

40:20-1-1. Purpose

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

[Source: Amended at 14 Ok Reg 1529, eff 7-1-97]

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

(a) Law enforcement agencies may designate either blood or breath as the specimen to be obtained and tested for the alcohol concentration thereof, but such designation shall not affect the validity of an otherwise valid test.

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

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

[Source: Amended at 27 Ok Reg 2663, eff 8-26-10]

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

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

(1) Collection of blood specimens - general conditions.

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

(B) No blood shall be knowingly collected from any person with hemophilia or from any person who is taking anticoagulant medication(s). However, the collection of blood from a person with hemophilia or from a person who is taking anticoagulant medications does not invalidate an otherwise valid test.

(2) Procedures, techniques, and precautions.

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

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

(C) Each tube containing a blood specimen shall be placed into a sealed container approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

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

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

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

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

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

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

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

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

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

(1) **Collection of Retained Blood Specimens.**

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

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

(C) The tube containing the Retained Blood Specimen shall be placed into a sealed container, approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

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

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

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

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

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

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

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

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

- (ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory
- (iii) Full name of the subject from whom the blood specimen was obtained
- (iv) Date, time and location of blood specimen collection
- (v) Case or identification number assigned to the case or subject by the law enforcement agency
- (vi) Signature, printed name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

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

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

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

(3) Retention and storage of Retained Blood Specimens.

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

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage shall be carried out in such a manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

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

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

(A) Upon written direction by the tested person or such person's agent to the Approved Retention Laboratory that has custody of the Retained Blood Specimen obtained from such person, received in

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

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

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

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

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