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Mary Fallin, Governor
Mike Hunter,
Secretary of State
Peggy Coe, Editor-in-Chief

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Table of Contents

Agency/Action/Subject Index	iii
Rules Affected Index	iv
Agency Index (Title numbers assigned)	v
Notices of Rulemaking Intent	
Children and Youth, Commission on (Title 135)	89
Employment Security Commission, Oklahoma (Title 240)	90, 91, 92
Emergency Adoptions	
Alcohol and Drug Influence, Board of Tests for (Title 40)	95, 98
Executive Orders (Title 1)	101

Agency/Action/Subject Index

**ALCOHOL and Drug Influence, Board of Tests for
(Title 40)**

Emergency Adoptions

Organization, Operations, Procedures and Policies (Chapter 1)	95
Specimens (Chapter 20)	95
Apparatus, Devices, Equipment, and Materials (Chapter 25)	98

CHILDREN and Youth, Commission on (Title 135)

Notices of Rulemaking Intent

Programs, Boards, and Councils: Operation and Administration (Chapter 10)	89
--	----

**EMPLOYMENT Security Commission, Oklahoma
(Title 240)**

Notices of Rulemaking Intent

General Provisions (Chapter 1)	90
Unemployment Insurance Program (Chapter 10)	91
Board of Review Procedures (Chapter 15)	92
Workforce Investment Act (Chapter 21)	92

GOVERNOR

Executive Orders

Ordering flags at half-staff to honor Michael G. Sauro, Department of Army civilian (16-33)	101
Ordering flags at half-staff to honor former Senator Sam Lee Helton (16-34)	101

Rules Affected Index

[(E) = Emergency action]

Rule	Register Page	Rule	Register Page
40:1-1-1.....	[AMENDED] (E)..... 95	165:59-7-17.....	[AMENDED] (E)..... 24
40:20-1-3.....	[AMENDED] (E)..... 96	165:59-7-18.....	[RESERVED] (E)..... 24
40:25-1-2.....	[AMENDED] (E)..... 98	165:59-7-19.....	[NEW] (E)..... 24
40:25-1-3.....	[AMENDED] (E)..... 99	165:59-9-1.....	[AMENDED] (E)..... 25
40:25-1-4.....	[REVOKED] (E)..... 99	165:59-9-3.....	[AMENDED] (E)..... 25
165:5-21-3.1.....	[NEW] (E)..... 53	165:59-9-5.....	[AMENDED] (E)..... 26
165:59-1-1.....	[AMENDED] (E)..... 5	165:59-9-6.....	[AMENDED] (E)..... 26
165:59-1-2.....	[AMENDED] (E)..... 6	165:59-9-11.....	[AMENDED] (E)..... 26
165:59-1-3.....	[AMENDED] (E)..... 6	165:59-9-13.....	[AMENDED] (E)..... 27
165:59-1-4.....	[AMENDED] (E)..... 6	165:59-9-15.....	[AMENDED] (E)..... 27
165:59-1-7.....	[AMENDED] (E)..... 8	165:59-9-17.....	[AMENDED] (E)..... 27
165:59-3-1.....	[REVOKED] (E)..... 8	165:59-9-21.....	[AMENDED] (E)..... 27
165:59-3-11.....	[AMENDED] (E)..... 8	165:59-9-23.....	[AMENDED] (E)..... 27
165:59-3-13.....	[AMENDED] (E)..... 8	165:59-9-25.....	[AMENDED] (E)..... 28
165:59-3-14.....	[AMENDED] (E)..... 8	165:59-9-27.....	[AMENDED] (E)..... 29
165:59-3-15.....	[REVOKED] (E)..... 9	165:59-9-29.....	[AMENDED] (E)..... 29
165:59-3-16.....	[AMENDED] (E)..... 9	317:30-5-42.17.....	[AMENDED] (E)..... 57
165:59-3-30.....	[AMENDED] (E)..... 10	317:30-5-241.1.....	[AMENDED] (E)..... 54
165:59-3-32.....	[AMENDED] (E)..... 10	317:30-5-432.1.....	[AMENDED] (E)..... 57
165:59-3-34.....	[AMENDED] (E)..... 10	340:40-1-2.....	[AMENDED] (E)..... 58
165:59-3-36.....	[AMENDED] (E)..... 11	340:40-3-1.....	[AMENDED] (E)..... 58
165:59-3-38.....	[AMENDED] (E)..... 11	340:40-7-3.....	[AMENDED] (E)..... 60
165:59-3-40.....	[AMENDED] (E)..... 11	340:40-7-5.....	[AMENDED] (E)..... 60
165:59-3-42.....	[AMENDED] (E)..... 11	340:40-7-6.....	[AMENDED] (E)..... 61
165:59-3-44.....	[AMENDED] (E)..... 11	340:40-7-7.....	[AMENDED] (E)..... 62
165:59-3-46.....	[AMENDED] (E)..... 12	340:40-7-8.....	[AMENDED] (E)..... 63
165:59-3-60.....	[AMENDED] (E)..... 12	340:40-7-9.....	[AMENDED] (E)..... 68
165:59-3-61.....	[AMENDED] (E)..... 12	340:40-7-11.....	[AMENDED] (E)..... 70
165:59-3-62.....	[REVOKED] (E)..... 12	340:40-7-12.....	[AMENDED] (E)..... 73
165:59-3-65.....	[RESERVED] (E)..... 14	340:40-9-1.....	[AMENDED] (E)..... 75
165:59-3-66.....	[NEW] (E)..... 14	340:40-9-2.....	[AMENDED] (E)..... 76
165:59-3-67.....	[RESERVED] (E)..... 15	340:40-13-3.....	[AMENDED] (E)..... 77
165:59-3-68.....	[NEW] (E)..... 15	340:65-3-8.....	[AMENDED] (E)..... 78
165:59-3-69.....	[RESERVED] (E)..... 16	710:45-9-81.....	[AMENDED] (E)..... 80
165:59-3-70.....	[NEW] (E)..... 16	710:45-9-82.....	[AMENDED] (E)..... 80
165:59-3-71.....	[RESERVED] (E)..... 17	710:45-9-83.....	[AMENDED] (E)..... 80
165:59-3-72.....	[NEW] (E)..... 17	710:45-9-84.....	[AMENDED] (E)..... 80
165:59-7-1.....	[AMENDED] (E)..... 18	710:50-3-35.....	[AMENDED] (E)..... 81
165:59-7-5.....	[REVOKED] (E)..... 21	710:50-9-3.....	[AMENDED] (E)..... 81
165:59-7-6.....	[AMENDED] (E)..... 21	710:50-15-50.....	[AMENDED] (E)..... 82
165:59-7-7.....	[REVOKED] (E)..... 22	710:50-15-74.....	[AMENDED] (E)..... 82
165:59-7-8.....	[AMENDED] (E)..... 23	710:50-15-76.....	[AMENDED] (E)..... 84
165:59-7-9.....	[REVOKED] (E)..... 23	710:50-15-90.....	[AMENDED] (E)..... 85
165:59-7-10.....	[AMENDED] (E)..... 24	710:50-15-103.....	[AMENDED] (E)..... 85
165:59-7-13.....	[AMENDED] (E)..... 24	710:50-15-104.....	[AMENDED] (E)..... 86
165:59-7-15.....	[AMENDED] (E)..... 24		

