

RULE IMPACT STATEMENT

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

1. **BRIEF DESCRIPTION OF PURPOSE OF PROPOSED RULE:** The purpose of the proposed rule amendments is to clarify the definition of Administrative Law Judge and provide a definition for petition; to add procedures for reciprocity and portability of licensure and registration; to clarify procedures for serving petition and notice of hearing in individual proceedings; to clarify notice of individual hearings as it relates to the Oklahoma Inspector's Act; to clarify service of papers and documents; to clarify how appeals are to be filed; and to add procedures and duties for a skilled trade education and workforce development fund.
2. **DESCRIPTION OF THE CLASSES OF PERSONS AFFECTED:** The agency, members of industry and persons subject to the provisions of The Plumbing License Law of 1955, the Electrical License Act, the Mechanical Licensing Act, the Oklahoma Inspectors Act, the Home Inspection Licensing Act, and the Roofing Contractor Registration Act.
3. **CLASSES OF PERSONS BENEFITTED:** The agency, members of industry and persons subject to the provisions of The Plumbing License Law of 1955, the Electrical License Act, the Mechanical Licensing Act, the Oklahoma Inspectors Act, the Home Inspection Licensing Act, the Roofing Contractor Registration Act, and members of the public interested in the trades.
4. **ECONOMIC IMPACT UPON AFFECTED CLASSES OF PERSONS:** No fees are established or changed by the proposed rules. The proposed amendments are for clarification purposes and therefore, there would be no new/different economic impact.
5. **COSTS AND BENEFITS TO THE AGENCY:** The proposed amendments create no new cost to the agency. The benefit is to have clear, unambiguous rules in place to assist those impacted by the rules.
6. **ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** No fees are established or changed by the proposed rules. The proposed amendments are for clarification purposes and therefore, there would be no new/different economic impact.
7. **ECONOMIC IMPACT ON SMALL BUSINESS:** Any economic impact on small business is not measurable.
8. **MEASURES TAKEN TO MINIMIZE COMPLIANCE COSTS:** The proposed rule changes are the least costly or least intrusive method of achieving the purpose of the proposed rules. There are no non-regulatory methods for achieving the purpose of the proposed rule changes.

9. **EFFECT OF THE PROPOSED RULE ON PUBLIC HEALTH:** No impact on public health is anticipated.
10. **DETRIMENTS TO PUBLIC HEALTH IF THE RULE IS NOT ADOPTED:** There are no known detriments to public health if the proposed rule changes are not adopted.
11. **DATE IMPACT STATEMENT PREPARED:** December 19, 2018.

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

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

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, who may also be referred to as a hearing examiner or a hearing officer.

"Board" means the Oklahoma Constructions 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.

"Petition" means a pleading initiating an individual proceeding under the Administrative Procedures Act and may be in the form of an individual petition or a citation.

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

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

158:1-3-13. Reciprocity, exam equivalency and portability of licensure and registration

(a) Reciprocity. Pursuant to the Construction Industries Board Act and trade licensing and registration acts administered by the Board, the Board may enter into reciprocity agreements with another state or jurisdiction, upon a satisfactory showing that the requirements for obtaining a license by examination in Oklahoma are deemed by the Board to be substantially the same or equivalent to the requirements of the other jurisdiction's original license by examination. A current Oklahoma reciprocity agreement allows Oklahoma and another jurisdiction, to reciprocate by license type and category, without the Oklahoma licensee or the in-coming applicant being required to meet any additional requirement in either jurisdiction.

(b) Exam equivalency. To allow licensees to have more portability of their license, one who is seeking Oklahoma licensure may be eligible for exam equivalency in the category of their home jurisdiction license by examination. The Board may enter into exam equivalency agreements with another state or jurisdiction concerning an examination requirement of a license upon a satisfactory showing that the examination in Oklahoma and the other jurisdiction is deemed by the Board to be an equivalent examination. After there is an approved exam equivalency agreement with the jurisdiction, applications may be accepted from that jurisdiction showing proof of successfully passing the exam. Proof of continuous licensing in good standing from time of examination is required. A current examination equivalency agreement allows another jurisdictions exam, that is evaluated by a trade Committee to be equivalent to Oklahoma's exam

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for the same license type and category, to be approved by the Board and accepted for the exam requirement in Oklahoma. Exam equivalency only applies to the examination requirement of a license, therefore all other requirements for that license type and category must still be completed to obtain a license in Oklahoma.

