

Rules for the Administration of the Oklahoma Employment Security Act



JUNE 2009

STATE OF OKLAHOMA

**Brad Henry, Governor
Jon Brock, Executive Director**

**RULES
of the
OKLAHOMA EMPLOYMENT SECURITY COMMISSION
2401 North Lincoln Boulevard
Will Rogers Memorial Office Building
Oklahoma City, Oklahoma 73105-4495**

(Codified 2-12-91)

These rules were adopted by the Oklahoma Employment Security Commission pursuant to the Oklahoma Administrative Procedures Act, 75 O.S §§250 et seq..

The rules in this document are NOT the official rules of the Oklahoma Employment Security Commission. The official text is the text accepted by the Secretary of State for publication in the Oklahoma Administrative Code. The official rules are on file in the Office of Administrative Rules of the Oklahoma Secretary of State. They are also available at the Secretary of State's web site at: <http://204.87.112.100/oar/codedoc02.nsf/Titles?OpenView>

The Oklahoma Employment Security Commission has tried to make sure the text of the rules in this book are the same as the text on file in the Office of Administrative Rules of the Secretary of State. Any differences will be decided in favor of the text on file in the Office of Administrative Rules of the Secretary of State.

As a condition to the award of financial assistance from the Department of Labor, under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following:

Section 188 of the Workforce Investment Act of 1998 (WIA)

Title VI of the Civil Rights Act of 1964

Section 504 of the Rehabilitation Act of 1973

The Age Discrimination Act of 1975

Title IX of the Education Amendments of 1972, and
29 CFR Part 37

This publication is issued by the Oklahoma Employment Security Commission as authorized by the Oklahoma Employment Security Act. Fifteen hundred copies have been prepared and distributed at an approximate cost of \$1,750.00 and paid for out of the federal funds granted by the U.S.Department of Labor to said Commission.

The rules are also available at: <http://www.oesc.state.ok.us/FileFormPub/default.htm>

INTRODUCTION

This book contains the Oklahoma Employment Security Commission Rules. These rules are also called the OESC Rules.

THE NUMBERING SYSTEM

A section number is a number assigned to an individual rule. An example of a section number is 240:10-1-2. In this example:

240:10-1-2

"240" is the Title number assigned to the Oklahoma Employment Security Commission by the Editor of the Oklahoma Register. Each agency in the state is identified by a different title number.

240:10-1-2

"10" refers to Chapter 10. Chapters identify major areas of regularity control within the agency's authority.

240:10-1-2

"1" refers to Subchapter 1 of Chapter 10. A Subchapter contains a group of Sections related to the same general subject. Some Subchapters are further divided into "Parts" which are groups of related Sections. The numbers initially assigned to Subchapters and Parts are all odd numbers: 1, 3, 5, etc. This is to save space for future expansion.

240:10-1-2

"2" refers to Section 2 of Subchapter 1. a Section is an individual rule.

Section Subdivision Letters and Numbers: Individual sections (rules) may be subdivided according to the following structure:

A subsection is designated by a lower-cased letter of the alphabet enclosed in parentheses [e.g., (a), (b), (c)].

A paragraph is designated by an Arabic numeral enclosed in parentheses [e.g., (1), (2), (3)].

A subparagraph is designated by an upper-cased letter of the alphabet enclosed in parentheses [e.g., (A), (B), (C)].

A unit is designated by a lower-cased roman numeral enclosed in parentheses [e.g., (I), (ii), (iii)].

A subunit is designated by an upper-cased roman numeral enclosed in parentheses [e.g., (I), (II), (III)].

*NEW/AMENDMENTS EFFECTIVE 5-25-2009

CHAPTER 1. GENERAL PROVISIONS**Subchapter 1. General Provisions**

240:1-1-1	Purpose	8
240:1-1-2	Definitions	8
240:1-1-3	Organization of Commission	8
240:1-1-4	Authority	8
240:1-1-5	Offices of Commission	9
240:1-1-6	Petitions to promulgate, amend or repeal rules	9
240:1-1-7	Petitions for declaratory rulings	9

Subchapter 3. Records and Inspections

240:1-3-1	Location of records	10
240:1-3-2	Non-confidential records	10
240:1-3-3	Confidential records	11
240:1-3-4	Copies	11
240:1-3-5	Charges	11
240:1-3-6	Search fees	12
240:1-3-7	Receipt of requests	12
240:1-3-8	Notices to requesters	12

Subchapter 5. Local Project Funding

240:1-5-1	Purpose	13
240:1-5-2	Definition	13
240:1-5-3	Local project funding announcement	13
240:1-5-4	Evaluation of local project funding contract application	14
240:1-5-5	Affidavit of LPF officer	14
240:1-5-6	Serial numbering of local project funding contract	14
240:1-5-7	Monitoring of local project funding contracts	14

CHAPTER 5. EMPLOYMENT SERVICE**Subchapter 1. General Provisions**

240:5-1-1	Purpose	16
240:5-1-2	Definitions [Reserved]	

Subchapter 3. Internet Use

240:5-3-1	Internet user registration	16
240:5-3-2	Time limit on Internet use	16
240:5-3-3	Internet user prohibitions	16
240:5-3-4	Penalties for violations	17

CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM**Subchapter 1. General Provisions**

240:10-1-1	Purpose	18
240:10-1-2	Definitions	18
240:10-1-3	Time computation	21

Subchapter 3. Benefits

Part 1. General Provisions

240:10-3-1	Purpose	21
*240:10-3-2	Claimant's notification of change of address [Effective 5-25-09]	21