Agency/Title Index

[Assigned as of 11-15-16]

Agency	Title	Agency	Title
Oklahoma ABSTRACTORS Board	5	Office of DISABILITY Concerns (<i>Formerly</i> : Office of HANDICAPPED Concerns) - <i>See</i> Title 305	
Oklahoma ACCOUNTANCY Board	10	Board of Regents of EASTERN Oklahoma State College (<i>exempted</i> 11-1-98)	205
State ACCREDITING Agency	15	EDGE Fund Policy Board	208
AD Valorem Task Force (<i>abolished</i> 7-1-93)	20	State Department of EDUCATION	210
Oklahoma AERONAUTICS Commission	25	EDUCATION Oversight Board (<i>merged under</i> Office of Educational Quality and Accountability 7-1-14 - <i>See</i> Title 218)	215
Board of Regents for the Oklahoma AGRICULTURAL and Mechanical Colleges (<i>exempted</i> 11-1-98)	30	Office of EDUCATIONAL Quality and Accountability	218
Oklahoma Department of AGRICULTURE , Food, and Forestry	35	Oklahoma EDUCATIONAL Television Authority	220
Oklahoma Board of Licensed ALCOHOL and Drug Counselors	38	[RESERVED]	225
Board of Tests for ALCOHOL and Drug Influence	40	State ELECTION Board	230
ALCOHOLIC Beverage Laws Enforcement Commission	45	Oklahoma FUNERAL Board (<i>Formerly</i> : Oklahoma State Board of EMBALMERS and Funeral Directors)	235
ANATOMICAL Board of the State of Oklahoma	50	Oklahoma Department of EMERGENCY Management (<i>Formerly</i> : Department of CIVIL Emergency Management) - <i>See</i> Title 145	
Board of Governors of the Licensed ARCHITECTS , Landscape Architects and Registered Interior Designers of Oklahoma (<i>Formerly</i> : Board of Governors of the Licensed ARCHITECTS and Landscape Architects of Oklahoma; and Board of Governors of the Licensed ARCHITECTS , Landscape Architects and Interior Designers of Oklahoma)	55	Oklahoma EMPLOYMENT Security Commission	240
ARCHIVES and Records Commission	60	Oklahoma ENERGY Resources Board	243
Board of Trustees for the ARDMORE Higher Education Program (<i>exempted</i> 11-1-98)	65	State Board of Licensure for Professional ENGINEERS and Land Surveyors (<i>Formerly</i> : State Board of Registration for Professional ENGINEERS and Land Surveyors)	245
Oklahoma ARTS Council	70	Board of Trustees for the ENID Higher Education Program (<i>exempted</i> 11-1-98)	250
Oklahoma State ATHLETIC Commission (<i>Formerly</i> : Oklahoma Professional BOXING Commission) - <i>See</i> Title 92		Department of ENVIRONMENTAL Quality	252
ATTORNEY General	75	State Board of EQUALIZATION	255
State AUDITOR and Inspector	80	ETHICS Commission (<i>Title revoked</i>)	257
State BANKING Department	85	ETHICS Commission	258
Oklahoma State Employees BENEFITS Council (<i>consolidated under</i> Office of Management and Enterprise Services 8-26-11 - <i>See</i> Title 260)	86	Office of MANAGEMENT and Enterprise Services (<i>Formerly</i> : Office of State FINANCE)	260
Oklahoma State Employees BENEFITS Council	87	State FIRE Marshal Commission	265
Council of BOND Oversight	90	Oklahoma Council on FIREFIGHTER Training	268
Oklahoma State ATHLETIC Commission (<i>Formerly</i> : Oklahoma Professional BOXING Commission)	92	Oklahoma FIREFIGHTERS Pension and Retirement System	270
State BURIAL Board (<i>abolished</i> 7-1-92)	95	[RESERVED]	275
[RESERVED]	100	FORENSIC Review Board	277
Oklahoma CAPITAL Investment Board	105	State Board of Registration for FORESTERS	280
Oklahoma CAPITOL Improvement Authority	110	FOSTER Care Review Advisory Board	285
State CAPITOL Preservation Commission	115	Oklahoma FUNERAL Board (<i>Formerly</i> : Oklahoma State Board of Embalmers and Funeral Directors) - <i>See</i> Title 235	
CAPITOL-MEDICAL Center Improvement and Zoning Commission	120	Oklahoma FUTURES	290
Oklahoma Department of CAREER and Technology Education (<i>Formerly</i> : Oklahoma Department of VOCATIONAL and Technical Education) - <i>See</i> Title 780		GOVERNOR (<i>See also</i> Title 1, Executive Orders)	295
Board of Regents of CARL Albert State College (<i>exempted</i> 11-1-98)	125	GRAND River Dam Authority	300
Department of CENTRAL Services (<i>Formerly</i> : Office of PUBLIC Affairs) - <i>See</i> Title 580		Group Self-Insurance Association GUARANTY Fund Board	302
CEREBRAL Palsy Commission	130	Individual Self-Insured GUARANTY Fund Board	303
Commission on CHILDREN and Youth	135	STATE Use Committee (<i>Formerly</i> : Committee on Purchases of Products and Services of the Severely HANDICAPPED ; <i>consolidated under</i> Office of Management and Enterprise Services 8-26-11 - <i>See</i> Title 260)	304
Board of CHIROPRACTIC Examiners	140	Office of DISABILITY Concerns (<i>Formerly</i> : Office of HANDICAPPED Concerns)	305
Oklahoma Department of EMERGENCY Management (<i>Formerly</i> : Department of CIVIL Emergency Management)	145	Oklahoma State Department of HEALTH	310
Oklahoma Department of COMMERCE	150	Oklahoma Basic HEALTH Benefits Board (<i>abolished</i> 11-1-97)	315
COMMUNITY Hospitals Authority	152	Oklahoma HEALTH Care Authority	317
COMPSOURCE Oklahoma (<i>Formerly</i> : State INSURANCE Fund) - <i>See</i> Title 370		HIGHWAY Construction Materials Technician Certification Board	318
Oklahoma CONSERVATION Commission	155	Oklahoma HISTORICAL Society	320
CONSTRUCTION Industries Board	158	Oklahoma HORSE Racing Commission	325
Department of CONSUMER Credit	160	Oklahoma HOUSING Finance Agency	330
CORPORATION Commission	165	Oklahoma HUMAN Rights Commission	335
Department of CORRECTIONS	170	Department of HUMAN Services	340
State Board of COSMETOLOGY and Barbering	175	Committee for INCENTIVE Awards for State Employees	345
Oklahoma State CREDIT Union Board	180	Oklahoma INDIAN Affairs Commission	350
CRIME Victims Compensation Board	185	Oklahoma INDIGENT Defense System	352
Joint CRIMINAL Justice System Task Force Committee	190	Oklahoma INDUSTRIAL Finance Authority	355
Board of DENTISTRY	195	INJURY Review Board	357
Oklahoma DEVELOPMENT Finance Authority	200	Oklahoma State and Education Employees Group INSURANCE Board (<i>consolidated under</i> Office of Management and Enterprise Services 8-26-11 - <i>See</i> Title 260)	360
		INSURANCE Department	365