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL PROCEEDINGS

158:1-5-1. Petition and notice

(a) 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.

(b) For matters pursuant to the Oklahoma Inspectors Act, notice of an individual proceeding will be served upon an individual licensee or for political subdivisions the mayor, city manager, or city attorney for the Respondent jurisdiction according to the Procedures of the Construction Industries Board's administrative rules in Title 158, Ch 1.

158:1-5-2. Notice of hearing

(a) 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.

(b) For matters pursuant to the Oklahoma Inspectors Act, notice of an individual hearing will be served upon an individual licensee or for political subdivisions the mayor, city manager, or city attorney for Respondent jurisdiction according to the Procedures of the Construction Industries Board's administrative rules in Title 158, Ch 1.

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

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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.

(h) **Oklahoma Inspector's Act.** For matters pursuant to the Oklahoma Inspectors Act, notice of an individual hearing will be served upon an individual licensee or for political subdivisions the mayor, city manager, or city attorney for the Respondent jurisdiction according to the Procedures of the Construction Industries Board's administrative rules in Title 158, Ch 1.

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

(a) 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.

(b) For matters pursuant to the Oklahoma Inspectors Act, service of all other documents and papers connected with an individual proceeding will be served upon an individual licensee or for political subdivisions the mayor, city manager or city attorney for the Respondent jurisdiction according to the Procedures of the Construction Industries Board's administrative rules in Title 158, Ch 1.

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 written Request for Appeal and brief within ten (10) business days of the issuance of the Administrative Law Judge's proposed order by delivering or mailing the written request and brief to the principal office of the Board during regular office hours as provided in this chapter. The request and brief must be legible, on standard paper size of 8.5" x 11", and contain the Respondent's full name, citation number, mailing address, telephone number, and a complete detailed description of the reason for the appeal. 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 no less than two (2) weeks before the Board meeting to consider the appeal. 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.

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

SUBCHAPTER 9. ACTIONS TO IMPROVE WORKFORCE DEVELOPMENT AND SKILLED TRADE EDUCATION

158:1-9-1. Skilled Trade Education and Workforce Development Fund

The available funds, based upon statutory limitations, of the Skilled Trade Education and Workforce Development Fund shall be used only for the advancement of the trade-related education and workforce development. The Skilled Trade Education and Workforce Development Fund was created for the following purposes:

A. To develop instructional materials on Oklahoma laws, statutes and rules, as they relate to the plumbing, mechanical, electrical and roofing trades and state licensing standards;

B. To cover the cost of equipment, materials, personnel and any other costs of developing and implementing the trade curriculum; and

C. To cover the cost of equipment, materials, personnel and any other costs of developing and implementing the workforce development program used to promote the plumbing, mechanical, electrical and roofing trades as a career in Oklahoma.

158:1-9-2. Additional powers and duties of the Board-workforce development and education

The Construction Industries Board shall have the additional powers to:

A. Receive and convey information relating to the skilled trades regulated by the Construction Industries Board; and

B. Enter into contracts with the Oklahoma Department of Career and Technology Education for any accredited vocational or technical school or system of education institution in the State of Oklahoma receiving state appropriations and offering programs in secondary and postsecondary instruction that provide electrical, mechanical, plumbing or roofing trade coursework for any of the following purposes, or combination thereof:

1. developing and implementing instructional courses on Oklahoma Statutes and rules that govern the electrical, mechanical, plumbing and roofing trades, which courses can be in conjunction with instruction in performing trade work or instruction on statewide-adopted trade codes, or both, for the advancement of the electrical, mechanical, plumbing and roofing trades, or

2. developing and implementing a workforce development program that will create interest in the pursuit of a skilled trade career. The workforce development program may consist of, but is not limited to, use of the internet, community and school presentations, and research and instruction on the electrical, mechanical, plumbing and roofing trades.

158:1-9-3. Contracts with Oklahoma Department of Career and Technology Education

(a) All contracts with the Oklahoma Department of Career and Technology Education pursuant to this section shall be approved by the Construction Industries Board in accordance with the

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Oklahoma Open Meeting Act. Cost of the contracts with the Oklahoma Department of Career and Technology Education for education and workforce development programs shall be paid from the Skilled Trade Education and Workforce Development Fund.