Part 3. Computation

240:10-3-10	Approved training	21
240:10-3-11	Priority of deductions from unemployment insurance benefits	22
*240:10-3-12	Payments of benefits [Effective 5-25-09]	23

Part 5. Eligibility	
240:10-3-20	Instructions to secure work23
240:10-3-21	Reasonable assurance24
240:10-3-22	Claims for benefits24
240:10-3-23	Claims for total unemployment benefits24
240:10-3-24	Claims for partial unemployment benefits25
240:10-3-25	Payment of claim of deceased worker27
240:10-3-26	Payment of benefits to interstate claimants28
240:10-3-27	Social Security account numbers29
240:10-3-28	Application of payments made to repay an overpayment of benefits29
Part 7. Protection of Rights and Benefits	
240:10-3-30	Notice to claimants of income tax withholding program29
240:10-3-31	Amounts deducted held in Unemployment Trust Fund30
240:10-3-32	Federal procedures followed30
240:10-3-33	Priorities of deductions from benefits [Revoked]30
240:10-3-34	Calculation of deductions30
240:10-3-35	Personal identification numbers30
Part 9. Disqualification	
240:10-3-40	Normal working day [Revoked]31
240:10-3-41	Application of retirement proceeds and severance pay31
240:10-3-42	Labor disputes31
240:10-3-43	Performed service and earned remuneration; reemployed and has earned wages32
240:10-3-44	Domestic violence or abuse [Revoked].....32
240:10-3-45	Cases involving positive drug or alcohol tests32
Part 11. Filing Claims - Notice	
240:10-3-50	Employers who shall receive a notice of determination32
240:10-3-51	Information to be posted33
240:10-3-52	Information to separated workers33
240:10-3-53	Third party administrators-filing requirements33
Part 12. Interest Waiver for Benefit Overpayments	
240:10-3-60	Definitions33
240:10-3-61	Filing a request for waiver33
240:10-3-62	Three year limitation, assessment of penalty & accrual of interest34
240:10-3-63	Request letter34
240:10-3-64	Initial determination34
240:10-3-65	Appeal of initial determination35
240:10-3-66	Jurisdiction and authority of Appeal Tribunal35
240:10-3-67	Appeal Tribunal hearing35
240:10-3-68	Appeal35
240:10-3-69	Waiver to be denied35
Part 13. Appeals [Reserved]	
Part 15. Extended Benefits [Reserved]	
Part 17. Child Support [Reserved]	
Subchapter 5. Contributions	
Part 1. General Provisions	
240:10-5-1	Purpose36
240:10-5-2	Definitions36
240:10-5-3	Notice of change of address, organization or ownership36
240:10-5-4	Surety bond for lessor employing units36
240:10-5-5	Coverage of Indian tribes (<i>Expired Emergency Rule</i>)37

	Part 3. Rates	
240:10-5-10	Payment of contributions	37
240:10-5-11	Subject employer acquiring the experience rating account of employers	38
240:10-5-12	Non-subject employers acquiring the experience rating account of Employers	38
240:10-5-13	Experience rating contribution rates - appeal	39
240:10-5-14	Experience rating - date of benefit payments	39
240:10-5-15	Successor acquiring the experience rating account of predecessor	39
240:10-5-16	Recall credit	40
240:10-5-17	Relief from benefit wage charges - disasters	40
	Part 5. Period, Termination, Election [Reserved]	
	Part 7. Collection of Contributions	
240:10-5-30	Jeopardy assessments security defined	40
240:10-5-31	Claims for refund - procedure	41
240:10-5-32	Application of payments to delinquent tax indebtedness	41
240:10-5-33	Application of payments to Computer Assessment Fund	42
	Part 8. Waiver of Penalty and Interest	
240:10-5-40	Definitions	42
240:10-5-41	Filing a request for waiver	42
240:10-5-42	Three year limitation, assessment of penalty and accrual of interest	42
240:10-5-43	Request letter	43
240:10-5-44	Initial determination	43
240:10-5-45	Appeal of initial determination	43
240:10-5-46	Jurisdiction and authority of Assessment Board	44
240:10-5-47	Assessment Board hearing	44
240:10-5-48	Judicial review	44
240:10-5-49	Waiver to be denied	44
	Part 9. Judicial Review [Reserved]	
	Part 11. Warrants	
240:10-5-60	Tax warrant filing fees	45
240:10-5-61	Sheriff service fees for tax warrants	45
	Part 13. Unemployment Compensation Fund [Reserved]	
	Part 15. Financing Benefits to Employees of the State	
240:10-5-70	Termination of individual reimbursing employers	45
240:10-5-71	Group accounts	46
	Part 17. Financing Benefits to Employees of Nonprofit Organizations	
240:10-5-80	Establishment of group accounts for state, local governments and nonprofit organizations	47
	Part 19. Maintenance and Production of Work Records	
*240:10-5-90	Records [Effective 5-25-09]	49
240:10-5-91	Reports	50
240:10-5-92	Industrial classification statement	51
240:10-5-93	Lessor employing unit reports	51
240:10-5-94	Multiple worksite reports	51
240:10-5-95	Occupational employment statistics survey	51
	Part 21. Reciprocal Arrangement	
240:10-5-100	Employer elections to cover interstate workers	51
	Subchapter 7. Administration	
	Part 1. General Provisions	
240:10-7-1	Purpose [Revoked]	54
	Part 3. Commission [Reserved]	
	Part 5. Board of Review	
240:10-7-20	Board of Review appeals and procedure [Revoked]	54