Agency/Title Index – *continued*

Agency	Title	Agency	Title
COMPSOURCE Oklahoma (Formerly: State INSURANCE Fund)	370	PUBLIC Employees Relations Board	585
Oklahoma State Bureau of INVESTIGATION	375	Oklahoma PUBLIC Employees Retirement System	590
Council on JUDICIAL Complaints	376	Department of PUBLIC Safety	595
Office of JUVENILE Affairs	377	REAL Estate Appraiser Board	600
Department of LABOR	380	Oklahoma REAL Estate Commission	605
Department of the Commissioners of the LAND Office	385	Board of Regents of REDLANDS Community College (<i>exempted</i> <i>11-1-98</i>)	607
Council on LAW Enforcement Education and Training	390	State REGENTS for Higher Education	610
Oklahoma LAW Enforcement Retirement System	395	State Department of REHABILITATION Services	612
Board on LEGISLATIVE Compensation	400	Board of Regents of ROGERS State College (<i>exempted 11-1-98</i>)	615
Oklahoma Department of LIBRARIES	405	Board of Regents of ROSE State College (<i>exempted 11-1-98</i>)	620
LIEUTENANT Governor	410	Oklahoma SAVINGS and Loan Board (<i>abolished 7-1-93</i>)	625
Oklahoma LINKED Deposit Review Board	415	SCENIC Rivers Commission	630
Oklahoma LIQUEFIED Petroleum Gas Board	420	Oklahoma Commission on SCHOOL and County Funds Management	635
Oklahoma LIQUEFIED Petroleum Gas Research, Marketing and Safety Commission	422	Advisory Task Force on the Sale of SCHOOL Lands (<i>functions</i> <i>concluded 2-92</i>)	640
LITERACY Initiatives Commission	425	The Oklahoma School of SCIENCE and Mathematics	645
LONG-RANGE Capital Planning Commission	428	Oklahoma Center for the Advancement of SCIENCE and Technology	650
Oklahoma State Board of Examiners for LONG-TERM Care Administrators (Formerly: Oklahoma State Board of Examiners for NURSING Home Administrators) - <i>See</i> Title 490		SECRETARY of State	655
LOTTERY Commission, Oklahoma	429	Department of SECURITIES	660
Board of Trustees for the MCCURTAIN County Higher Education Program (<i>exempted 11-1-98</i>)	430	Board of Regents of SEMINOLE State College (<i>exempted</i> <i>11-1-98</i>)	665
Office of MANAGEMENT and Enterprise Services (Formerly: Office of State FINANCE) - <i>See</i> Title 260		SHEEP and Wool Commission	670
Commission on MARGINALLY Producing Oil and Gas Wells	432	State Board of Licensed SOCIAL Workers	675
State Board of MEDICAL Licensure and Supervision	435	SOUTHERN Growth Policies Board	680
MEDICAL Technology and Research Authority of Oklahoma	440	Oklahoma SOYBEAN Commission (<i>abolished 7-1-97</i>)	685
Board of MEDICOLEGAL Investigations	445	Board of Examiners for SPEECH-LANGUAGE Pathology and Audiology (Formerly: Board of Examiners for SPEECH Pathology and Audiology)	690
Department of MENTAL Health and Substance Abuse Services	450	STATE Employee Charitable Contributions, Oversight Committee for (Formerly: STATE Agency Review Committee)	695
MERIT Protection Commission	455	STATE Use Committee (Formerly: Committee on Purchases of Products and Services of the Severely HANDICAPPED) - <i>See</i> Title 304	
MILITARY Planning Commission, Oklahoma Strategic	457	Oklahoma STUDENT Loan Authority	700
Department of MINES	460	TASK Force 2000	705
Oklahoma MOTOR Vehicle Commission	465	Oklahoma TAX Commission	710
Board of Regents of MURRAY State College (<i>exempted 11-1-98</i>)	470	Oklahoma Commission for TEACHER Preparation (<i>merged under</i> <i>Office of Educational Quality and Accountability 7-1-14 - See Title</i> <i>218</i>)	712
Oklahoma State Bureau of NARCOTICS and Dangerous Drugs Control	475	TEACHERS' Retirement System	715
Board of Regents of NORTHERN Oklahoma College (<i>exempted</i> <i>11-1-98</i>)	480	State TEXTBOOK Committee	720
Oklahoma Board of NURSING	485	TOBACCO Settlement Endowment Trust Fund	723
Oklahoma State Board of Examiners for LONG-TERM Care Administrators (Formerly: Oklahoma State Board of Examiners for NURSING Home Administrators)	490	Oklahoma TOURISM and Recreation Department	725
Board of Regents of OKLAHOMA City Community College (<i>exempted</i> <i>11-1-98</i>)	495	Department of TRANSPORTATION	730
Board of Regents of OKLAHOMA Colleges (<i>exempted 11-1-98</i>)	500	Oklahoma TRANSPORTATION Authority (<i>Name changed to</i> Oklahoma TURNPIKE Authority <i>11-1-05</i>) - <i>See</i> Title 731	
