

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES, AND POLICIES**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 40:1-1-2. Organization, powers and duties [AMENDED]
- 40:1-1-3. General course and method of operation [AMENDED]
- 40:1-1-5. Rules of practice for individual proceedings [AMENDED]

SUMMARY:

The proposed rule amendments update and clarify the roles and responsibilities of the members of the Board, and update the membership of the Board in accordance with amendments to 47 O.S. §759. The proposed rules eliminate language related to the Administrative Assistant to the Board, rendered superfluous by the amendments to 47 O.S. §759. The proposed rules update a renumbered statutory citation.

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

COMMENT PERIOD:

Persons may submit written comments to Kevin Behrens, State Director, at P.O. Box 36307, Oklahoma City, OK 73136. Persons may submit oral comments to Kevin Behrens, State Director at 3600 North Martin Luther King Ave., Building 9, Oklahoma City, OK 73111 between 8:00 a.m. and 4:30 p.m. Monday through Friday. Comments will be accepted from February 17, 2016 until March 21, 2016.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views regarding the proposed rulemaking action. Each person will be allowed a maximum of 10 minutes to speak. All persons wishing to comment must sign in at the door. The hearing will be held on March 22, 2016, at 9:00 a.m. at the Administrative Offices of the Board, located at 3600 N. Martin Luther King Ave., Building 9, Oklahoma City, OK 73111.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing through March 21, 2016, to Kevin Behrens, State Director at P.O. Box 36307, Oklahoma City, OK 73136.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the Administrative Offices of the Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Ave., Building 9, Oklahoma City, OK 73111, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. Copies of proposed rules may be obtained at a cost of 10 cents per page copying charge from the Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136. The proposed rules are also available on the Board's website at www.ok.gov/bot.

RULE IMPACT STATEMENT:

Pursuant to 75. O.S. §303(D), a rule impact statement will be prepared and will be available on and after publication of this notice on February 16, 2016 at the same locations, and on the same terms, listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, 405-425-2460, kbehrens@dps.state.ok.us

TRANSMITTAL SHEET

NAME OF AGENCY:

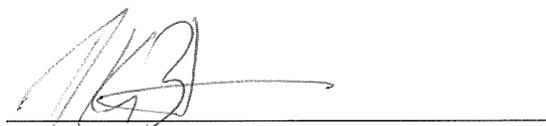
Board of Tests for Alcohol and Drug Influence

TYPE OF DOCUMENT:

NOTICE OF RULEMAKING INTENT

LIAISON VERIFICATION:

I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the APA and the rules of the Secretary of State. Additional information may be obtained by contacting me at 405-425-2460.

A handwritten signature in black ink, appearing to read 'KB', is written over a horizontal line.

Kevin Behrens

State Director of Tests for Alcohol
and Drug Influence

Date signed: January 22, 2016

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

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) **Composition.** The Board consists of the following ~~seven~~ eight members:

- (1) The Dean of the University of Oklahoma College of Medicine, or ~~the Dean's~~ designee, ~~who shall receive an appointment in writing, as Chairman~~
- (2) The Commissioner of Public Safety, or designee
- (3) The Director of the Oklahoma State Bureau of Investigation, or designee
- (4) The State Commissioner of Health, or designee
- (5) The Director of the Council on Law Enforcement Education and Training, or designee
- (6) A certified peace officer, who is a member of a local law enforcement agency, selected by the Oklahoma Sheriffs and Peace Officers Association
- (7) A person selected by the Oklahoma Association of Chiefs of Police.
- (8) The Dean of the Oklahoma State University College of Osteopathic Medicine, or a designee.

(c) **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.

(d) **Officers of the board.** ~~The Chairman of the Board is designated by Statute (47 O.S., Section 759). The Board elects a Chair and Vice-Chair from its membership every two years. A State Director of Tests for Alcohol and Drug Influence and an Administrative Assistant are each~~ is appointed by the Board, from among qualified persons, and serves at the pleasure of the Board and until ~~each~~ such appointment is terminated by the Board or by resignation or other termination of service by the appointee.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

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 in Oklahoma City, Oklahoma, 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, ~~for proper purposes and in a proper manner,~~ 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) Regularly scheduled meetings of the Board will be held at least twice yearly with proper public notice.

(2) Special meetings of the Board may be called at any time by the Chairman, or upon written request of any four members of the Board, with proper public notice.

