Director Smith introduced and welcomed Director Campa from CLEET as our newest Board member.

Action Taken: Sheriff West motioned to approve the director's report. Director Campa seconded the motion.

A roll call vote was taken with the following results Dr. Blick voted yes, Dr. Wagner voted yes, Director Campa voted yes, Dr. Dunn voted yes, Kevin Kramer voted yes, Sheriff West voted yes

5. Discussion and possible action on Petition for Declaratory ruling received from Oklahoma Department of Public Safety

Director Smith explained that the Department of Public Safety submitted a petition for declaratory ruling as he had shared via email with the members. Director Smith informed the Board that Mr. Stephen Fabian and Mr. Brian Morton brought to his attention that by rule the Board should allow input from all interested parties. The Department of Public Safety did not provide a list of interested parties. Director Smith informed the Board that it may be necessary to clarify the administrative rules to ensure that all parties are given an opportunity to provide input on a petition. He reported that currently the petitioner identifies the interested parties and it would be more appropriate for the Board to identify those parties. The Board discussed and decided that a 30 day comment period would be appropriate to all interested parties before the Board takes action and adopts a Declaratory Ruling. Dr. Blick requested a motion from the members.

Action Taken: Sheriff West made a motion to allow 30 days for public comment on the Declaratory Ruling and the director receive those comments, provide a review to the board members and revisit the agenda item at the next Board meeting. Director Campa seconded the motion.

A roll call vote was taken with the following results Dr. Blick voted yes, Dr. Wagner voted yes, Director Campa voted yes, Dr. Dunn voted yes, Kevin Kramer voted yes, Sheriff West voted yes

6. Discussion and possible action on 2021 Regular Board meeting dates:

Suggested Dates for 2021 Regular Meetings:
February 9, 2021
May 18, 2021

August 3, 2021
November 9, 2021

Action Taken: Dr. Wagner motioned to approve the suggested dates for the 2021 Regular Board Meetings all being held at 10:00 am. Kevin Kramer seconded the motion.

A roll call vote was taken with the following results Dr. Blick voted yes, Dr. Wagner voted yes, Director Campa voted yes, Dr. Dunn voted yes, Kevin Kramer voted yes, Sheriff West voted yes

7. Chairman's Report

Dr. Blick extended a thank you and congratulations to staff members for staying the course and keeping things going during the pandemic.

8. Adjournment

Action Taken: Sheriff West motioned to adjourn the meeting. Kevin Kramer seconded the motion.

A roll call vote was taken with the following results Dr. Blick voted yes, Dr. Wagner voted yes, Director Campa voted yes, Dr. Dunn voted yes, Kevin Kramer voted yes, Sheriff West voted yes

Respectfully submitted,

Chairman Kenneth Blick
Board of Tests for Alcohol and Drug Influence

THIS MEETING WAS HELD VIA TELECONFERENCING, VIDEOCONFERENCING, AND IN PERSON AT 3600 N. MARTIN LUTHER KING AVE. OKLAHOMA CITY, OK 73111 BUILDING #9 ON DPS CAMPUS W.C. (SARG) SMITH CLASSROOM

4. Director's Report

5. Comments from interested parties

6. Discussion and possible action for ruling or order

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State Director

DECLARATORY RULING OR OTHER ORDER

DISPOSABLE MATERIALS, SUPPLIES AND PARAPHERNALIA

Adopted March 10, 2021 Special Board Meeting

Background:

The Oklahoma Department of Public Safety filed a petition for declaratory ruling[1] with the Board of Tests State Director on October 9, 2020 via email and hand delivered the original notarized petition October 13, 2020. During its November 10, 2020 regular board meeting, the Board motioned and voted for the Director to notify interested parties and collect responses with a thirty (30) day deadline. All known interested parties were notified and given thirty (30) days to submit replies, arguments or information regarding the filed petition. After review of the responses received from interested parties, the Board, at its February 9, 2021 meeting, in accordance with the procedure in Board rule OAC 40:1-1-5, voted to issue the following declaratory ruling or other order. The petition and responses received from interested parties concerned the amendments and revoked language in Title 40 of the Oklahoma Administrative Code related to disposable materials, supplies, and paraphernalia.