Board of Examiners in OPTOMETRY	505	Oklahoma TURNPIKE Authority (Formerly: Oklahoma TRANSPORTATION Authority AND Oklahoma TURNPIKE Authority) - <i>See</i> also Title 745	731
State Board of OSTEOPATHIC Examiners	510	State TREASURER	735
PARDON and Parole Board	515	Board of Regents of TULSA Community College (<i>exempted</i> <i>11-1-98</i>)	740
Oklahoma PEANUT Commission	520	Oklahoma TURNPIKE Authority (<i>Name changed to Oklahoma</i> TRANSPORTATION Authority <i>11-1-99 - no rules enacted in this</i> <i>Title - See</i> Title 731)	745
Oklahoma State PENSION Commission	525	Oklahoma UNIFORM Building Code Commission	748
State Board of Examiners of PERFUSIONISTS	527	Board of Trustees for the UNIVERSITY Center at Tulsa (<i>exempted</i> <i>11-1-98</i>)	750
Office of PERSONNEL Management (<i>consolidated under</i> Office of Management and Enterprise Services <i>8-26-11 - See Title</i> <i>260</i>)	530	UNIVERSITY Hospitals Authority	752
Board of Commercial PET Breeders (<i>abolished 7-1-12 - See Title</i> <i>35</i>)	532	UNIVERSITY Hospitals Trust	753
Oklahoma State Board of PHARMACY	535	Board of Regents of the UNIVERSITY of Oklahoma (<i>exempted</i> <i>11-1-98</i>)	755
PHYSICIAN Manpower Training Commission	540	Board of Regents of the UNIVERSITY of Science and Arts of Oklahoma (<i>exempted 11-1-98</i>)	760
Board of PODIATRIC Medical Examiners	545	Oklahoma USED Motor Vehicle and Parts Commission	765
Oklahoma POLICE Pension and Retirement System	550	Oklahoma Department of VETERANS Affairs	770
State Department of POLLUTION Control (<i>abolished 1-1-93</i>)	555	Board of VETERINARY Medical Examiners	775
POLYGRAPH Examiners Board	560	Statewide VIRTUAL Charter School Board	777
Oklahoma Board of PRIVATE Vocational Schools	565		
State Board for PROPERTY and Casualty Rates (<i>abolished 7-1-06; see also Title 365</i>)	570		
State Board of Examiners of PSYCHOLOGISTS	575		
Department of CENTRAL Services (Formerly: Office of PUBLIC Affairs; <i>consolidated under</i> Office of Management and Enterprise Services <i>8-26-11 - See Title 260</i>)	580		

Agency	Title	Agency	Title
Oklahoma Department of CAREER and Technology Education (Formerly: Oklahoma Department of VOCATIONAL and Technical Education)	780	Oklahoma WHEAT Commission	795
Oklahoma WATER Resources Board	785	Department of WILDLIFE Conservation	800
Board of Regents of WESTERN Oklahoma State College (<i>exempted</i> <i>11-1-98</i>)	790	WILL Rogers and J.M. Davis Memorials Commission	805
		Oklahoma WORKERS' Compensation Commission	810

Notices of Rulemaking Intent

Prior to adoption and gubernatorial/legislative review of a proposed PERMANENT rulemaking action, an agency must publish a Notice of Rulemaking Intent in the *Register*. In addition, an agency may publish a Notice of Rulemaking Intent in the *Register* prior to adoption of a proposed EMERGENCY or PREEMPTIVE rulemaking action.

A Notice of Rulemaking Intent announces a comment period, or a comment period and public hearing, and provides other information about the intended rulemaking action as required by law, including where copies of proposed rules may be obtained.

For additional information on Notices of Rulemaking Intent, see 75 O.S., Section 303.

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #16-775]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 26. Juvenile Forensic Evaluator Credentialing
135:10-26-1 [NEW]
135:10-26-2 [NEW]
135:10-26-3 [NEW]
135:10-26-4 [NEW]

SUMMARY:

The proposed new rules establish the procedure by which the Oklahoma Commission on Children and Youth shall credential juvenile competency evaluators pursuant to Oklahoma Session Laws 2015, ch. 398, § 4, codified at 10A O.S. § 2-2-401.4, which became effective Jan. 1, 2016.

AUTHORITY:

10 O.S. § 601.4(9); 10A O.S. § 2-2-401.4; Commission on Children and Youth

COMMENT PERIOD:

Written and oral comments will be accepted until the conclusion of the rules hearing on January 11, 2017. Comments may be submitted to Lisa Smith, Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103. The comment period is from December 9, 2016, to January 11, 2017.

PUBLIC HEARING:

A public hearing has been scheduled for January 11, 2017, at 9:00 a.m., at the Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103. Persons wishing to speak must sign in by 9:10 a.m.