(3) Emergency meetings of the Board may be called by the Chairman or by any four members of the Board, whenever required and statutorily permitted, and without prior public notice if so required by exigent circumstances.

(4) Continued or reconvened meetings of the Board may be called by the Chairman, or upon written request of any four members of the Board, as required to complete business of a prior meeting.

(5) All meetings of the Board shall be open to the public and other properly interested parties, except as otherwise provided by law.

(6) 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 is 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.

(7) Minutes or proceedings of all meetings of the Board shall be timely prepared and kept by ~~the Administrative Assistant to the Board, under the direction of the State Director of Tests for~~

Alcohol and Drug Influence, or a designee. They shall consist of a summary of the proceedings of each meeting showing:

- (A) Members of the Board present or absent
- (B) All matters considered by the Board
- (C) All actions taken by the Board
- (D) The vote of each member of the Board on any motion or other action taken by vote
- (E) Manner and time of public notice of the meeting
- (F) Other items as required.

(e) Administration.

(1) The general conduct and administration of the affairs and functions of the Board, between meetings thereof, shall be vested in the State Director of Tests for Alcohol and Drug Influence, ~~with the assistance of the Administrative Assistant to the Board and functioning under the direction and guidance of the Chairman of the Board.~~ The Chairman of the Board, the State Director of Tests for Alcohol and Drug Influence, ~~and the Administrative Assistant to the Board~~ shall each have authority to act appropriately on behalf and as agents 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) Call meetings as set forth in these rules.
- (B) Conduct meetings as set forth in these rules.
- (C) 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 Chairman of the Board, and with the assistance of the Administrative Assistant to 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, ~~with the assistance of the Administrative Assistant to the Board when appropriate.~~

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

(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.

~~(3) The Administrative Assistant to the Board shall have the following duties, responsibilities, and authority:~~

- ~~(A) To act as Records Officer of the Board, to keep and maintain the official files and~~

records of the Board, and to perform other duties as required by law.

~~(B) To attend meetings of the Board and render reports at such meetings, and otherwise when requested by the Board or its Chairman, or the State Director of Tests for Alcohol and Drug Influence.~~

~~(C) To prepare timely minutes of meetings of the Board and maintain a file of such official meeting minutes or proceedings.~~

~~(D) To assist the State Director of Tests for Alcohol and Drug Influence in the general conduct and administration of the affairs of the Board between meetings thereof.~~

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

~~(F) To assist the State Director of Tests for Alcohol and Drug Influence with correspondence and other communications, on behalf and as an agent of the Board and in cooperation with the State Director of Tests for Alcohol and Drug Influence and the Chairman of the Board.~~

~~(G) To perform other duties and functions as directed from time to time by the Board, or as requested by the Chairman of the Board or by the State Director of Tests for Alcohol and Drug Influence in order 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.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

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 ~~301~~250.3. In formulating orders or conducting individual proceedings, the Board shall act in full 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 ~~301-(6)250.3(17)~~] may also be made and issued by the Board on its own initiative. Any properly 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 properly 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 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 applicable provisions of the Oklahoma Administrative Procedures Act, and otherwise in accordance with procedures and practices determined or designated by the Board.

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 10. PERSONNEL**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Breath-Alcohol Analysts

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

SUMMARY:

The proposed rule amendments update and clarify the process and time periods for renewing breath alcohol operator permits.

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

COMMENT PERIOD:

Persons may submit written comments to Kevin Behrens, State Director, at P.O. Box 36307, Oklahoma City, OK 73136. Persons may submit oral comments to Kevin Behrens, State Director at 3600 North Martin Luther King Ave., Building 9, Oklahoma City, OK 73111 between 8:00 a.m. and 4:30 p.m. Monday through Friday. Comments will be accepted from February 17, 2016 until March 21, 2016.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views regarding the proposed rulemaking action. Each person will be allowed a maximum of 10 minutes to speak. All persons wishing to comment must sign in at the door. The hearing will be held on March 22, 2016, at 9:00 a.m. at the Administrative Offices of the Board, located at 3600 N. Martin Luther King Ave., Building 9, Oklahoma City, OK 73111.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing through March 21, 2016, to Kevin Behrens, State Director at P.O. Box 36307, Oklahoma City, OK 73136.