Subchapter 9. Penalties and Representation	
Part 1. General Provisions [Reserved]	
Part 3. Penalties	
240:10-9-10	Willful violation of Act54
Part 5. Representation [Reserved]	
Subchapter 11. Assessment Board Procedure	
Part 1. General Provisions	
240:10-11-1	Purpose54
240:10-11-2	Definitions [Reserved]
240:10-11-3	Organization55
240:10-11-4	Quorum [Revoked]55
240:10-11-5	Jurisdiction55
*240:10-11-6	Address of Board [Effective 5-25-09]..... 56
240:10-11-7	Address of Appellant56
240:10-11-8	Judicial ethics56
Part 3. Appeals to Assessment Board	
240:10-11-11	Filing of protests57
240:10-11-12	Timeliness of filing – jurisdiction57
Part 5. Hearings	
240:10-11-20	Notice of hearings57
240:10-11-21	Continuances and rescheduled hearings57
240:10-11-22	Conduct of hearings57
240:10-11-23	Telephone hearings58
240:10-11-24	Good cause58
240:10-11-25	Motion to reopen after failure to appear58
*240:10-11-26	Cameras [Effective 5-25-09]..... 58
Part 7. Witnesses and Subpoenas	
240:10-11-30	Subpoenas59
240:10-11-31	Witness fees and expenses59
Part 9. Records of Assessment Board [Reserved]	
Part 11. Appeals to District Court	
240:10-11-50	Intent to appeal notice [Revoked]59
240:10-11-51	Petition for review60
240:10-11-52	Payment of assessment or bond60
Subchapter 13. Appeal Tribunal Procedure	
Part 1. General Provisions	
240:10-13-1	Purpose60
240:10-13-2	Definitions [Reserved]
240:10-13-3	Authority60
240:10-13-4	Organization60
240:10-13-5	Jurisdiction61
240:10-13-6	Administrative review61
*240:10-13-7	Disqualification of hearing officer [Effective 5-25-09] 61
*240:10-13-8	Address of Appeal Tribunal [Effective 5-25-09]..... 61
240:10-13-9	Judicial ethics62
Part 3. Appeals to Appeal Tribunal	
240:10-13-20	Filing an appeal62
240:10-13-21	Notice of appeal62
240:10-13-22	Date filed62
Part 5. Hearings	
240:10-13-30	Case assignment62
240:10-13-31	Location63
240:10-13-32	Telephone hearings63
240:10-13-33	Notices of hearing63

240:10-13-34	Content	63
240:10-13-35	Commission-party	63
240:10-13-36	Change of address	63
240:10-13-37	Good cause	63
240:10-13-38	Continuances	64
240:10-13-39	Nonappearance	64
240:10-13-40	Reopen	64
240:10-13-41	Withdrawal	65
240:10-13-42	Conduct of hearings	65
240:10-13-43	Record of hearings	65
240:10-13-44	Representation at hearings	65
240:10-13-45	Legal fees [Revoked]	65
*240:10-13-46	Cameras [Effective 5-25-09]	65
	Part 7. Witnesses and Subpoena	
240:10-13-60	Subpoenas	66
240:10-13-61	Witness fees and expenses	66
	Part 9. Records of Appeal Tribunal	
240:10-13-70	Transcript of hearings	66
240:10-13-71	Requests for copies	66
240:10-13-72	Inspection of records	67
240:10-13-73	Decisions	67
	Part 11. Appeals to Board of Review	
240:10-13-80	Appeal rights of interested parties	67
240:10-13-81	Certification to Board of Review [Revoked]	67

CHAPTER 12. TRADE ACT PROGRAMS

Subchapter 1. General Provisions

240:12-1-1	Purpose	68
240:12-1-2	Definitions	68
240:12-1-3	Federal rules	68
240:12-1-4	Application information	68

Subchapter 3. Trade Readjustment Allowances [RESERVED]

Subchapter 5. Reemployment Services

240:12-5-1	Approval of training	69
240:12-5-2	Subsistence and transportation payments	69
240:12-5-3	Receipts for reimbursement	69
240:12-5-4	Maximum cost of training [Revoked]	69
240:12-5-5	Usual and customary cost of training	69

Subchapter 7. Job Search Allowances

240:12-7-1	Eligibility for allowances	69
240:12-7-2	Information required	70
240:12-7-3	Allowable expenses	70
240:12-7-4	Mode and time of travel	70
240:12-7-5	Calculation of mileage	70
240:12-7-6	Receipts for reimbursement	70
240:12-7-7	Suitable employment/employment of long-term duration	70

Subchapter 9. Relocation Allowances

240:12-9-1	Information required	71
240:12-9-2	Receipts for reimbursement	71
240:12-9-3	Suitable employment/employment of long-term duration	71
240:12-9-4	Commercial carrier	71

Subchapter 11. Job Search Program [RESERVED]

Subchapter 13. Administration

240:12-13-1	Determinations/appeals	71
-----------------------------	--	----

CHAPTER 15. BOARD OF REVIEW PROCEDURES**Subchapter 1. General Provisions**

240:15-1-1	Purpose	72
240:15-1-2	Definitions [Reserved]	
240:15-1-3	Board of Review Chairman; Vice-Chairman; quorum	72
240:15-1-4	Clerk of the Board of Review	72
240:15-1-5	Attorneys or representative; fees	72
240:15-1-6	Hearing officer-conflict of interest	72
240:15-1-7	Attorney fees – approval [Revoked]	72
240:15-1-8	Attorney fees – approval	72