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 by the end of the comment period to Lisa Smith, Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500,

Oklahoma City, OK 73103. The Commission is unaware of any business entities affected by the proposed changes.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Commission on Children and Youth. Copies may be obtained by written request mailed to the attention of Michael Walsh, Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103, or by e-mail at Michael.Walsh@occy.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared and available for review on or after November 30, 2016. A copy of the rule impact statement may be obtained by written request mailed to the attention of Michael Walsh, Oklahoma Commission on Children and Youth, 1111 N. Lee, Suite 500, Oklahoma City, OK 73103, or by e-mail at Michael.Walsh@occy.ok.gov.

CONTACT PERSONS:

Lisa Smith, Oklahoma Commission on Children and Youth, at (405) 606-4900; and Grant Moak, Assistant Attorney General, at (405) 522-0152.

[OAR Docket #16-775; filed 10-24-16]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #16-776]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Office of Juvenile System Oversight
135:10-3-2 [AMENDED]

SUMMARY:

The proposed rule changes provide the procedure by which the Commission Director or Director's designee may refer matters under review by the Office of Juvenile System Oversight to the Oklahoma State Bureau of Investigation pursuant to 10 O.S. § 601.4(11).

AUTHORITY:

10 O.S. § 601.4(9); 10 O.S. § 601.4(11); Commission on Children and Youth

Notices of Rulemaking Intent

COMMENT PERIOD:

Written and oral comments will be accepted until the conclusion of the rules hearing on January 11, 2017. Comments may be submitted to Mark James, Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103. The comment period is from December 9, 2016 to January 11, 2017.

PUBLIC HEARING:

A public hearing has been scheduled for January 11, 2017, at the Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103, at 9:00 a.m. Persons wishing to speak must sign in by 9:10 a.m.

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 by the end of the comment period to Mark James, Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103. The Commission is unaware of any business entities affected by the proposed changes.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Commission on Children and Youth. Copies may be obtained by written request mailed to the attention of Michael Walsh, Oklahoma Commission on Children and Youth, 111 N. Lee, Suite 500, Oklahoma City, OK 73103, or by e-mail at Michael.Walsh@occy.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared and available for review on or after November 30, 2016. A copy of the rule impact statement may be obtained by written request mailed to the attention of Michael Walsh, Oklahoma Commission on Children and Youth, 1111 N. Lee, Suite 500, Oklahoma City, OK 73103, or by e-mail at Michael.Walsh@occy.ok.gov.

CONTACT PERSONS:

Mark James, Oklahoma Commission on Children and Youth, at (405) 606-4900; and Grant Moak, Assistant Attorney General, at (405) 522-0152.

[OAR Docket #16-776; filed 10-24-16]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 1. GENERAL PROVISIONS

[OAR Docket #16-768]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Records and Inspections [AMENDED]

240:1-3-9. Release of confidential information to specific government agencies [AMENDED]

SUMMARY:

This is a clean-up amendment to accomplish two changes. The first is to remove CompSource Oklahoma from the list of state agencies that can receive information maintained by the Oklahoma Employment Security Commission. CompSource Oklahoma no longer exists as a state agency. The second is to change the reference to the Workforce Investment Act to the current statute known as the Workforce Innovation and Opportunity Act and to correct the cite to the Federal Code for this act.

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§4-302, 4-508

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00 p.m. on December 16, 2016, at the following address: Gina Antipov, OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152, or Gina.Antipov@oesc.state.ok.us.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Monday, December 19, 2016, at the Oklahoma Employment Security Commission, 5th Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OESC requests that business entities affected by this proposed rule provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Gina Antipov, at the above address, before the close of the comment period on December 16, 2016.

COPIES OF PROPOSED RULES:

Copies of the proposed rule may be obtained from the OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152. The proposed rule is also available on the OESC website at https://www.ok.gov/oesc_web/documents/2017%20-%20PUB%20ANNOUNCEMENT%20-%20OESC.pdf

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the OESC Legal Department at the above address beginning October 11, 2016.

CONTACT PERSON:

Gina Antipov, Secretary V, (405) 557-7146,
Gina.Antipov@oesc.state.ok.us.

[OAR Docket #16-768; filed 10-11-16]

**TITLE 240. OKLAHOMA EMPLOYMENT
SECURITY COMMISSION
CHAPTER 10. UNEMPLOYMENT
INSURANCE PROGRAM**

[OAR Docket #16-769]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 240:10-1-3. Time computation [AMENDED]
- Subchapter 3. Benefits
 - Part 7. Protection of Rights and Benefits
 - 240:10-3-35. Personal identification numbers [AMENDED]
- Subchapter 5. Contribution
 - Part 1. General Provisions
 - 240:10-5-4. Surety bond for lessor employing units [AMENDED]
 - Part 3. Rates
 - 240:10-5-10. Payment of contributions [AMENDED]
 - Part 7. Collection of Contributions
 - 240:10-5-31. Claims for refund - procedure [AMENDED]
 - Part 8. Waiver of Penalty and Interest
 - 240:10-5-43. Request letter [AMENDED]
 - 240:10-5-45. Appeal of initial determination [AMENDED]
 - Part 15. Financing Benefits to Employees of the State
 - 240:10-5-71. Group accounts [REVOKED]
 - Part 17. Financing Benefits to Employees of Nonprofit Organizations
 - 240:10-5-80. Establishment of group accounts for state, local governments and nonprofit organizations [REVOKED]
- Subchapter 11. Assessment Board Procedure
 - Part 1. General Provisions
 - 240:10-11-5. Jurisdiction [AMENDED]
- Subchapter 13. Appeal Tribunal Procedure
 - Part 11. Appeals to Board of Review
 - 240:10-13-80. Appeal rights of interested parties [AMENDED]

SUMMARY:

The amendments to these rules will modify the time computation rule to make allowance for federal holidays and days state offices are closed due to Executive Order. The liability of a claimant when a personal identification number

is lost is more clearly explained, citations to statutes are corrected, the receipt date of tax payments mailed through the U.S. Postal Service is more clearly delineated, procedures for claiming refunds and interest and penalty waivers are streamlined, group tax accounts are eliminated, obsolete programs are deleted from the Assessment Board jurisdiction, and clarification of the appeal rights rule for benefit claims.