COPIES OF PROPOSED RULES:

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RULE IMPACT STATEMENT:

Pursuant to 75. O.S. §303(D), a rule impact statement will be prepared and will be available on and after publication of this notice on February 16, 2016 at the same locations, and on the same terms, listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, 405-425-2460, kbehrens@dps.state.ok.us

ACCEPTED 1 / 26 / 16
Office of Administrative Rules
Oklahoma Secretary of State
Docket # 16 - 52 OAR/cert C.C.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 10. PERSONNEL
SUBCHAPTER 3. BREATH-ALCOHOL ANALYSTS

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.
- (2) Minimum age of 21 years
- (3) Good moral character.
- (4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.
- (5) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence, ~~within the preceding year upon compliance with~~
 - ~~(A) Qualifications and Requirements for Initial Issuance of such Permits then in force, or~~
 - ~~(B) Qualifications and Requirements for Renewal of such Permits then in force.~~
- (6) Satisfactory Annual completion, ~~within one (1) year prior to renewal of the Operator Permit,~~ 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.
- (7) Annual ~~Establishment within one (1) year prior to renewal of the Operator Permit,~~ to the satisfaction of the ~~Board of Tests for Alcohol and Drug Influence~~ State Director of Tests for Alcohol and Drug Influence, of the applicant's competence to operate Board approved breath test instrument(s).

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIALS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

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

SUMMARY:

The proposed rule amendments update and clarify the requirements related to the use of mouthpieces in breath test instrumentation. Outdated language is eliminated in the proposed rule. Existing misspellings in the rule are also corrected.

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

COMMENT PERIOD:

Persons may submit written comments to Kevin Behrens, State Director, at P.O. Box 36307, Oklahoma City, OK 73136. Persons may submit oral comments to Kevin Behrens, State Director at 3600 North Martin Luther King Ave., Building 9, Oklahoma City, OK 73111 between 8:00 a.m. and 4:30 p.m. Monday through Friday. Comments will be accepted from February 17, 2016 until March 21, 2016.

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Kevin Behrens, State Director of Tests, 405-425-2460, kbehrens@dps.state.ok.us

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIALS

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

(a) **Items for breath-alcohol analysis.** In the collection and analysis of breath specimens for the determination of the alcohol concentration thereof by means of any apparatus, device, instrument, method, or procedure approved for that purpose by the Board of Tests for Alcohol and Drug Influence or its predecessor agency, the following safeguards additional to the prescribed operating procedure shall be employed in every such collection and/or analysis involving a human subject.

(1) ~~All disposable materials, supplies, and paraphernalia of whatever kind (including but not limited to mouthpieces, saliva traps, reagent ampoules, bubbler tubes, record cards, etc.) employed in any given collection, analysis, or breath test shall be new, previously unused, commercial items designed and manufactured for that purpose and specifically approved for such use by the State Director of Tests for Alcohol and Drug Influence. For the purpose of this rule, breath test means the completion of the steps contained in 40 O.A.C. 30-1-3 and the operating procedure prescribed by the State Director of Tests.~~

(2) Any such disposable materials, supplies, and paraphernalia shall not be reused for the collection or analysis of breath specimens from any other human subject.

(3) All such disposable materials, supplies, and paraphernalia, other than required records or report or other documents ~~or retained specimens~~, shall be safely disposed of as soon as practicable after use.

(4) All such disposable materials, supplies, or paraphernalia with which the tested subject will or may come into physical contact shall be stored, handled, and used in a properly safe and sanitary manner.

(b) **Items for blood-alcohol analysis.** All materials, supplies, and paraphernalia of whatever kind (including but not limited to hypodermic needles, syringes, partially evacuated tubes and other containers, anticoagulants, preservatives, etc.) employed in the withdrawal and collection of blood and storage of blood specimens shall be new, previously unused, sterile or otherwise suitable single-use disposable commercial items designed and manufactured for that purpose and approved for such use by the State Director of Tests for Alcohol and Drug Influence; or shall be other suitable items, materials, or supplies specifically approved for such use by the State Director of Tests for Alcohol and Drug Influence.

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

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

SUMMARY:

The proposed rule amendments update the requirements for reporting the results of the analysis of blood specimens for alcohol.

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

COMMENT PERIOD:

Persons may submit written comments to Kevin Behrens, State Director, at P.O. Box 36307, Oklahoma City, OK 73136. Persons may submit oral comments to Kevin Behrens, State Director at 3600 North Martin Luther King Ave., Building 9, Oklahoma City, OK 73111 between 8:00 a.m. and 4:30 p.m. Monday through Friday. Comments will be accepted from February 17, 2016 until March 21, 2016.

