

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD**  
**CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD**

**SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

**158:1-1-1. Purpose**

(a) These rules implement the Administrative Procedures Act, 75 O.S. § 250, *et seq.*, as amended ("APA"). These rules govern formal proceedings of the Construction Industries Board and may be supplemented by procedural rules within a particular division or unit area. Informal proceedings may be held as announced by the Construction Industries Board or as agreed with any person or entity.

(b) These rules are adopted to simplify procedure, avoid delays, reduce expenses, and facilitate the administration of the Construction Industries Board Act of Oklahoma and all other regulatory laws and rules administered by the Construction Industries Board. To that end, the provisions of these rules shall be given a fair and impartial construction.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 30 Ok Reg 1530, eff 7-11-13; Amended at 31 Ok Reg 892, eff 9-12-14]*

**158:1-1-2. Definitions**

Unless the context otherwise requires, singular words shall be deemed to include the plural, and masculine words to include the feminine, and vice versa. The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Act"** means the Construction Industries Board Act as found at 59 O.S. § 1000.1, *et seq.*

**"Administrator"** means the Administrator of the Board as described in the Act.

**"Administrative Law Judge"** means a person appointed by the Construction Industries Board to conduct an individual hearing under the Administrative Procedures Act and may be an employee or a private attorney with whom the Construction Industries Board has a contract for services.

**"Board"** means the Oklahoma Construction Industries Board.

**"Employees"** means the administrative staff of the Board referenced in 59 O.S. 2011 § 1000.4(B)(5) who were previously codified as unclassified employees in Senate Bill 354, effective July 1, 2001.

**"Respondent"** means the person(s) or legal entity(ies) named in a petition for an individual proceeding, against whom relief is sought.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 24 Ok Reg 1210, eff 5-25-07; Amended at 31 Ok Reg 892 eff 9-12-14; Amended at 32 Ok Reg 1612, eff 9-11-15]*

### **158:1-1-3. Organization**

The employees of the Board shall be unclassified, organized and divided into such divisions or units, as the Board deems desirable for efficiency. Such organization and division may be revised by the Board as it finds necessary or expedient. Copies of the organizational chart are available upon request to the Office of the Administrator.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 32 Ok Reg 1612, eff 9-11-15]*

### **158:1-1-4. Administrator**

- (a) **Appointment and term.** The Construction Industries Board shall hire the Administrator.
- (b) **Removal.** The Board may, by majority vote, terminate the employment of the Administrator.
- (c) **Duties.** The duties of Administrator shall include, but are not limited to:
  - (1) *Keep a record of all proceedings of the Board and certify to actions of the Board;*
  - (2) *oversee the receipt and deposit of all monies received by the Board in the appropriate revolving funds;*
  - (3) *submit, at the first regular meeting of the Board after the end of each fiscal year, a full itemized report of the receipts and disbursements for the prior fiscal year, showing the amount of funds on hand;*
  - (4) *perform such other duties as are prescribed in this act or as may be prescribed by the Board; and,*
  - (5) *assist the Construction Industries Board in the performance of its duties and shall report directly to the Board.*

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 21 Ok Reg 760, eff 4-26-04]*

## **SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES**

### **158:1-3-1. Address**

The principal office of the Board is 2401 N.W. 23rd, Suite 2F, Oklahoma City, Oklahoma 73107.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 21 Ok Reg 760, eff 4-26-04; Amended at 30 Ok Reg 1530, eff 7-11-13]*

### **158:1-3-2. Office hours**

Office hours are from 8:00 a.m. to 4:30 p.m., unless otherwise designated by the Administrator, each day except Saturday and Sunday and legal holidays established by statute or by the Governor.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 23 Ok Reg 1211, eff 5-25-06]*

### **158:1-3-3. Writing to the Board**

Written communication to the Board shall be addressed to the Administrator at the principal office.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-3-4. Board statements, orders and forms**

All records not privileged from disclosure by law are subject to the provisions of the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq.* Copies will be provided upon payment of a fee as allowed under the Oklahoma Open Records Act.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 32 Ok Reg 1612, eff 9-11-15]*

**158:1-3-5. Access to Agency records pursuant to the Open Records Act**

(a) **Official records.** Official records include records required to be maintained by law, the record in individual proceedings, records submitted to the agency by any person and any other "record" as that term is defined by the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq.* (OORA).