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§1-209.1, 2-203, 2-503, 3-102, 4-302

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00 p.m. on December 16, 2016, at the following address: Gina Antipov, OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152, or Gina.Antipov@oesc.state.ok.us.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Monday, December 19, 2016, at the Oklahoma Employment Security Commission, 5th Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OESC requests that business entities affected by this proposed rule provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Gina Antipov, at the above address, before the close of the comment period on December 16, 2016.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152. The proposed rules are also available on the OESC website at https://www.ok.gov/oesc_web/documents/2017%20-%20PUB%20ANNOUNCEMENT%20-%20OESC.pdf

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the OESC Legal Department at the above address beginning October 11, 2016.

CONTACT PERSON:

Gina Antipov, Secretary V, (405) 557-7146,
Gina.Antipov@oesc.state.ok.us.

[OAR Docket #16-769; filed 10-11-16]

Notices of Rulemaking Intent

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 15. BOARD OF REVIEW PROCEDURES

[OAR Docket #16-770]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Appeals to the Board of Review
[REVOKED]

240:15-3-6. Certification of fact finding and questions of
law from appeal tribunal [REVOKED]

SUMMARY:

This rule is being revoked due to changes in state law that make it obsolete. Under 40 O.S. §2-609, the Appeal Tribunal of the Oklahoma Employment Security Commission had the authority to certify certain questions of law and fact to the Board of Review for a hearing and determination by the Board. In 2014, an amendment was made to 40 O.S. §2-609 that removed the ability of the Appeal Tribunal to certify questions to the Board of Review. The Board of Review now sits as an appellate body only. Since the statutory authority allowing for the certification of questions has been removed, this rule governing that process must now be revoked.

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§2-609, 4-302

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00 p.m. on December 16, 2016, at the following address: Gina Antipov, OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152, or Gina.Antipov@oesc.state.ok.us.

PUBLIC HEARING:

A public hearing will be held at 2:30 p.m. on Monday, December 19, 2016, at the Oklahoma Employment Security Commission, 5th Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 2:35 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OESC requests that business entities affected by this proposed rule provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Gina Antipov, at the above address, before the close of the comment period on December 16, 2016.

COPIES OF PROPOSED RULES:

Copies of the proposed rule may be obtained from the OESC Legal Department, 2401 North Lincoln Boulevard,

Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152. The proposed rule is also available on the OESC website at https://www.ok.gov/oesc_web/documents/2017%20-%20PUB%20ANNOUNCEMENT%20-%2020BR.pdf

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the OESC Legal Department at the above address beginning October 11, 2016.

CONTACT PERSON:

Gina Antipov, Secretary V, (405) 557-7146,
Gina.Antipov@oesc.state.ok.us.

[OAR Docket #16-770; filed 10-11-16]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 21. WORKFORCE INVESTMENT ACT

[OAR Docket #16-771]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [REVOKED]

240:21-1-1. Purpose and authority [REVOKED]

240:21-1-2. Definitions [REVOKED]

240:21-1-3. Addresses for appeals [REVOKED]

240:21-1-4. Time computation [REVOKED]

Subchapter 7. Monitoring [REVOKED]

240:21-7-1. Monitoring and exit conference [REVOKED]

240:21-7-2. Monitoring report [REVOKED]

240:21-7-3. Monitoring resolution [REVOKED]

240:21-7-4. Final determination [REVOKED]

240:21-7-5. Appeal [REVOKED]

240:21-7-6. Hearing [REVOKED]

Subchapter 9. Audits [REVOKED]

240:21-9-1. Audit requirements [REVOKED]

240:21-9-2. Delinquent audit [REVOKED]

240:21-9-3. Audit resolution [REVOKED]

240:21-9-4. Audit review and request for information
[REVOKED]

240:21-9-5. Initial determination [REVOKED]

240:21-9-6. Final determination [REVOKED]

240:21-9-7. Appeal [REVOKED]

240:21-9-8. Hearing [REVOKED]

Subchapter 11. Grievance Procedures [REVOKED]

Part 1. General Provisions [REVOKED]

240:21-11-1. Grievances [REVOKED]

Part 3. Grievances Filed Directly with the OESC
[REVOKED]

240:21-11-10. Filing [REVOKED]

240:21-11-11. Time limit for filing a grievance with OESC
[REVOKED]

240:21-11-12. Contents of a grievance [REVOKED]

- 240:21-11-13. Referral of a grievance filed with OESC [REVOKED]
- Part 5. Appeals to the OESC from Grievance Decisions of a Local Area [REVOKED]
- 240:21-11-20. Filing grievance with local area [REVOKED]
- 240:21-11-21. Appeals with OESC [REVOKED]
- 240:21-11-22. Time limit for filing an appeal with OESC [REVOKED]
- Part 7. Informal and Formal Resolutions of Grievances [REVOKED]
- 240:21-11-30. Informal resolution [REVOKED]
- 240:21-11-31. Hearing [REVOKED]
- 240:21-11-32. Remedies [REVOKED]
- 240:21-11-33. Appeal to Secretary or investigation by Secretary [REVOKED]
- 240:21-11-34. Decision of the Secretary [REVOKED]

SUMMARY:

These rules pertain to the Workforce Investment Act. They were added to the OESC Rules shortly after the Workforce Investment Act was passed in 1998 when the OESC was named as the state agency that would monitor the program. The program has since been moved to other state agencies, and the federal government replaced the Workforce Investment Act programs with the Workforce Innovation and Opportunity Act. These rules are now obsolete and will be removed from the OESC Rulebook.

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§4-302

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00 p.m. on December 16, 2016, at the following address: Gina Antipov, OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152, or Gina.Antipov@oesc.state.ok.us.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Monday, December 19, 2016, at the Oklahoma Employment Security Commission, 5th Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OESC requests that business entities affected by this proposed rule provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Gina Antipov, at the above address, before the close of the comment period on December 16, 2016.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152. The proposed rules are also available on the OESC website at https://www.ok.gov/oesc_web/documents/2017%20-%20PUB%20ANNOUNCEMENT%20-%20OESC.pdf

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the OESC Legal Department at the above address beginning October 11, 2016.

