Mary Fallin
Governor

AMENDED NOTIFICATION FROM GOVERNOR MARY FALLIN REGARDING SUBMITTED AGENCY RULES

On October 7, 2016, the Board of Tests for Alcohol and Drug Influence, pursuant to Section 759 of Title 74 of the Oklahoma Statutes, adopted rules through emergency rulemaking.

On October 7, 2016, the rules and all necessary documentation required by Section 253 of Title 75 of the Oklahoma Statutes were submitted to the Office of the Governor for approval or disapproval.

On October 10, 2016, I hereby approve the following rules submitted:

40:1-1-1 40:20-1-3 40:25-1-2 40:25-1-3.

On October 10, 2016, I hereby approve the revocation of the following rules submitted:

40:25-1-4.

Mary Fallin

Mary Fallin, Governor of the State of Oklahoma

Attest:

Acting Assistant

Chris Benge, Secretary of State

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

40:1-1-1. Purpose

The rules ~~of~~ 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.

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

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

(a) ~~**Withdrawal and collection**~~ **Collection of blood.** ~~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(A) Blood specimens shall be ~~withdrawn in accordance with accepted medical practices, in an appropriate hospital or medical or clinical environment, including the interior of an ambulance, and~~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~~ collected 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~~C) 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 specimen.** A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's ~~blood specimen~~ 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 ~~withdrawn 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 Retained 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.

(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 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) ~~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 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~~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~~ 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.

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

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.

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

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.

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

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

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

~~(1) All 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.~~