Subchapter 3. Appeals to the Board of Review

240:15-3-1	Correspondence; stamping; time; mailing	73
*240:15-3-2	Correspondence with Board of Review; address [Effective 5-25-09]	73
240:15-3-3	Review of Appeal Tribunal decision	73
240:15-3-4	Withdrawal of appeal	74
240:15-3-5	Untimely appeals; good cause; notice	74
240:15-3-6	Certification of fact finding and questions of law from Appeal Tribunal	75

Subchapter 5. Hearings

240:15-5-1	Request for hearing, new additional evidence	75
240:15-5-2	Hearings; notice; Appeal Tribunal testimony; failure to appear	75
240:15-5-3	Continuances	76
240:15-5-4	Recording hearings	76
*240:15-5-5	Cameras [Effective 5-25-09]	76

Subchapter 7. Witnesses and Subpoena

240:15-7-1	Attendance at hearing	76
----------------------------	---------------------------------------	----

Subchapter 9. Records of the Board of Review

240:15-9-1	Inspection of records	77
240:15-9-2	Board of Review records	77

Subchapter 11. Appeals to District Court

240:15-11-1	Board of Review decision; appeal to district court	77
-----------------------------	--	----

**CHAPTER 20. JOB TRAINING PARTNERSHIP PROGRAM
[REVOKED]****CHAPTER 21. WORKFORCE INVESTMENT ACT****Subchapter 1. General Provisions**

240:21-1-1	Purpose	79
240:21-1-2	Definitions	79
240:21-1-3	Addresses for appeals	80

Subchapter 3. Denial or Termination of Eligibility of a Training Provider

240:21-3-1	Reporting – termination	80
240:21-3-2	Notice to the training provider	80
240:21-3-3	Appeal	81
240:21-3-4	Hearing	81
240:21-3-5	District court appeal	81
240:21-3-6	Administrative record	81

**Subchapter 5. Denial of Request for Designation as a Local Workforce
Investment Area**

240:21-5-1	Appeal	81
240:21-5-2	Appeal time	81
240:21-5-3	Hearing	81
240:21-5-4	Decision	82

240:21-5-5	Appeal of decision	82
Subchapter 7. Monitoring		
240:21-7-1	Monitoring	82
240:21-7-2	Monitoring report	82
240:21-7-3	Monitoring resolution & initial monitoring determination	82
240:21-7-4	Final monitoring determination	83
240:21-7-5	Appeal	84
240:21-7-6	Hearing	84
Subchapter 9. Audits		
*240:21-9-1	Audit requirements [Effective 5-25-09]	85
240:21-9-2	Delinquent audit	86
240:21-9-3	Audit resolution	86
240:21-9-4	Audit review and request for information	86
240:21-9-5	Initial determination	87
240:21-9-6	Final determination	87
240:21-9-7	Appeal	87
240:21-9-8	Hearing	88
Subchapter 11. Grievance Procedure		
Part 1. General Provisions		
240:21-11-1	Grievances	88
Part 3. Grievances Filed Directly with the OESC		
240:21-11-10	Filing	89
240:21-11-11	Time limit for filing a grievance with OESC	89
240:21-11-12	Contents of a grievance	89
240:21-11-13	Referral of a grievance filed with OESC	89
Part 5. Appeals to the OESC from Grievance Decisions of a Local Area		
240:21-11-20	Filing grievance with local area	90
240:21-11-21	Appeals with OESC	90
240:21-11-22	Time limit for filing an appeal with OESC	90
Part 7. Informal and Formal Resolutions of Grievances		
240:21-11-30	Informal resolution	90
240:21-11-31	Hearing	90
240:21-11-32	Remedies	91
240:21-11-33	Appeal to Secretary or investigation by Secretary	91
240:21-11-34	Decision of the Secretary	91
CHAPTER 25. TAX EXEMPTIONS FOR QUALIFYING EMPLOYERS		
Subchapter 1. General Provisions		
240:25-1-1	Purpose	92
240:25-1-2	Definitions	92
Subchapter 3. Procedural Rules		
240:25-3-1	Certification - new employees hired by new or expanding business	92

**OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 1 – GENERAL PROVISIONS**

SUBCHAPTER 1 – GENERAL PROVISIONS

240:1-1-1. Purpose

- (a) **Content of Title.** Title 240 consists of rules adopted by the:
- (1) Oklahoma Employment Security Commission (Commission) and,
 - (2) Board of Review (Board) for the Oklahoma Employment Security Commission.
- (b) **Content of chapter.** Chapter 1 of Title 240 provides information on the organization, authority and location of the Commission and the procedures for individuals to submit petitions to promulgate, amend or repeal Commission rules.
- (c) **Commission authority.** The Commission adopts rules for all Chapters in OAC Title 240 except "Chapter 15. Board of Review Procedures."
- (d) **Board authority.** The Board of Review has separate rulemaking authority to adopt rules governing the proceedings over which it presides. The Board rules are contained in OAC Title 240, Chapter 15.