The Petition:

Excerpt taken from the received petition:

"The Department contends the disposable mouthpiece, as important as it may be, is not necessary to obtain a valid breath test from a subject. Specifically, the Department contends the purpose of the disposable mouthpiece is twofold:

1. To protect the breath test instrumentation from damage from vomitus, mucus, or other contaminants.

2. To protect breath test subjects from the spread of disease.

Neither of these purposes have any effect on the validity of the breath test itself. Indeed, a valid breath test could be obtained without the use of a disposable mouthpiece. In the event a

[1] It is unclear whether the matter before the Board is properly a declaratory ruling or other order. Nevertheless, the Board is authorized by OAC 40:1-1-5 to issue "other orders . . . whether affirmative, negative, injunctive, or declaratory in form." To the extent that this ruling or other order may be construed to be a rule that was not properly promulgated, both a declaratory ruling and "orders by an agency" are expressly excluded from the definition of "rule" in the Administrative Procedures Act. 75 O.S. § 250.3(17)(b) and (e).

breath test were administered with no mouthpiece, there is no valid reason to believe the breath test result would be somehow effected by the lack of a mouthpiece.

Similarly, the Board's existing operating procedure contains a provision regarding hard plastic items in a breath test subject's mouth. Specifically, the operating procedures require the operator to "determine that the subject's mouth has no presence of any substantial loose material(s), foreign substance(s), or any such substance. Metal, porcelain, or ***hard plastic*** *need not be removed." OAC 40:30-l-3(b) (emphasis added). This statement suggests hard plastic objects need not be removed from the mouth. In other words, hard plastic materials have no effect on the administration of a breath test.*

This conclusion is supported by the rule-making record prepared by the Board in 2017. Therein, as previously described, the rules regarding disposable materials, including mouthpieces, were deemed "unnecessary". If the rule regarding the approval of mouthpieces was unnecessary in 2017, the intervening years have not made it necessary. There has been no rash of breath tests administered without a mouthpiece. Law enforcement officers are trained to use a mouthpiece to protect the instrument and the test subject. The change to the rules has no practical impact on the administration of breath tests in Oklahoma.

Likewise, the Board demonstrated it had the capacity to determine whether a disposable item is necessary to the administration of a valid test. Specifically, in the same rule-making action, the Board adopted explicit language approving "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" for the collection of blood samples. Therefore, the Board was fully capable of, and competent to, revoke the rules approving some disposable materials (mouthpieces) and approving others (blood tubes). The distinction made by the Board in 2017 supports the contention that the rule revoking the approval of mouthpieces reflects the rule is no longer necessary."

Findings of fact:

A review of the 2017 Board of Tests rule-making record clearly documents that the adopted rules were required to conform to the Court of Civil Appeals' opinion in *Sample v. DPS, 2016 OK CIV APP 62*. In *Sample,* the Court of Civil Appeals held that the Board exceeded its authority by delegating the approval of disposable materials to its State Director. All administrative rules and actions regarding disposable materials previously approved by the State Director were affected by *Sample*. The potential inability to introduce evidential results into evidence in Oklahoma Courts caused by the resulting conflicting language would effectively shut down the State's evidential breath and blood testing programs if not corrected. Language regarding disposable materials, supplies, and paraphernalia were moved to 40 O.A.C. 20-1-3 and all unnecessary language was revoked after full review and input from the Board members and staff. Emergency action was approved and taken on October 7, 2016 by the Board *en banc* during a Special Meeting and subsequently received gubernatorial approval on October 10, 2016. These amendments to the rules were approved and adopted again by the Board *en banc* February 28, 2017 with a proposed effective date of August 3, 2017 in compliance with the Oklahoma Administrative Procedures Act. The final adoption occurred June 13, 2017 via Governor's Declaration with a permanent effective date of September 11, 2017.

Conclusion:

The Board affirms that the use or non-use of a mouthpiece has no scientific or evidential weight in determining or measuring alcohol in breath. The mouthpiece exclusively serves as a means of sanitation between multiple users of the instrument. As cited in 47 O.S. § 759 (C) "*The Board is authorized to prescribe uniform standards, conditions, methods, procedures, techniques, devices, equipment and records for the collection, handling, retention, storage, preservation and*