(b) **Access to official records.** Every record defined by subparagraph (a) above wherein disclosure is not otherwise specifically excepted by law or the OORA is subject to inspection and mechanical reproduction under the provisions set forth below.

(c) **Initial procedural requirements.** A request for inspection may be submitted orally or in writing. To encourage a fully articulated and accurate response to a request, the Board recommends a request be submitted in a form that is susceptible to memorialization such as a writing, electronic mail or facsimile transmission, and must reasonably describe the records sought. Additionally, if applicable, every request must specify a time period for which records are being sought. A request submitted in the manner above, reasonably describing the records sought and stating an appropriate time period for the records being sought will be timely acknowledged and further processed for a review and inspection. If, consistent with the OORA, staff personnel determine that a search is necessary to gather and collect the records sought by the requester, the requester is required to pay, in advance, a search fee pursuant to subparagraph (h) below.

(d) **Requests received.** Requests submitted to the agency will not be deemed to have been received unless and until the request has been identified by agency personnel as a request properly filed in accordance with these rules. After a determination is made estimating the search time necessary to gather the records requested, the agency will remit an advice of the cost to the requester. Upon receipt of the requested search fee, the request will be deemed to have been received by the agency and will then be timely processed for inspection.

(e) **Abandonment.** Any request not confirmed by a tender of the requisite search fee within thirty (30) days of advice by the agency shall be deemed to be abandoned, unless, within the time stated, the requester can show cause why the confirmation should be delayed or postponed.

(f) **Cooperation with the Board.** If the requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, the processing of the subject request may be suspended by agency personnel. A request that remains suspended for a period exceeding sixty (60) days shall be deemed abandoned.

(g) **Appeal.** If the agency cannot comply with the request for disclosure, the requester shall be notified in writing, within thirty (30) days of notice of the adverse determination, stating the reason(s) therefor and advising the requestor of the right, at the requestor's option, of administrative appeal under the provisions of OAC 158:1-3-7.

(h) **Fees.** The following are fees for reproduction of records:

- (1) Paper Records

- (A) Regular copy - \$0.25 per page
  - (B) Certified copy - \$1.00 per page
  - (C) Copy sent by fax - \$0.35 per page
  - (D) Copy of pages larger than 8-1/2 X 11 - \$0.50 per page.
- (2) Audio Tapes
- (A) With tape provided - \$5.00 per tape
  - (B) Without tape provided - \$10.00 per tape.
- (3) Electronic Records - Requester is required to furnish blank tape(s) if reproduction is not in a printout format.
- (A) \$50.00 per hour programming time
  - (B) \$1,850.00 per CPU hour
  - (C) \$50.00 per hour for other computer time.
- (4) Search Fees - \$25.00 per hour.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 31 Ok Reg 892, eff 9-12-14]*

### **158:1-3-6. Administrative Law Judges and clerks**

(a) **Administrative Law Judge.** The Administrator may designate a person to serve as an Administrative Law Judge for any proceeding properly filed with the Board. Administrative Law Judges shall be familiar with the rules of procedure and generally familiar with the substantive rules governing the matter, and shall not have had prior involvement in the matter other than as an Administrative Law Judge. The Administrative Law Judge so designated shall have full authority to conduct all aspects of the hearing.

(b) **Hearing clerks.** The Administrator shall designate a person to serve as hearing clerk for the Board. The clerk shall maintain the administrative hearing files and dockets.