240:1-1-2. Definitions

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

"Third Party Administrator" means any entity that contracts with an employer to perform administrative functions on the employer's behalf related to the employer's compliance with any provision of the Employment Security Act of 1980, or any entity that contracts to represent the employer's interests in any protests, appeal or hearing before any division of the Oklahoma Employment Security Commission or the Board of Review. Attorneys licensed to practice law in Oklahoma who represent clients before the Oklahoma Employment Security Commission or the Board of Review shall not be considered third party administrators.

[Source: Added at 25 Ok Reg. 1622, eff 6-12-08]

240:1-1-3. Organization of Commission

The Oklahoma Employment Security Commission (Commission) *consists of five (5) members, appointed by the Governor, ... two of whom shall represent employers, two shall represent employees, and one shall represent the public. The representative of the public shall be the Chairman of the Commission.* [40:4-102]

240:1-1-4. Authority

The Oklahoma Employment Security Commission has *the power and authority to adopt, amend, or rescind such rules Y as it deems necessary or suitable* [40:4-302] to administer the Oklahoma Employment Security (OES) Act. The Commission shall *adopt and, from time to time, may modify and amend rules Y governing appeals before the Appeals Tribunal of the Commission and its referees,...* [40:2-607] .

[Source: Amended at 23 Ok Reg 884, eff 5-15-06]

240:1-1-5. Offices of the Commission

The public may obtain information by contacting any of the Commission's local offices located throughout the State, a UI Service Center, or its administrative office located in the Will Rogers Office Building, 2401 North Lincoln Boulevard, P. O. Box 52003, Oklahoma City, OK 73152-2003, telephone number (405) 557-7200.

[Source: Amended at 9 Ok Reg 1831, eff 6-11-92; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 24 Ok Reg 1232, eff 5-25-07]

240:1-1-6. Petitions to promulgate, amend or repeal rules

Individuals or organizations who wish to petition the Oklahoma Employment Security Commission to promulgate, amend or repeal a rule must submit a typewritten request to the Executive Director, Oklahoma Employment Security Commission, Will Rogers Office Building, 5th Floor, 2401 North Lincoln Boulevard, P. O. Box 52003, Oklahoma City, OK 73152-2003. Requests must state rule number, purpose of the change and the exact wording for the amendment to the rule. The Executive Director will present such petition at the next regularly scheduled meeting of the Oklahoma Employment Security Commission for consideration and disposition.

[Source: Amended at 9 Ok Reg 1831, eff 6-11-92; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 16 Ok Reg 1176, eff 5-13-99]

240:1-1-7. Petitions for declaratory rulings

a. Pursuant to the Administrative Procedures Act, 75 O.S. §307, individuals or organizations may file a Petition for Declaratory Ruling with the Oklahoma Employment Security Commission to obtain a determination on the applicability of any rule or order of the agency.

b. The Petition for Declaratory Ruling shall include the following:

1. Name, address, and telephone number of the individual or organization filing the Petition.
2. Identification of the agency rule or order that the petitioner wishes to have a determination on.
3. A short and plain statement of why the declaratory ruling is necessary, the facts that instigated the petition, the outcome the petitioner wishes to achieve, and any prior agency determinations that may be affected by the declaratory ruling requested.
4. The petition must be signed by the individual, or the chief executive officer of the organization filing it. If the individual or organization is represented by an attorney or representative, that person may sign the petition on behalf of the filing party. The attorney or representative must print his or her full name, address, telephone number, fax number, and e-mail address on the petition.

c. The petition shall be filed with the Director of Appeals, Oklahoma Employment Security Commission, P.O. Box 53345, Oklahoma City, OK 73152-3345.

d. Procedure:

1. All declaratory rulings requested for rules and procedures concerning the administration of claims for unemployment benefits pursuant to Article II of the Employment Security Act of 1980 shall be heard by the Appeal Tribunal of the Oklahoma Employment Security Commission. All rules and statutes regarding

hearings and appeals of unemployment benefit claims will apply to the hearing, determination, and appeal of these petitions.

2. All petitions for declaratory rulings on all rules and procedures of the Oklahoma Employment Security Commission, other than those covered by subsection (d)(1) of this rule, shall be heard by the Assessment Board of the Oklahoma Employment Security Commission. All rules and statutes regarding hearings of the Assessment Board and appeals of Assessment Board determinations will apply to the hearing, determination, and appeal of these petitions.

e. The petition for declaratory ruling shall be docketed and assigned a hearing officer according to the procedures of the Appellate Division. The hearing officer may require briefs from the petitioning party or the Oklahoma Employment Security Commission or both. Any person or entity wishing to file an Amicus Curiae brief must file a motion with the Appellate Division requesting to do so. Amicus Curiae briefs may be allowed by order, at the discretion of the hearing officer. The hearing officer shall have the authority to set motion deadlines, briefing schedules and hearing dates in all cases. Whether or not to hold hearings in a particular case will be within the discretion of the hearing officer. Determinations on petitions for declaratory rulings may be made on the briefs alone.

f. Notice of all petitions for declaratory rulings shall be posted on the website of the Oklahoma Employment Security Commission and read into the record of the first Commission meeting that occurs more than 20 days after the filing of the petition. The notice will contain:

- (1) The name of the petitioning party.
- (2) The date of filing.
- (3) A short synopsis of the issue presented by the petition including the citation to the statute, rule, policy, or procedures that is the subject of the petition.
- (4) The address to send motions for permission to file amicus curiae briefs and the deadline for filing these motions.

g. If it is determined that a party is using the declaratory ruling procedure to harass any other party or to hinder or delay the administration of justice, the hearing officer shall have authority to dismiss the petition on those grounds.