delivery of specimens of blood, breath, saliva and urine obtained for the purpose of determining the alcohol concentration thereof or the presence or concentration of any other intoxicating substance therein. The Board may take such other actions as may be reasonably necessary or appropriate to effectuate the purposes of Sections 751 through 761 of this title and Sections 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt, amend and repeal such other rules consistent with this chapter as the Board shall determine proper." The statute clearly states that the Board is authorized, not mandated, to prescribe uniform standards, devices, equipment, etc. and is statutorily authorized to repeal and amend rules to appropriately effectuate the purposes of 47 O.S. Sections 751 through 761 as the Board determines proper. The Board has adopted rules that scientifically effectuate the purposes of 47 O.S. Sections 751 through 761. Disposable materials such as the mouthpiece do not play an active role in the measurement of breath alcohol concentration and therefore, do not belong in our administrative rules. Oklahoma's bordering states; Arkansas, Colorado, Kansas, Missouri, and Texas have no mouthpieces approved in their administrative rules. New Mexico is the only bordering state that has a rule approving mouthpieces in their administrative code as cited from NMAC 7.33.2.9 (H.) and the approved list cites "Any disposable, individually wrapped, standard mouthpiece that is compatible with the Intoxilyzer 8000." New Mexico also cites by definition NMAC 7.33.2.7 (W.) "Supplies" - items that are used in the process of administering a breath or blood test but do not impact the test results, including but not limited to mouthpieces, and printer paper.

Dr. Kurt Dubowski was well aware of disposable mouthpieces and their function for breath testing instrumentation. Dr. Dubowski did not include mouthpieces when he published many articles including "Quality Assurance in Breath-Alcohol Analysis" *Journal of Analytical Toxicology*, Vol.18, October 1994, pp. 306-311, to his peers (excerpt cited) "*Particularly important are the following necessary scientific safeguards as components of quality control: (a) a pretest deprivation-observation period of at least 15 minutes; (b) blank tests immediately preceding each breath-collection step; (c) analysis of at least duplicate breath specimens; and (d) a control test accompanying every subject test. These safeguards have withstood adversarial challenges in the judicial system for more than 30 years."* A formal rule requiring approval of non-essential supplies or materials such as mouthpieces, ink pens, printer paper, external printers, or keyboard covers to be used with the approved breath testing device is unnecessary and plays no active role in the scientific measurement procedure or quality assurance. The rules adopted by the Board in 2016 - 2017 related to disposable materials, supplies, and paraphernalia in response to the Court of Civil Appeals' opinion given in *Sample v. DPS* do not require amendment.

Ruling/Order:

The Board of Tests for Alcohol and Drug Influence determined in 2016 via emergency action when the rules were analyzed, approved and adopted by the Board that a mouthpiece was never necessary or required in order to administer a valid breath-alcohol test on evidential breath testing devices approved by the Board for determining the presence and/or concentration of alcohol from a person's breath. Therefore, this ruling/order retroactively applies to all evidential breath tests that have been conducted in the state of Oklahoma since the creation of the agency and it's approved evidential breath testing devices.

Disposable materials used by qualified professionals in the capacity of their employment to withdraw/collect blood into Board approved vials is equivalent to the disposable materials an operator uses to collect breath. Such medical professionals or phlebotomists are trained and certified to use and practice universal precautions while performing those tasks just as the Oklahoma Breath Testing Operator is trained and certified to use and practice universal precautions to perform a breath test collection. The purpose of the mouthpiece exclusively serves as a means of sanitation between multiple users of the instrument and is not required to be administratively governed by this Board.

The Board hereby notifies all parties that no particulate or foreign matter may enter the sample chamber and interfere with measurement. The Intoxilyzer 8000 has additional screens in multiple locations internally that prevent such matter from entering the testing chamber. Multiple instrument safeguards incorporated into the testing sequence also ensure the continued protection of the breath samples and the quality/accuracy of the test measurement.

The Board respectfully gives notice to all parties that the instrument analyzes dry gas samples during the testing sequence without a mouthpiece and analyzes known wet bath solutions from simulators during maintenance without mouthpieces. For any party to take a scientific stance that the mouthpiece plays a role in measurement provides proof that the party is not an expert nor are they experienced in alcohol breath testing collection and analysis.

The mouthpiece prompt received by the operator from the Intoxilyzer 8000 at time of test serves as a reminder to the operator to use a new mouthpiece with each tested subject as trained. The issue at hand does not appear to be an issue of failure to use a mouthpiece. The Board has not received any complaint from the public or legal community regarding an operator's failure to use a mouthpiece. The permitted operator is formally trained regarding the mouthpiece's role, proper mouthpiece use and sanitary practices. The use or non-use of a mouthpiece has no scientific weight or affect in the infrared measurement of ethanol as demonstrated by the dry gas calibration check and bench check report printed during maintenance. The use or non-use of a mouthpiece does not invalidate an otherwise valid test. The amendments, relocations, and revocation of Title 40 of the Oklahoma Administrative Code related to disposable materials, supplies, and paraphernalia is a reflection of this scientific conclusion and action that was taken by the Board in 2016.