(c) **Authority.** The Administrative Law Judge shall have complete authority to conduct the proceedings and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. The Administrative Law Judge may also:

- (1) arrange and issue notice of the date, time and place of hearings and conferences;
- (2) establish the methods and procedures to be used in the presentation of the evidence;
- (3) administer oaths and affirmations;
- (4) regulate the course of the hearing and govern the conduct of participants;
- (5) examine witnesses;
- (6) rule on, admit, exclude and limit evidence;
- (7) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;
- (8) rule on motions and other pending procedural matters; and
- (9) divide the hearing into stages or combine interests of parties whenever the number of parties is large or the issues are numerous and complex.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 31 Ok Reg 892, eff 9-12-14]*

### **158:1-3-7. Requesting individual proceedings and rulemaking**

(a) **APA governs.** The Administrative Procedures Act, 75 O.S. § 250, *et seq.*, governs individual proceedings and rulemaking undertaken by the Board.

- (b) **Petitions.** All initial requests for hearings or other adjudicatory, declaratory or rulemaking action of the Board should be made in the form of a petition, unless otherwise provided by specific statute or rule.
- (c) **Petitioner(s).** The Board or the Administrator, and other petitioners when authorized by law, may initiate petitions for individual proceedings and for rulemaking.
- (d) **Motions.** All requests for action in a matter already before the Board shall be made in the form of a motion.
- (e) **Must state reason and sign.** All requests must state clearly and with specificity the reason and basis for the request, and the action or relief sought. The request shall be signed by the person presenting the same, or his attorney pursuant to 75 O.S. § 310(5), and in all cases shall include the signer's address and phone number.
- (f) **Where filed.** All requests shall be filed with the hearing clerk.
- (g) **Response.** The Board or the Administrator shall timely respond to such petitions or motions, either by initiating proceedings or by denying the request in writing. The Administrator may refer rulemaking petitions, and petitions requesting declaratory rulings on the applicability of any rule, to appropriate advisory councils and committees for their recommendations, and shall do so when required by statutes. Any petition for rulemaking will be deemed to be denied if the Administrator has not initiated rulemaking proceedings within thirty (30) calendar days after the petition is filed with the hearing clerk.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 31 Ok Reg 892, eff 9-12-14]*

#### **158:1-3-8. Fee for dishonored checks**

The Construction Industries Board may charge and collect a fee of \$25.00 from any licensee, registrant or other obligor of a fee, fine, or other payment for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the licensee, registrant or other obligor.

*[Source: Added at 26 Ok Reg 2448, eff 7-11-09; Amended at 31 Ok Reg 892, eff 9-12-14]*

#### **158:1-3-9. Fees for plan review and project review for code conformance**

- (a) **Plan review fee.** For formal review of project plans pursuant to 59 O.S. §§ 1002.1, 1681.1 and 1850.3a, the Construction Industries Board shall charge a fee of \$ 75.00 per hour per review, one hour minimum, not to exceed \$200 for any single review.
- (b) **Project review inspection fee.** For inspection services related to a project review for code conformance pursuant to 59 O.S. § 1000.5(A)(2), the Construction Industries Board shall charge a fee of \$ 75.00 per hour, per inspection, one hour minimum, not to exceed \$200 for any single inspection.
- (c) **Limitations on inspection fees.** The fee required in subsection (b) herein only applies in localities where the Construction Industries Board is the authority having jurisdiction for code enforcement purposes and the inspection services are performed at the request of a contractor or property owner. The Construction Industries Board shall not charge a fee for inspections related to licensing or licensee investigations.
- (d) **Each code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein based on the trade (plumbing, electrical or mechanical) work inspected for code conformance by the Construction Industries Board.

(e) **Subsequent code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein for each subsequent inspection of work for conformance to a code, including scheduled progress inspections performed at different intervals during the stages of construction.

