

**40:10-1-1. Purpose**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The training shall be conducted by or under the authority of the Board of Tests for Alcohol and Drug Influence.

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

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

(1) Initial training of breath-alcohol operators may be conducted in the State of Oklahoma by employees of the Board or other suitable entities or individuals as determined by the State Director of Tests for Alcohol and Drug Influence. Other entities or individuals conducting Breath Alcohol Operator training shall comply with the rules, policies and procedures of the Board regarding such training as well as the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(1) Possession of a valid Breath Alcohol Operator Permit in accordance with OAC 40:10-3-1 or OAC 40:10-3-3.

(2) Satisfactory completion of an instructor development course or school acceptable to the Board of Tests for Alcohol and Drug Influence, as determined by the State Director of Tests for Alcohol and Drug Influence, or equivalent background as determined by the State Director of Tests for Alcohol and Drug Influence.

(3) Competence to conduct instruction and training and to administer examinations, in one or more appropriate categories of training in breath-alcohol analysis and closely related subject matter, as determined by the State Director of Tests for Alcohol and Drug Influence or the State Director's designated representative(s).

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

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

(A) Submission of a properly completed application form for the appropriate category or categories of Permits, together with the supporting documentation specified therein.

(B) Participation in such conference(s) or exercise(s) for prospective breath-alcohol training instructors as may be conducted by the State Director of Tests for Alcohol and Drug Influence or the State Director's designated representative(s)

(2) **Period of validity.** Breath-Alcohol Training Instructor Permits shall be valid to a period of three (3) years from the date of issue, and shall be subject to earlier termination or revocation at the discretion of

the Board of Tests for Alcohol and Drug Influence. Such permits shall be renewable in accordance with such terms and requirements as are established by the State Director of Tests for Alcohol and Drug Influence.

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

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

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

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

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

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

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

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

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

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

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

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

Revocation refers to the immediate cancellation of a permit.

- (1) A breath alcohol operator permit may be revoked by the Board when, in the opinion of the Board, the operator no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules, or in any case where, in the opinion of the Board, continuance of licensure would not uphold the scientific integrity of the breath testing program.
- (2) Upon revocation, the Board shall forward the notice and order of revocation of the breath alcohol operator permit to the operator and his/her employer specifying the basis for the revocation.
- (3) The Board, in its sole discretion, shall determine the period of revocation.
- (4) A revocation cancels any license issued to the breath alcohol operator for the period of revocation.
- (5) During the period of revocation, the revoked breath alcohol operator shall cease any and all activities related to evidential breath testing in the state of Oklahoma.
- (6) Licensure of a breath alcohol operator whose license has been revoked will require a written request from the applicant to the Board and successful completion of the original requirements for licensure outlined in this subsection.
- (7) Revocation shall be for the purpose of maintaining the scientific integrity of the program and enforcing these rules.

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



#### **40:10-3-14. Appeal process**

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

(1) **The Director.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Residence within the State of Oklahoma.

(B) Minimum age of 21 years.

(C) Good moral character.

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

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

(i) the field of blood-alcohol analysis or forensic toxicology or forensic chemistry or criminalistics, or

(ii) other pertinent biomedical or forensic laboratory activities.

(F) Competence to perform forensic alcohol analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Residence within the State of Oklahoma.

(B) Minimum age of 21 years.

(C) Good moral character.

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

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

(i) the field of drug analysis or forensic toxicology or forensic chemistry or criminalistics, or

(ii) other pertinent biomedical or forensic laboratory activities.

(F) Competence to perform forensic drug analysis.

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

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

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

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

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

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

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

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

(B) Continued competence to perform forensic drug analysis.

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

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

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

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

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

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

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

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

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

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

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