CONTACT PERSON:

Gina Antipov, Secretary V, (405) 557-7146, Gina.Antipov@oesc.state.ok.us.

[OAR Docket #16-771; filed 10-11-16]

Emergency Adoptions

"If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated" if the Governor approves the rules after determining "that the rule is necessary as an emergency measure to do any of the following:

- a. protect the public health, safety or welfare,
- b. comply with deadlines in amendments to an agency's governing law or federal programs,
- c. avoid violation of federal law or regulation or other state law,
- d. avoid imminent reduction to the agency's budget, or
- e. avoid serious prejudice to the public interest." [75 O.S., Section 253(A)]

An emergency rule is considered promulgated immediately upon approval by the Governor, and effective immediately upon the Governor's approval or a later date specified by the agency in the emergency rule document. An emergency rule expires on September 15 following the next regular legislative session after its promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which cites to the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

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

[OAR Docket #16-772]

RULEMAKING ACTION:

Emergency adoption

RULES:

40:1-1-1. Purpose [AMENDED]

AUTHORITY:

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

COMMENT PERIOD:

N/A

PUBLIC HEARING:

N/A

ADOPTION:

October 7, 2016

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 10, 2016

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The emergency rules respond to a Court of Civil Appeals ruling effecting the admissibility of chemical testing in criminal and civil driver license actions. As a result of the ruling and the inability of officers to administer tests the public health and safety is compromised without the proposed rules.

ANALYSIS:

The proposed rule changes remove references to the Administrative Procedures Act deemed by the Court of Civil Appeals to limit the authority of the agency to act only by promulgation of rules.

CONTACT PERSON:

Kevin Behrens (405)425-2460, kevin.behrens@dps.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

40:1-1-1. Purpose

The rules ~~set forth in~~ this Chapter ~~have been adopted to comply with the provisions of the Administrative Procedures Act, 75 O.S., Sections 302, 305, and 307. They concern and control~~ describe the organization, powers, duties, operations, and procedures of the Board with respect to its administration, rule-making, individual proceedings, and other activities.

[OAR Docket #16-772; filed 10-20-16]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 20. SPECIMENS

[OAR Docket #16-773]

RULEMAKING ACTION:

Emergency adoption

RULES:

40:20-1-3. Collection, transfers, and retention of blood specimens ~~of blood~~ [AMENDED]

AUTHORITY:

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

COMMENT PERIOD:

N/A

PUBLIC HEARING:

N/A

ADOPTION:

October 7, 2016

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 10, 2016

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The emergency rules were adopted in response to Court of Civil Appeals' opinions affecting the ability of the State to obtain and use blood specimens as evidence in impaired driving cases. As a result of the ruling and the inability of officers to administer tests the public health and safety is compromised without the proposed rules.

Emergency Adoptions

ANALYSIS:

The amended rules address findings by the Court of Civil Appeals that the Board's rules require the introduction of evidence of the medical procedures used to collect blood from impaired driving suspects. Additionally, the proposed rules approve blood collection materials for the use in blood collection for the purpose of impaired driving enforcement.

CONTACT PERSON:

Kevin Behrens (405)425-2460, kevin.behrens@dps.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

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

(a) ~~Withdrawal and collection~~Collection of specimens of blood obtained 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.~~The entire process shall be carried out with full regard for the health and safety of the tested persons, and so as to maintain properly the identity, integrity, and composition of such blood specimens.~~

(1) Collection of blood specimens - general conditions.

(A) ~~Blood specimens shall be withdrawn in accordance with accepted medical practices, in an appropriate hospital or medical or clinical environment, including the interior of an ambulance, and 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 withdrawn from any person with hemophilia or from any person who is taking anticoagulant medication(s) under the direction of a licensed healing arts practitioner. 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 and techniques, and precautions.

(A) ~~Blood shall be withdrawn by venipuncture, after appropriate preparation of the puncture site(s), and with necessary precautions to maintain asepsis and avoid contamination of the specimens. Puncture site preparation and skin cleansing shall be performed without the use of alcohol or other volatile organic disinfectant.~~

(B) ~~All blood specimens shall be collected directly in or immediately deposited into suitable clean, sterile, dry containers with inert closures, which contain adequate and appropriate anticoagulant(s) and preservative(s) in accordance with recognized procedural standards.~~ 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) All disposable materials, supplies, and paraphernalia shall not be reused for the withdrawal and collection or storage of blood specimens. All such materials, supplies, and paraphernalia other than required records or those required to be stored or retained or forwarded for evidentiary or other reasonable purposes shall be safely disposed of as soon as practicable after use. All materials, supplies, and 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.~~

~~(D) Each tube or other vessel containing a blood specimen shall be placed into a sealed envelope or other suitable sealed container or enclosure, 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) ~~Legible signature~~Signature, printed name, and title of the qualified person who withdrew the blood specimen.

(b) **Handling and disposition of state's blood specimens.** 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~~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 choice~~selection of the approved ~~Laboratory~~laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may ~~accomplish the dispatch or forwarding of~~forward the State's ~~blood specimen~~Blood Specimen to the approved ~~Laboratory~~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~~ 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~~ 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 ~~with- drawn—~~ and collected in a manner identical to the State's ~~blood specimen~~ Blood Specimen and as set forth heretofore in this Section.

(C) The tube ~~or other vessel~~ containing the Re- tained Blood Specimen shall be placed into a ~~sealed envelope or other suitable sealed container or en- closure,~~ approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or contain- ing at least the following information:

- (i) Full name of the subject from whom the blood specimen was obtained
- (ii) Date, time, and location where the blood specimen was obtained
- (iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen
- (iv) ~~Legible signature~~ Signature, printed name, and title of the qualified person who withdrew the blood specimen.