[Source: Added at 25 Ok Reg 1622, eff 6-12-08]

SUBCHAPTER 3 – RECORDS AND INSPECTIONS

240:1-3-1. Location of records

The Oklahoma Employment Security Commission shall maintain records at its official offices. Records shall include those materials which are defined as "records" in the Open Records Act, 51 O.S., Sections 24A.1 through 24A.18.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94]

240:1-3-2. Non-confidential records

(a) During regular business hours any person may inspect any record that is not deemed confidential by law at the office of the Commission where the record is maintained.

(b) The person requesting inspection of the record shall make his or her request in writing. The writing shall include the name, address, and telephone number of the person

making the request, the date the records will be inspected, including any relevant identification numbers.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 15 Ok Reg 1495, eff 5-11-98]

240:1-3-3. Confidential records

(a) Employer and unemployment insurance claimant records made confidential under Title 40 O.S., Section 4-508, may be released upon receipt of an administrative subpoena, court order or a notarized waiver of confidentiality signed by the person with the authority to waive the confidentiality of the records.

(b) The administrative subpoena, court order or waiver of confidentiality form shall be served on the Commission's legal division or the custodian of records twenty (20) days prior to the date on which the records are to be produced. The records requested shall be described as specifically as possible and the administrative subpoena, court order or waiver of confidentiality form shall set out the employer account number or social security number of the employer or claimant whose records are being requested.

(c) An employer or unemployment insurance claimant with proper identification can request a copy of his or her records at the Commission's local office or at the administrative office located in the Will Rogers Memorial Office Building in Oklahoma City.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 16 Ok Reg 1176, eff 5-13-99; Amended at 21 Ok Reg 1028, eff 5-15-04; Amended at 24 Ok Reg 1232, eff 5-25-07]

240:1-3-4. Copies

(a) Any person wishing to obtain a copy of any record must follow the procedures in rules 240:1-3-2 or 240:1-3-3 and include a request for copies in the writing, administrative subpoena, court order or waiver of confidentiality.

(b) In the event the request constitutes more than twenty (20) pages, the legal division or custodian of records may arrange to mail the copies to the requester, within twenty-five (25) days from the date of receipt of the request.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 21 Ok Reg 1028, eff 5-15-04]

240:1-3-5. Charges

(a) The Commission shall charge for copies of records, as set out in this rule, and a search fee for staff time spent in obtaining the records, pursuant to 240:1-3-6, except no charge will be made for requests in furtherance of a claim for unemployment benefits or if disallowed by the provisions of 51 O.S. §24A.5.

(b) The document copying fee is twenty-five cents (\$0.25) per page or One Dollar (\$1.00) per page for a certified copy. This fee is to be paid prior to the release of the requested records.

(c) The reproduction fee for an audio recording of a hearing shall be Ten Dollars (\$10.00).

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 11 Ok Reg 4331, eff 7-14-94 (emergency); Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 23 Ok Reg 884, eff 5-15-06; Amended at 24 Ok Reg 1232, eff 5-25-07]

240:1-3-6. Search fees

The search fee shall be applicable to all confidential records requested for commercial purposes, unless it is determined by the Director, in his or her discretion, that the public interest is served to such an extent that no charge should be applicable. The search fee will be \$10.00 for each account or claimant record requested. No search fee will be charged for the production of non-confidential record.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 11 Ok Reg 4331, eff 7-14-94 (emergency); Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 23 Ok Reg 884, eff 5-15-06; Amended at 24 Ok Reg 1232, eff 5-25-07]

240:1-3-7. Receipt of requests

All requests for inspection or release of information, administrative subpoenas, court order or waivers of confidentiality shall be served upon the Legal Department of the Oklahoma Employment Security Commission or the Custodian of Records for the records requested. The Executive Director of the Oklahoma Employment Security Commission shall designate the Custodian of Records.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 21 Ok Reg 1028, eff 5-15-04]

240:1-3-8. Notices to requesters

(a) Upon receipt of a request for inspection or copy of any records held by the Commission, the custodian of the record shall, within five (5) days of receipt of the request, notify the person requesting the record of one of the following:

- (1) The request is granted and, if costs exceed One Hundred Fifty Dollars (\$150) or the person or party requesting the copies owes the Commission in excess of that amount for copies and services already rendered, prepayment may be required.
- (2) The request is denied and the reason for the denial. Such denial shall provide the statutory citation or other reasons for the denial.
- (3) The request is granted, but that due to circumstances specified in the notice, the inspection of the document or the copy must be delayed. The reasons for the delay shall be specified in the notice sent by the custodian of records.

(b) In the event a delay is necessary, the custodian of the record shall notify the person requesting the record as soon as the record or copy is available.

(c) In the event the record has been sent to archives, the custodian of the records will inform the requester.

[Source: Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 16 Ok Reg 1176, eff 5-13-99]

SUBCHAPTER 5 – LOCAL PROJECT FUNDING**240:1-5-1. Purpose**

These rules set out the procedures and criteria that will be used to award local project funding contracts by the Oklahoma Employment Security Commission.

[Source: Added at 20 Ok Reg 832, eff 5-12-03]

240:1-5-2. Definitions

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

"**Commission**" means the Oklahoma Employment Security Commission.