*[Source: Added at 27 Ok Reg 2080, eff 7-11-10; Amended at 31 Ok Reg 892, eff 9-12-14]*

**158:1-3-10. Acceptance of Military education, training, and experience toward qualification for licensure or endorsement examination**

(a) **Licensure or endorsement - post-military service.** In accordance with 59 O.S. § 4100.4 of the Post-Military Service Occupation, Education and Credentialing Act, the related trade committee and the Board shall, upon satisfactory evidence of substantially equivalent education, training and experience by an applicant for licensure, registration, or endorsement, accept the education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction, and apply it in the manner most favorable toward satisfying the applicant's qualifications for examination and license or endorsement issuance.

(1) An applicant applying under this paragraph must complete and submit the following:

(A) Appropriate application(s).

(B) Satisfactory evidence of education, training and experience obtained by the applicant as a member of the military Armed Forces or Reserves of the United States.

(C) License, registration, or endorsement certification(s) from jurisdiction(s) in which the applicant has held or currently holds a license, registration, or endorsement, if applicable.

(D) Criminal history background application, finger print card and fee, if applicable.

(E) Successful completion of the appropriate examination.

(b) **Military spouse applicant – equivalency.** In accordance with 59 O.S. § 4100.5 the Board shall issue the individual an equivalent license, registration, or endorsement in an equivalent category if, in the opinion of the related trade committee, the requirements for licensure, registration, or endorsement of the other state are substantially equivalent to those required by this state, and the applicant:

(1) is actively licensed or holds active registration or endorsement in another state;

(2) is the spouse of an active-duty member of the Armed Forces or Reserves of the United States;

(3) has a spouse subject to a military transfer to this state; and

(4) left employment in another state to accompany their spouse to this state.

(c) **May be required to meet additional requirements.** If, in the opinion of the related trade committee, there is a question as to the competence of the previously licensed, registered, or endorsed applicant, the individual may be required to meet additional educational courses and/or successfully complete the required examination.

*[Source: Added at 31 Ok Reg 892, eff 9-12-14; Amended at 32 Ok Reg 432, eff 12-17-14 (emergency); Amended at 32 Ok Reg 1612, eff 9-11-15]*

**158:1-3-11. Expediting issuances of license, registration, or endorsement to military spouse**

The following procedures are hereby established to expedite the issuance of a license, registration, or endorsement for spouses of certain members of the Armed Forces on active duty in this state.

(1) The Board shall expedite consideration of requests by military spouses by methods appropriate to the volume of such requests by, in its sole discretion, referring to the related trade committee to review them, or other appropriate methods. The Board may request supplemental information as may be necessary. The application will be heard, if necessary, at the next practicable trade related committee meeting following submission of all requested documentation.

(2) Upon satisfactory completion of any specific requirements in Oklahoma that were not required in the state in which the military spouse is licensed or holds an active registration or endorsement, or passing the required examination, the Board may issue the applicant an electrical, mechanical or plumbing journeyman license, or electrical, mechanical, or plumbing contractor license, or building and construction inspector license, or home inspector license, roofing registration or commercial roofing endorsement subject to the usual requirements of Oklahoma licensure, roofing registration or endorsement, including, but not limited to, continuing education, payment of license, roofing registration or endorsement fees and renewal fees, and compliance with all applicable statutes and rules of the Board.

*[Source: Added at 31 Ok Reg 892, eff 9-12-14; Amended at 32 Ok Reg 432, eff 12-17-14 (emergency); Amended at 32 Ok Reg 1612, eff 9-11-15]*

**158:1-3-12. Renewals for licensee or registration or endorsement holder - post-military service**

(a) **Active duty as a member of the Armed Forces of the United States.** In accordance with 59 O.S. § 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act, while a licensee or registration or endorsement holder is on active duty the license, registration or endorsement may be renewed without payment of the license, registration or endorsement renewal fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Board prior to license, registration or endorsement expiration, along with evidence of the order for active duty. The license, registration or endorsement issued pursuant to this rule may be continued as long as the licensee or registration or endorsement holder is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon discharge from active duty and a request for license, registration or endorsement activation, the licensee or registration or endorsement holder shall submit to the Board evidence of successful completion of the continuing education requirement for the current license or endorsement renewal term.