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Kevin Behrens, State Director of Tests, 405-425-2460, kbehrens@dps.state.ok.us

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD

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 (00.XX g/100 mL or 0.XXX g/100mL), ~~truncated, deleting entirely the third decimal digit.~~ 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.

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

40:50-1-1.1. Definitions [AMENDED]

40:50-1-3. Standards and specifications [AMENDED]

40:50-1-3.2. Reportable violations [AMENDED]

40:50-1-7. Service center licensing process [AMENDED]

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

SUMMARY:

The proposed rules add absconding to the list of reportable violations and provide a definition for absconding. The proposed rules make changes to the retest and confirmatory test requirements to address problems with reporting retest violations and confirmatory test results. The proposed rules create time frames for the manufacturer to take certain required actions in the event of a service center inactivation or revocation. The proposed rules provide vendors an alternative to having a licensed ignition interlock technicians on site at all times. The proposed rules also eliminate some confusing references to the Board's website.

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

COMMENT PERIOD:

Persons may submit written comments to Kevin Behrens, State Director, at P.O. Box 36307, Oklahoma City, OK 73136. Persons may submit oral comments to Kevin Behrens, State Director at 3600 North Martin Luther King Ave., Building 9, Oklahoma City, OK 73111 between 8:00 a.m. and 4:30 p.m. Monday through Friday. Comments will be accepted from February 17, 2016 until March 21, 2016.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views regarding the proposed rulemaking action. Each person will be allowed a maximum of 10 minutes to speak. All persons wishing to comment must sign in at the door. The hearing will be held on March 22, 2016, at 9:00 a.m. at the Administrative Offices of the Board, located at 3600 N. Martin Luther King Ave., Building 9, Oklahoma City, OK 73111.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing through March 21, 2016, to Kevin Behrens, State Director at P.O. Box 36307, Oklahoma City, OK 73136.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the Administrative Offices of the Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Ave., Building 9, Oklahoma City, OK 73111, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. Copies of proposed rules may be obtained at a cost of 10 cents per page copying charge from the Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136. The proposed rules are also available on the Board's website at www.ok.gov/bot.

RULE IMPACT STATEMENT:

Pursuant to 75. O.S. §303(D), a rule impact statement will be prepared and will be available on and after publication of this notice on February 16, 2016 at the same locations, and

on the same terms, listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, 405-425-2460, kbehrens@dps.state.ok.us

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES

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.

“Absconding” means a failure of an interlock program participant to remedy a permanent lockout in accordance with these rules within 30 days of the occurrence of such permanent lockout.

“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.

“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 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”.

“Inclusion Zone” means an area encompassing 25 driven miles from the Oklahoma state line as determined by the Board.

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

“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.

“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 alter, interfere, disable, defeat or circumvent the installation or operation of the device.

“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.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES

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 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.
- (c) The startup set point value for the device shall be an alcohol concentration of 0.02 g/210L.
- (d) The penalty fail point value for the device shall be an alcohol concentration of:
- (1) 0.03 g/210L for persons under 21 years of age.
 - (2) 0.09 g/210L for persons 21 years of age and over.
 - (3) The device shall have a distinct audible and/or visual indicator to notify the driver when a penalty fail has been recorded in the data storage system.
- (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 0.03 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 the vehicle's horn to sound repeatedly or activate a unique audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown ~~or a negative result is delivered.~~
 - (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 0.02 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 the vehicle's horn to sound repeatedly or activate a unique audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown ~~or a negative result is delivered.~~

(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) 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.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES

40:50-1-3.2. Reportable violations

(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 except:
 - (A) Upon receipt of documentation from the Installation Authority or Monitor authorizing said removal.
 - (B) The vehicle is being repaired. The program participant must inform the licensed service center at least every eight (8) days as to the anticipated date of completion of repairs, or
 - (C) The vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the removal and reinstallation of the device in the subsequent vehicle must be accomplished within eight (8) days of the removal.
- (5) Tampering.
- (6) Absconding.

(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 the violation reset service or removal of the device

(c) The manufacturer shall ensure proper record maintenance.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES

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

- (a) All service centers located in the state of Oklahoma or within the inclusion zone 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 at <http://ignitioninterlock.ok.gov>.
- (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 at <http://ignitioninterlock.ok.gov>.
- (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.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
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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) During the period of suspension, the suspended service center may continue to provide service to existing participants but shall not be able to generate official installation verification forms until the license has been reinstated.
 - (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.