

**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.

#### **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](http://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; 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.
- (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.

#### **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 full 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.

#### **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 all the provisions of the Oklahoma Administrative Procedures Act, and otherwise in accordance with procedures and practices determined or designated by the Board.

#### **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]