(1) If a licensee, or registration or endorsement holder on active duty does not request such waiver in writing and the license, registration or endorsement expires, the applicant may, by written request, provide the Board documentation as required in paragraph (a) of this section; however, no later than one (1) year after discharge from active duty.

(2) In the event a license, registration or endorsement expires during the events as noted herein, the Board shall waive any retesting license or endorsement examination as a result of the expired license or endorsement.

(b) **Member of the National Guard or reserve component of the Armed Forces.** In accordance with 72 O.S. § 48.2 Extension and Renewal of Professional Licenses, any licensee, or registration or endorsement holder whose license, registration or endorsement expires while

on active duty as a member of the National Guard or reserve component of the armed forces shall be extended until no later than one (1) year after the member is discharged from active duty status. Upon the Board receiving a copy of the official orders calling the member or reservist to active duty and official orders discharging the member or reservist from active duty all license, registration or endorsement fees and continuing education shall be waived for this time period as well as license or endorsement examination otherwise required as a result of license, registration or endorsement expiration.

*[Source: Added at 31 Ok Reg 892, eff 9-12-14; Amended at 32 Ok Reg 432, eff 12-17-14 (emergency); Amended at 32 Ok Reg 1612, eff 9-11-15]*

## **SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL PROCEEDINGS**

### **158:1-5-1. Petition and notice**

Individual proceedings may be initiated by filing a petition with the hearing clerk and by serving the petition on all Respondents. Each petition shall name the Respondent and shall contain a reference to the statutes and rules involved, a brief statement of the facts giving a right to relief and of the relief requested. The petition may allege facts without stating specific facts if the specific violations are included in a document which is incorporated by reference and attached to the petition. The petition shall meet the requirements of "notice" under the APA.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

### **158:1-5-2. Notice of hearing**

The Administrator, his or her designee, or the Administrative Law Judge shall schedule the date, time and place of the hearing. The hearing clerk shall notify both parties. The hearing shall be scheduled at least fifteen (15) days after the date of service of the petition. Both parties may agree to an earlier date. If a specific law requires a hearing in fewer days, that statute shall be followed. If an emergency exists, a hearing may be conducted without the filing of a petition and without the fifteen (15) day notice.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 30 Ok Reg 1530, eff 7-11-13]*

### **158:1-5-3. Service of petition and notice of hearing**

- (a) **Service.** The Petition and notice of hearing shall be served on the Respondent by personal service or by mail or other lawful means.
- (b) **Personal service.** Personal service of the petition and the notice of hearing upon an individual shall be made by delivering the Petition personally on the Respondent or by leaving a copy of the Petition at the individual's dwelling place or the usual place of abode with some person residing therein who is fifteen (15) years of age or older.
- (c) **Board as petitioner.** Where the Board is the petitioner, personal service of the petition and notice of hearing may be made by a person designated by the Administrator to make such service for the Board.
- (d) **Service by mail.** Service of the petition and the notice of hearing may be made by certified mail, return receipt requested, restricted delivery.
- (e) **Proof of service.** The person serving the petition and the notice of hearing shall file proof of service with the hearing clerk within twenty (20) days of service or before the date of the

hearing whichever is sooner. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.

(f) **Substitute service.** Substitute service in a matter against a licensee may be completed after personal and mail service are attempted with the filing of an affirmation of the attempted service and that the petition and notice of hearing were mailed first class mail to the last known address of the licensee.