(2) **Transfer of ~~retained blood specimens~~ 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 speci- men:

- (i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) trans- ferring 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) ~~Legible signature~~ 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 ~~accomplish the transfer or forwarding of forward~~ the Retained Blood Specimen to the Approved Retention Labora- tory 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 man- ner 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 Re- tained 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 speci- mens~~ 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 Labora- tory 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 Labora- tory as hereinafter provided, may be promptly and safely destroyed by the Approved Retention Labora- tory.

(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

Emergency Adoptions

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~~Retained Blood Specimens to a forensic alcohol laboratory or forensic drug laboratory.

(A) Upon ~~proper~~written direction by the tested person or such person's agent to the Approved Retention Laboratory ~~which 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 ~~accomplish the transfer of~~ 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.

[OAR Docket #16-773; filed 10-20-16]

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

[OAR Docket #16-774]

RULEMAKING ACTION:

Emergency adoption

RULES:

40:25-1-2 [AMENDED]

40:25-1-3 [AMENDED]

40:25-1-4 [REVOKED]

AUTHORITY:

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

COMMENT PERIOD:

N/A

PUBLIC HEARING:

N/A

ADOPTION:

October 7, 2016

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 10, 2016

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The emergency rules respond to a Court of Civil Appeals ruling affecting the admissibility of chemical testing in criminal and civil driver license actions. As a result of the ruling and the potential inability of officers to administer tests the public health and safety is compromised without the proposed rules.

ANALYSIS:

The emergency rules address findings by the Court of Civil Appeals that potentially invalidated the approval of breath testing instruments, external reference methods, and disposable materials used in blood and breath testing. The rules approve any breath testing instrument conforming to the testing of the National Highway Traffic Safety Administration. The rules approve dry gas canisters labeled by the manufacturer with a target value of 0.080 BAC for use as external reference methods. The rules eliminate the need for approval of disposable mouthpieces for breath testing, and relocate the approval of disposable materials for blood collections to another chapter.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

40:25-1-2. Approved evidential breath-alcohol analyzers measurement devices

(a) ~~Any evidential breath alcohol analyzer, approved by the Board as an automated analyzer, by resolution, at an open meeting of the Board is hereby approved for analysis of alcohol in breath specimens and is designated as an automated analyzer. Any device appearing on the latest "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published by the National Highway Traffic Safety Administration or approved by the National Highway Traffic Safety Administration for inclusion on the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" is hereby approved by the Board of Tests for Alcohol and Drug Influence for the collection and analysis of breath samples to determine the presence or concentration of alcohol in subjects' breath.~~

(b) ~~The Board may expunge from approval any previously approved analyzer, by resolution, at an open meeting of the Board.~~The State Director of Tests, in accordance with the needs of the agency, may deploy any devices approved by this section for use by law enforcement officers possessing a permit issued by the Board of Tests for Alcohol and Drug Influence.

(c) ~~The Board shall maintain a list of all said approved analyzers, available for public review at the administrative office of the Board during regular office hours.~~The State Director of

Tests shall maintain a list of devices approved by this section that have been deployed by the Agency.

40:25-1-3. ~~Alcoholic breath simulators and reference methods~~ Approved dry gas canisters

(a) ~~Any alcoholic breath simulator or reference method, approved by the Board, by resolution, at an open meeting of the Board is hereby approved, for use in association with any breath alcohol analysis apparatus, device, or instrument for the determination of the alcohol concentration of breath specimens approved for that purpose by the Board of Tests for Alcohol and Drug Influence. Any pressurized dry gas canister labeled by the manufacturer with a target value of 0.080g/210L 2% or .002 BAC, whichever is greater, is hereby approved for use in association with approved evidential breath alcohol measurement devices.~~

(b) ~~The Board may expunge from approval any previously approved simulator or reference method, by resolution, at an open meeting of the Board. The State Director of Tests, in accordance with the needs of the agency, may deploy dry gas canisters approved by this section for the purpose of performing calibration checks of approved evidential breath alcohol measurement devices.~~

(c) ~~The Board shall maintain a list of all said approved simulators or reference methods, available for public review at the administrative office of the Board during regular office hours. The State Director of Tests shall maintain a list of the dry gas canisters approved by this section that have been deployed by the agency.~~

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

(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 mouth pieces employed in any 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, 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.~~

[OAR Docket #16-774; filed 10-20-16]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2016-33.

EXECUTIVE ORDER 2016-33

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 5:00 p.m. on Friday, October 28, 2016, until 8:00 a.m. on Monday, October 31, 2016, to honor Mr. Michael G. Sauro, an Oklahoman, who died on October 19, 2016, in the Kabul Province, Afghanistan, while working with the United States Army as a Department of the Army civilian assigned to the Defense Ammunition Center, McAlester Army Ammunition Plant, in support of Operation Freedom's Sentinel. His sacrifice for our nation and our state will never be forgotten.

This executive order shall be forwarded to the Division of Capital Assets Management, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 28th day of October, 2016.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Chris Benge
Secretary of State

[OAR Docket #16-778; filed 10-28-16]

1:2016-34.

EXECUTIVE ORDER 2016-34

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct that appropriate steps be taken to fly all American and

Oklahoma flags on State property at half-staff from 8:00 a.m. to 5:00 p.m. on Thursday, November 3, 2016, to honor former Senator Sam Lee Helton, who passed away on Sunday, October 30, 2016.

Sam Helton joined the Lawton Police Department in 1982, where he worked as a patrol officer, detective, narcotics detective, crime prevention officer, and coordinator for the Lawton Crime Stoppers Program. He was elected to serve Senate District 31 in 1992, and served until his retirement in 2004. While representing Senate District 31, he was appointed to a multitude of positions within the Oklahoma State Senate. He served as the Majority Whip and Chairman of the Senate Public Safety and Military and Veterans Affairs Committee. He was also the Chairman of the Senate Energy and Environmental Committee. His dedication to his community and the State of Oklahoma will be missed.

This Executive Order shall be forwarded to the Department of Capital Assets Management, who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 1st day of November, 2016.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Mike Hunter
Secretary of State

[OAR Docket #16-779; filed 11-1-16]