(b) All contracts with the Oklahoma Department of Career and Technology Education entered into and approved pursuant to this section shall include the following:

1. The time period for the contract.

2. The amount of available funds of the previous fiscal year determined by statutory limitations transferred to the Skilled Trade Education and Workforce Development Fund for expenditure according to the terms of the contract.

3. A description of the services to be provided under the terms of the contract pursuant to this subchapter that may include, but not be limited to:

A. Career awareness programs that will create interest in the pursuit of a skilled trade career in the electrical, mechanical, plumbing and roofing trades;

B. Education in regulatory and trade requirements, performing trade work, and the related state adopted building codes governing the electrical, mechanical, plumbing and roofing trades, and assisting with existing classes, courses and programs; or,

C. Assistance with developing and implementing lesson plans, curriculum and information for school teachers, counselors and others assisting with career awareness in the related trades.

4. A requirement for the Oklahoma Department of Career and Technology Education to provide a report at the end of the contract terms describing how the funds of the contract were used, what was the return to the Construction Industries Board, and the benefits of the use of the funds to the State of Oklahoma, the development and education of the Oklahoma skilled workforce in the related trades, and the health, safety and welfare of the public.

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Description of Organization

158:1-1-2 [AMENDED]

Subchapter 3. General Operation and Procedures

158:1-3-13 [NEW]

Subchapter 5. Procedure in Individual Proceedings

158:1-5-1 [AMENDED]

158:1-5-2 [AMENDED]

158:1-5-3 [AMENDED]

158:1-5-4 [AMENDED]

158:1-5-13.1 [AMENDED]

Subchapter 9. Actions to Improve Workforce Development and Skilled Trade Education [NEW]

158:1-9-1 [NEW]

158:1-9-2 [NEW]

158:1-9-3 [NEW]

SUMMARY:

The proposed amendments to 158:1-1-2 clarify the definition of Administrative Law Judge and provide a definition for petition. The proposed amendments for 158:1-3-13 add procedures for reciprocity and portability of licensure and registration. The proposed amendment to 158:1-5-1 clarifies procedures for serving petition and notice of hearing in individual proceedings. The proposed amendment to 158:1-5-2 clarifies the notice of individual hearing as it relates to the Oklahoma Inspector's Act. The proposed amendment to 158:1-5-3 clarifies service of paper and documents. The proposed amendments to 158:1-5-13.1 clarifies how appeals are to be filed. The proposed addition of 158:1-9-1, 158:1-9-2 and 158:1-9-3 is to add procedures and duties for a skilled trade education and workforce development fund.

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 858-627, 1000.4, 1000.5, 1002, 1032, 1681, 1850.3, 1151.2a, and 1151.4

COMMENT PERIOD:

Written and oral comments will be accepted until 4:30 p.m. on January 16, 2019, at the following address: Construction Industries Board, ATTN: Administrative Rules Division, 2401 NW 23rd Street, Ste. 2F, Oklahoma City, OK 73107. During the open public comment period, comments may be delivered during regular business hours or submitted via regular mail.

PUBLIC HEARING:

A Public Hearing is scheduled for 1:30 p.m. on Wednesday, January 23, 2019, at the monthly meeting of the Construction Industries Board which will be held in the Construction Industries Board Conference Room at 2401 NW 23rd Street, Suite 2F, Oklahoma City, OK 73107. Anyone who wishes to make comments regarding the proposed rules at the public hearing must sign in by 1:30 p.m. See "Additional Information" section below.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to the Administrative Rules

Division through the close of the comment period on January 16, 2019, at the address shown below for obtaining copies of the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules are available at the Construction Industries Board, 2401 NW 23rd Street, Ste. 2F, Oklahoma City, OK 73107, or online at www.cib.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared and will be available beginning December 28, 2018, at the address listed above for obtaining copies of the proposed rules.

CONTACT PERSON:

Stephanie Brown, Board Secretary/ Executive Assistant, 405-521-6550

ADDITIONAL INFORMATION:

If the monthly meeting of the Construction Industries Board scheduled for Wednesday, January 23, 2019, cannot be held due to inclement weather or lack of a quorum, the Public Hearing that would have occurred January 23, 2019, at that monthly meeting of the Construction Industries Board will be held instead at the monthly meeting scheduled for Wednesday, February 13, 2019, at 1:30 p.m., in the Construction Industries Board Conference Room at 2401 NW 23rd Street, Suite 2F, Oklahoma City, OK 73107. Anyone who wishes to make comments regarding the proposed rules at the public hearing must sign in by 1:30 p.m.