(g) **Service of Proposed Order and Notice of Appeal.** A person shall file an entry of appearance and agreement to allow use of regular mail for proposed orders. Issuance of proposed orders and the notice of appeal may then be sent by regular mail. If an entry of appearance or agreement is not filed, then the proposed order and notice of appeal will be sent using a certificate of mailing indicating the date of mailing and the name and address of the addressee.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 30 Ok Reg 1530, eff 7-11-13; Amended at 31 Ok Reg 113, eff 10-15-13 (emergency); Amended at 31 Ok Reg 892, eff 9-12-14]*

#### **158:1-5-4. Service of other papers and documents**

Service of all other documents and papers connected with an individual proceeding shall be served on the parties or their counsel by delivering a copy or mailing a copy by regular mail.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

#### **158:1-5-5. Response**

A Respondent may file, and the Administrative Law Judge may direct a Respondent to file, a responsive pleading to the petition or order that initiated the action.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

##### **158:1-5-5.1. Entry of Appearance**

Respondents, attorneys representing Respondents, and attorneys representing the Board in an individual proceeding shall file an entry of appearance. The entry of appearance shall include the case caption of the individual proceeding, the name, address, telephone number, and electronic mailing address of Respondent or of Respondent's attorney.

*[Source: Added at 31 Ok Reg 113, eff 10-15-13 (emergency); Added at 31 Ok Reg 892, eff 9-12-14]*

#### **158:1-5-6. Prehearing conference**

A prehearing conference may be ordered and scheduled by the Administrative Law Judge on his own motion or upon the request of any party. The Administrative Law Judge may authorize such to occur by teleconference. The subjects and objectives of prehearing conferences shall be similar to those for pretrial proceedings in the district courts.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

#### **158:1-5-7. Continuances**

Motions for a continuance of the hearing to another date or time shall be in writing and filed with the Hearing Clerk with a copy to the parties and the Administrative Law Judge. A motion

for a continuance shall state the reasons for the request and specify the length of time requested. The Administrative Law Judge shall act upon such motion promptly and shall grant or deny such request at his discretion. If the motion is denied, it may be renewed orally by the party at the hearing. No administrative hearing case shall be delayed or continued once placed upon the Board's agenda for final review except with consent of the parties.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 31 Ok Reg 113, eff 10-15-13 (emergency); Amended at Ok Reg 892, eff 9-12-14]*

### **158:1-5-8. Subpoenas**

(a) **Issuance.** Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Hearing Clerk upon request by a party. As an officer of the court, an attorney authorized to practice law in Oklahoma may also issue and sign subpoenas. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code.

(b) **Failure to obey.** The Board or Petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Administrative Law Judge may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c) **Motions to quash.** Motions to quash subpoenas may be filed with the hearing clerk and will be ruled on by the Administrative Law Judge.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

### **158:1-5-9. Record**

(a) **To be made.** An electronic recording of the hearing proceedings shall be made. The recording will not be transcribed as a matter of course. The Board's electronic recording of the hearing shall be the official record. Copies of the recordings shall be provided to a party on written request. A transcript may be obtained by submitting a written request and tendering payment in an amount sufficient to pay the cost of having the recording transcribed. Cost of transcription shall be borne by the party requesting same.

(b) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(c) **Maintained.** The record of a proceeding and the file containing the notices and the pleadings will be maintained in a location designated by the Hearing Clerk. All pleadings, motions, orders and other papers submitted for filing in such a proceeding shall be date/file-stamped by the hearing clerk upon receipt. The burden of showing substantial prejudice by any failure to correctly file-stamp any submittal shall be upon the party asserting such.

(d) **Designation on appeal.** On appeal, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the Administrative Procedures Act.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-10. Order of procedure**

(a) **Generally that of civil proceedings.** The order of procedure in hearings in all individual proceedings shall generally be governed by the Oklahoma Pleading Code and the Discovery Code. At the hearing, each party may make a brief opening statement; present witnesses, documents and exhibits on its behalf; cross-examine adverse witnesses; and make closing arguments. The rules of evidence shall be those specified by the APA. At the discretion of the Administrative Law Judge, any party may reopen the case in chief, even after the adverse party has rested. Parties may stipulate to any lawful matter.

(b) **Matters not described.** Any matter of practice or procedure not specified either by the APA or by these rules will be guided by practice or procedure followed in the district courts of this state.