Respectfully,

Board *en Banc*
Response Voted and Approved March 10, 2021 Special Board Meeting
Oklahoma Board of Tests for Alcohol and Drug Influence

Affirmed Signatures:

Dr. Kenneth Blick Board Chair	Dr. Jarrad Wagner Board Vice-Chair	Joshua Smith Director

7. Discussion and action on proposed rules

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 statues, 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~~; and ROBERT'S RULES OF ORDER, latest available edition, shall serve as the parliamentary authority for meetings of the Board~~ 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]

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.

~~(a) A law enforcement agency designating blood as the specimen to be obtained and tested for the alcohol concentration thereof shall exempt and exclude any person with hemophilia and any person who is taking anticoagulant medication(s) under the direction of a licensed healing arts practitioner from the collection of blood specimen(s) and from submission to test(s) of blood. A test or tests of breath for the alcohol concentration thereof shall be an approved alternate test to be administered to any such person.~~

~~(c)~~(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]

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. ~~approved by the State Director of Tests for Alcohol and Drug Influence, and~~ A sealed container must ~~bearing~~be accompanied with a Blood Test Officers affidavit or containing 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. ~~approved by the State Director of Tests for Alcohol and Drug Influence, and~~ A sealed container must ~~bearing~~be accompanied with a Blood Test Officers affidavit or contain~~ing~~ 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]

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. ~~approved by the State Director of Tests for Alcohol and Drug Influence, and~~ A sealed container must ~~bearing~~be accompanied with a Blood Test Officers affidavit or containing 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. ~~approved by the State Director of Tests for Alcohol and Drug Influence, and~~ A sealed container must ~~bearing~~be accompanied with a Blood Test Officers affidavit or contain~~ing~~ 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]

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.

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 (±0.01g/210L).

(6) The operator performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the 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 (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath (± 0.03g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantive. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.

(d) **Maintenance.** Maintenance shall be performed on 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~~, according to the procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence.~~ 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]

EDITOR'S NOTE: *[1]Pursuant 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 supserseded 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: *[2]On 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.*

40:40-1-2. 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 quantitation or qualification 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.~~a person holding a currently valid Forensic Drug Analysis Permit issued by authority of the Board of Tests for Alcohol and Drug Influence.~~

(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.

(1) Methods and procedures shall be performed in compliance with ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accreditation. ~~Analysis of blood for other intoxicating substances may be carried out, to the extent feasible, by the combination of one or more initial (qualitative) tests and one or more confirmatory quantitative analyses; or entirely by means of suitable confirmatory quantitative analysis methods for any given analyte.~~

~~(2) Initial (qualitative) tests shall employ methods based on one or more of the following analysis principles:~~

~~(A) Chromatography; including gas chromatography, liquid chromatography, thin-layer chromatography~~

~~(B) Fluorometry~~

~~(C) Immunochemical assays; including homogeneous enzyme immunoassay, radioimmunoassay, and fluorescence polarization immunoassay~~

~~(D) Spectrophotometry; including infrared, ultraviolet, and visible light spectrophotometry~~

~~(E) Other analysis principles generally-recognized by competent authorities in forensic toxicology.~~

(2) ~~Confirmatory (quantitative) analysis methods shall be based on one or more of the following analysis principles:~~

~~(A) Gas chromatography; including capillary and packed column gas chromatography~~

~~(B) Gas chromatography combined with mass spectrometry (GC/MS)~~

~~(C) Liquid chromatography~~

~~(D) Liquid chromatography combined with mass spectrometry (LC/MS)~~

~~(E) Spectrophotometry; including infrared, ultraviolet, and visible light spectrophotometry~~

~~(F) Spectrophotofluorometry~~

~~(G) Other analysis principles generally-recognized by competent authorities in forensic toxicology.~~

(3) ~~If initial (qualitative) test(s) are employed and yield positive result(s), the subsequent confirmation and quantitation of target analyte(s) shall be performed by confirmatory quantitative methods based on different principle(s) from those on which the initial test(s) are based. Specimens of blood or its components which yield negative results for specified target analyte(s) in one or more appropriate initial (qualitative) tests need not be subjected to further analysis for those analyte(s).~~

(4) ~~In performing quantitative analyses, one or more appropriate internal standard(s) shall be added to all unknown specimen(s) and to all control specimens, when appropriate.~~