"**Local project funding contract**" means an agreement made pursuant to Executive Order 98-37, not subject to statutory competitive bidding requirements, between a state agency and a local governmental entity or a private entity, or both, in which the state agency agrees to provide funding to accomplish a public purpose. The direct benefits of a local project funding contract shall accrue primarily to a local population rather than the state as a whole.

"**Local Project Administrator**" means the person employed by an entity that is awarded a local project funding contract, or the person employed by an entity that will be the fiscal agent acting on behalf of a group of entities that have collaborated to obtain a local project funding contract. The local project administrator will:

- (A) Serve as the point of contact with the Commission;
- (B) Submit and attest to the accuracy of all reports; and
- (C) Receive payment of all funds and manage the funds.

"**LPF Auditor**" means the employee of the Commission designated by the Executive Director to be responsible for monitoring all local project funding contracts after an award of the contract has been made.

"**LPF Officer**" means the employee of the Commission designated by the Executive Director to be responsible for reviewing all local project funding contract proposals, and who will award contracts to the successful applicants.

[Source: Added at 20 Ok Reg 832, eff 5-12-03]

240:1-5-3. Local project funding announcement

Each local project funding contract will be announced by press release submitted to 25 newspapers in both metropolitan and rural areas. A paid advertisement will be placed in a newspaper that serves the geographic area where the local project will be located. An announcement will also be printed in the Oklahoma Register. All announcements will be submitted at least 20 days before the deadline for making application to obtain a local project funding contract. Each announcement submitted for publication shall contain the following information:

- (1) The Oklahoma Employment Security Commission will be the contracting agency;
- (2) A description of the type of projects eligible for local project funding contracts;
- (3) A description of the type of persons or entities who are eligible or qualified for the local project funding contract;
- (4) A total amount of money available from the agency for the local project funding contract;

- (5) The closing date and time for receipt of applications; and
- (6) The name, business address, telephone number, fax number, and e-mail address of the person who interested parties may contact for additional information and the name and business address of the person to whom applications must be submitted.

[Source: Added at 20 Ok Reg 832, eff 5-12-03]

240:1-5-4. Evaluation of local project funding contract applications

- (a) The LPF officer will be responsible for evaluating all local project funding contract applications and to award contracts to the successful applicants
- (b) Each local project funding contract application will be evaluated on the following criteria, if relevant:
 - (1) The lowest unit price or overall cost;
 - (2) The best value;
 - (3) The experience of the person or entity applying for the contract;
 - (4) The licenses, certifications, or academic achievement possessed by the applicant;
 - (5) The past contractual experience between the Commission and the applicant;
 - (6) The number of employees and the amount of resources the applicant will devote to the project;
 - (7) The financial condition or capitalization of the person or entity applying for the contract;
 - (8) Demonstrated ability to complete the project and meet all reporting requirements; and
 - (9) That the applicant is an equal opportunity employer.

[Source: Added at 20 Ok Reg 832, eff 5-12-03]

240:1-5-5. Affidavit of LPF officer

The LPF officer shall be responsible for submitting an affidavit to the Director of the Office of State Finance certifying that the award of the local project funding contract met all criteria set forth in these rules, as well as filing all other documentation required for the Office of State Finance to encumber the necessary funds and pay the local project funding contract.

[Source: Added at 20 Ok Reg 832, eff 5-12-03]

240:1-5-6. Serial numbering of local project funding contracts

Each local project funding contract shall be identified by a serial number that will be cited in all correspondence to the contracting parties and the Office of State Finance concerning the local project funding contract. The number shall begin with the agency number for the Commission, followed by the last two digits of the year in which the contract is made, then followed by the number assigned to the contract. The agency number, year, and contract number will be separated by dashes.

[Source: Added at 20 Ok Reg 832, eff 5-12-03]

240:1-5-7. Monitoring of local project funding contracts

The Commission will be responsible for monitoring all local project funding contracts awarded under these rules. The Commission will have the right to require the local project administrator to submit any reports deemed necessary for the award and

administration of the contract, and the local project administrator will allow the LPF Auditor to audit any of its books and records that the auditor deems necessary in order to ensure that the purposes of the contract are being fulfilled and that all laws and rules are being adhered to. The LPF auditor will also have the right to conduct a physical inspection of any facilities or programs that are benefited or impacted by the local project funding contract.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03]

CHAPTER 5 – EMPLOYMENT SERVICE

SUBCHAPTER 1 – GENERAL PROVISIONS

240:5-1-1. Purpose

This chapter establishes procedures for the administration of the Employment Service in the State of Oklahoma.

[Source: Added at 17 Ok Reg 1594, eff 5-25-00]

240:5-1-2. Definitions [RESERVED]

[Source: Reserved at 17 Ok Reg 1594, eff 5-25-00]

SUBCHAPTER 3. INTERNET USE

240:5-3-1. Internet user registration

The Employment Service provides personal computers in each of its local offices throughout the state for the purpose of accessing the Internet. Members of the public may use this Internet access to look for employment, obtain information concerning prospective employers, prepare resumes, and any other activity associated with searching for employment. In order to utilize the personal computers for this purpose, the user must complete an Internet User Application form, which is available in each local office. If the user is under the age of 18, the user's parent or guardian must sign the Internet User Application form before Internet access will be granted.

[Source: Added at 17 Ok Reg 1594, eff 5-25-00]

240:5-3-2. Time limit on Internet use

Each user may use the Internet computer for 30 minutes per day. If there are no other users waiting to access the Internet computer, the user may continue using it past this time limit. If another user requests to access the Internet computer, and the current user has exceeded the 30 minute time limit, then the current user will be given an additional 15 minutes to complete what he or she is working on and will be required to relinquish the computer at that time.