(c) **Rulings.** The Administrative Law Judge shall rule on the admissibility of evidence and objections to evidence, on motions or objections raised during hearings, and may rely on the advice of counsel present and serving in an advisory capacity. Any party may object to a ruling considered erroneous. All objections shall be made promptly or be deemed waived. Parties shall be deemed to have taken exception to any adverse ruling.

(d) **Findings and conclusions.** The Administrative Law Judge shall hear all evidence and arguments applicable in a case and shall prepare Findings of Fact and Conclusions of Law. The Administrative Law Judge may allow the parties to submit briefs or proposed findings and conclusions before ruling on the matter at issue, specify the time of filing and shall rule on such proposed findings.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-11. Default**

Any Respondent or other person who fails to appear as directed, after service of the petition and notice of hearing as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the petition. A final order in such proceeding may be issued by the Administrative Law Judge or the Administrator granting by default the relief prayed for in the petition.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-12. Order**

Following the hearing, the Administrative Law Judge shall prepare a proposed final order to be authorized by the Board. The proposed final order will be automatically reviewed by the entire Board to be affirmed, denied, or remanded to the Administrative Law Judge for further hearing, with or without instructions. A written recommendation and summary of the case will be provided to the Board by the Administrator. The decision by the Board that is affirmed or denied will be a final order. Any decision to remand will be brought before the Board following further proceeding by the Administrative Law Judge and the new proposed order will be reviewed by the Board according to this section. The Board member attending the original or remanded trade hearing board hearing will abstain from discussion or voting when the same matter is before the Board. The Board will review proposed orders no later than the last day of the quarter the proposed order was issued.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02; Amended at 31 Ok Reg 113, eff 10-15-13 (emergency); Amended at 31 Ok Reg 892, eff 9-12-14]*

**158:1-5-13. Reconsideration**

Any party may petition for rehearing, reopening or reconsideration of any decision in an individual proceeding within ten (10) days of its entry, pursuant to 75 O.S. § 317. Nothing shall prevent reconsideration of a matter in accordance with other statutory provisions.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-13.1 Appeals**

(a) Any person subject to an administrative fine, penalty or fee shall have all rights to appeal according to the Administrative Procedures Act once a final order is authorized by the Board. A person may appeal a proposed order to the Board, and any final order by the Board may be appealed to the district court of Oklahoma County.

(b) In order to appeal the Administrative Law Judge's proposed order, the person must file with the Board a Request for Appeal and brief within ten (10) business days of the issuance of the Administrative Law Judge's proposed order. The Request for Appeal and brief shall be no more than fifteen (15) pages and the person shall set forth a summary of the exceptions with the Administrative Law Judge's proposed order. The attorney for the Board may issue a brief in response. The person will then be notified of the date and time of the appropriate Board meeting regarding the appeal.

(c) A request for oral arguments shall be made at the time the Request for Appeal is filed with the Board. Oral arguments will be limited to no more than ten minutes (10) for each side. Briefs and oral arguments shall not include any new factual information.

(d) The Board may affirm the proposed order, deny the proposed order, or remand the case to the hearing officer, with or without instructions.

*[Source: Added at 31 Ok Reg 113, eff 10-15-13(emergency); Added at Ok Reg 892, eff 9-12-14]*

**158:1-5-14. Settlement**

Unless precluded by law, individual proceedings may be resolved by agreed settlement or consent order, with the concurrence of the Administrator.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-15. Enforcement of Final Orders**

The Administrator may apply for judicial enforcement of Final Orders.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-16. Emergency actions**

When the Board finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action or summary suspension of a license may be ordered pending the filing of a petition and/or the outcome of an individual proceeding.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 (emergency); Added at 19 Ok Reg 1258, eff 5-28-02]*

**158:1-5-17. Notice of violation and compliance orders**

(a) The Board, through its investigator, may issue a written notice of violation to any person or entity who is in violation of any standard or rule adopted by the Board. The notice of violation shall be served in accordance with OAC 158:1-5-3.