(5) ~~Any specimen which has been analyzed directly by confirmatory quantitative methods [i.e., without a preceding initial (qualitative) test] should be subjected to an additional confirmatory analysis employing different analytical principle(s), when feasible.~~

(6) ~~Separation of target analytes from the blood or blood component matrix, if required, may be carried out by methods based on one or more of the following principles:~~

~~(A) Liquid-phase extraction; including liquid/liquid extraction~~

~~(B) Solid-phase extraction, including column chromatography~~

~~(C) Combined liquid and solid-phase extraction~~

~~(D) Vapor-phase separation~~

~~(E) Other separation principles generally recognized by competent authorities in forensic toxicology.~~

(e) Quality assurance.

(1) Quality assurance shall be performed in compliance with ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accreditation.~~Analysis of other intoxicating substances in blood shall be carried out in conjunction with adequate and appropriate quality assurance procedures.~~

(2) ~~Quality assurance procedures shall include documentation of the specificity, sensitivity, detection limits, linearity limits, precision and accuracy of all methods employed for initial (qualitative) or confirmatory quantitative analysis.~~

(3) ~~Every analysis, whether of a single blood specimen or a group of specimens analyzed together, shall include at least the following quality assurance specimens for each target analyte:~~

~~(A) Reagent blank(s)~~

~~(B) At least two (2) calibrators of concentrations within the linearity limits of the instant method (for confirmatory quantitative methods only)~~

~~(C) One or more "negative" controls consisting of the same biological specimen matrix as that of the unknown specimen(s), and devoid of the target analyte(s)~~

~~(D) One or more "positive" controls consisting of the same kind of biological specimen matrix as that of the unknown specimen(s), and containing the target analyte(s) at appropriate concentration(s).~~

(f) Records and reports.

(1) Record keeping and reporting shall be performed in compliance with ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accreditation.~~The Forensic Drug Laboratory shall, for each specimen analyzed for other intoxicating substances, maintain in its files a record of all analysts observations, all "raw" analytical data produced by instrumental analysis or otherwise, and all data reduction and data treatment leading to the reported results; together with documentation of the analyte(s) sought, identification of all method(s) of analysis employed, the ultimate findings and results, and a copy of any laboratory report rendered.~~

(2) ~~Reports of analyses for other intoxicating substances shall contain substantially the following information:~~

~~(A) Customary information concerning the identity of the person from whom the specimen was obtained; and the date and time of specimen collection, if known~~

~~(B) Nature of the specimen (whole blood, blood serum, blood plasma, etc.)~~

~~(C) The identity of each other intoxicating substance found present in the specimen, expressed in correct chemical terminology~~

~~(D) The concentration of each other intoxicating substance found, expressed in micrograms per milliliter (mcg/mL) or nanograms per milliliter (ng/mL) of blood (or other specimen), as appropriate for the intoxicating substance concerned. The units of concentration employed shall be clearly stated in every analysis report for every analyte~~

~~(E) The date of completion of the analysis and the date of rendering of the report~~

~~(F) Identifying information concerning the Forensic Drug Laboratory, including its name and location~~

~~(G) Identification of the Forensic Drug Analyst(s) who analyzed the specimen(s) and obtained the findings reported~~

~~(H) The name, title, and signature of the person rendering the report.~~

[**Source:** Amended at 14 Ok Reg 1536, eff 7-1-97]

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 asintended.

(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 ~~documented~~final action against a device or manufacturer received by other state administrators or agencies in the United States.

~~(c) The Board may prescribe procedures for the conditional approval of devices in the event of:~~

~~(1) Technical non-compliance with the certification requirements that does not represent a threat to the safety of the public or the user of the device, or diminish the effectiveness of the device in preventing unauthorized vehicle starts.~~

~~(2) Conditional approval of a previously approved device would temporarily ease the administrative burden on the agency.~~

~~(d) The decision to award conditional approval lies solely with the Board.~~

(e) ~~When granted, conditional approval shall not exceed one six (6) month period.~~

[**Source:** Added at 27 Ok Reg 2667, eff 8-26-10; Amended at 35 Ok Reg 791, eff9-14-18]

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 ~~revocation~~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 ~~is~~possible.

~~(c) A manufacturer of a previously decertified device may apply to have the device certified in accordance with the provisions stated in this title.~~

(~~d~~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]

8. Chairman's Report

9. Public Comments

10. New Business

11. Adjournment