(b) Fifteen (15) days following the service of the notice of violation, the Board, through the administrator, may issue a written order requiring compliance with such standards or rules immediately or within a specified period of time. The fifteen-day notice period may be reduced to render the order reasonably effectual. Such order shall state with specificity the nature of the violation. Additionally, such order may assess a fine for each day of noncompliance with the order. All orders shall be served in accordance with OAC 158:1-5-3.

(c) Any person or entity issued an order must request a hearing no later than fifteen (15) days after the order is served. If a hearing is not requested, the order shall become final. If a hearing is requested, a hearing shall be held before the appropriate hearing board of the Construction Industries Board.

*[Source: Added at 21 Ok Reg 760, eff 4-26-04; Amended at 31 Ok Reg 892, eff 9-12-14]*

## **SUBCHAPTER 7. OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

**158:1-7-1. Purpose**

Pursuant to the Oklahoma Small Business Regulatory Flexibility Act (75 O.S. § 501, *et seq.*), these Rules apply to all fines and penalties imposed by the Board.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 through 7-14-02 (emergency)¹; Added at 20 Ok Reg 2649, eff 7-26-03; Amended at 31 Ok Reg 892, eff 9-12-14]*

*EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-02 (after the 7-14-02 expiration of this emergency action), Section 158:1-7-1 was no longer effective, and remained as such until added by permanent action on 7-26-03.*

**158:1-7-2. Definitions**

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Fine or penalty"** means a consequence that is a result of violating any statute, ordinance or rule governed by the Board pursuant to the Construction Industries Board Act.

**"Small Business"** means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees that is subject to regulation by the Board.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 through 7-14-02 (emergency)¹; Added at 20 Ok Reg 2649, eff 7-26-03; Amended at 31 Ok Reg 892, eff 9-12-14]*

*EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-02 (after the 7-14-02 expiration of this emergency action), Section 158:1-7-2 was no longer effective, and remained as such until added by permanent action on 7-26-03.*

**158:1-7-3. Waiver or reduction of administrative fine or penalty**

(a) Pursuant to the Oklahoma Small Business Regulatory Flexibility Act, a small business which is regulated by the Board can request a waiver or reduction in an administrative fine or penalty. An administrative fine or penalty may be waived by the Board against a small business if:

- (1) The small business corrected the violation within thirty (30) days of receiving notice of a violation or a citation; or
- (2) The violation was the result of an excusable misunderstanding of the Board's interpretation of a rule.

(b) The Board may not grant a waiver or reduction if:

- (1) The small business was notified of the violation of a statute, ordinance or rule by the Board, i.e., given a warning prior to the issuance of an administrative fine or penalty;
- (2) The small business did not exercise good faith in complying with a statute, ordinance or rule;
- (3) The violation involved willful or criminal conduct by the small business;
- (4) The violation resulted in a serious health, safety or environmental impact; or
- (5) The fine or penalty was assessed pursuant to federal law and for which no waiver was authorized by federal law or regulation.

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 through 7-14-02 (emergency)'; Added at 20 Ok Reg 2649, eff 7-26-03; Amended at 31 Ok Reg 892, eff 9-12-14]*

**EDITOR'S NOTE:** *'This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-02 (after the 7-14-02 expiration of this emergency action), Section 158:1-7-3 was no longer effective, and remained as such until added by permanent action on 7-26-03.*

**158:1-7-4. Assessment Order [EXPIRED]**

*[Source: Added at 19 Ok Reg 1243, eff 2-1-02 through 7-14-02 (emergency)']*

**EDITOR'S NOTE:** *'This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-02 (after the 7-14-02 expiration of this emergency action), Section 158:1-7-4 was no longer effective. For the official text of the emergency rule that was in effect from 2-1-02 through 7-14-02, see 19 Ok Reg 1243.*