[Source: Added at 17 Ok Reg 1594, eff 5-25-00]

240:5-3-3. Internet user prohibitions

Internet users must cooperate with the staff of the Oklahoma Employment Security Commission and follow all instructions regarding the use of the Internet computers. Internet users may not do any of the following:

- (1) Interfere with or disrupt network users, services, or equipment.
- (2) Make any attempt to damage computer equipment or software.
- (3) Make any attempt to alter software configurations.
- (4) Make any attempt to cause degradation of system performance.
- (5) Use any OESC work station for illegal or criminal purposes.
- (6) Access pornographic or gambling sites.
- (7) Violate copyright laws or software licensing agreements while using the Internet computer.
- (8) Engage in any activity which is deliberately malicious, libelous or slanderous.

- (9) Install or download any software.
 - (10) Use a locking floppy diskette.
 - (11) Download information.
- [Source: Added at 17 Ok Reg 1594, eff 5-25-00]

240:5-3-4. Penalties for violations

If an Internet user is found to have violated any of the restrictions set out in 240:5-3-3, the user will receive a warning for the first violation, a 30 day suspension for the second violation, and an indefinite suspension for the third violation.

[Source: Added at 17 Ok Reg 1594, eff 5-25-00; Amended at 21 Ok Reg 778, eff 5-1-04]

CHAPTER 10 – UNEMPLOYMENT INSURANCE PROGRAM

SUBCHAPTER 1 – GENERAL PROVISIONS

240:10-1-1. Purpose

This Chapter establishes procedures for:

- (1) collection of unemployment taxes from employers;
- (2) payment of benefits to unemployed individuals;
- (3) individuals to file appeals when they are adversely affected by decisions of the Commission; and
- (4) all actions necessary for the efficient operation of the OES Act [40:4-302].

240:10-1-2. Definitions

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

"Good cause" means reasons beyond the control of the party seeking relief.

"Independent contractor" means:

(A) Any person who performs services according to their own methods and without control except as to results is an independent contractor, if they are:

- (i) Customarily engaged in an independently-established business; or
- (ii) Performing service outside the usual course of the contractor's business and outside the places of such business.

(B) In order to be considered "without control" the individual providing the service shall:

- (i) Provide their own tools and equipment;
- (ii) Pay their own ordinary and customary business expenses;
- (iii) Risk losing money from the contract;
- (iv) Be free to hire their own assistants; and
- (v) Be responsible for obtaining and maintaining all business, tax registrations and all business occupational licenses required by federal, state, or local laws or ordinances.

(C) A written contract relating to such services shall be considered under 40 O.S. Section 1-210 (14), along with all other pertinent evidence in determining employment status and shall not be accorded any greater weight than any other evidence.

(D) This definition shall not be interpreted or construed as conflicting with Section 3304 (a) (6) (a) of the Federal Unemployment Tax Act.

"Interested Party" means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. §2-503 (E).

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal - the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

"Leases" and **"Rents"** [40:1-210(15)] mean a contract between an owner of a business, building, or property and a leasee, in which:

- (A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the leasee;
- (B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and
- (C) Is not based upon a percentage of income or revenue earned in the trade or business.

"Mail", **"Mailed"**, and **"Mailing"**, as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. §7520(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

"Profiling" means:

- (A) A systematic computer generated process that:
 - (i) Identifies those claimants most likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
 - (ii) Refers identified claimants to reemployment services; and
 - (iii) Collects follow-up information relating to the services received.
- (B) Data elements which may be used in the identification process for profiling are:
 - (i) Recall status;
 - (ii) Union hiring hall agreement;
 - (iii) Education;
 - (iv) Job tenure;
 - (v) Industry;
 - (vi) Occupation;
 - (vii) Unemployment rate;
 - (viii) Number of prior UI claims; and
 - (ix) Maximum weekly benefit amount.
- (C) Data elements prohibited for usage in profiling are:
 - (i) Age;
 - (ii) Race or ethnic group;
 - (iii) Sex;
 - (iv) Color;
 - (v) National origin;
 - (vi) Disability;
 - (vii) Religion;
 - (viii) Political affiliation; and
 - (ix) Citizenship.

"Reasonable cash value" [40:1-218] means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

"Reemployment Services" means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

"Temporary Layoff" means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date.

"Wages"

(A) **"Gratuities or Tips"** The employer shall include as wages all monies paid as gratuities or tips actually *received by an individual in the course of his work* [40:1-218] or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) **"Noncash remuneration"** Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services unless such *meals and lodging are furnished on the business premises of the employer for the convenience of the employer*. [40:1-218(4)]

"Wages paid"

(A) The term "wages paid" [40:1-219] shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

"Week"

(A) For the purpose of paying benefits and for the purpose of this Chapter, a "week" [40:1-220] shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.

(B) Provided that the Commission, upon its own initiative or upon application by any employer, may prescribe that with regard to individuals involved in a temporary layoff with a specified date to return to work and whose assigned work week consists of consecutive work days within two different calendar weeks, the definition of a "week" shall be the work week as assigned by the employer.

(C) For the purposes of determining full time work, "week" means a period of seven consecutive days that is established by an employer as its regular work week.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 9 Ok Reg 1969, eff 6-11-92; Amended at 9 Ok Reg 3763, eff 8-7-92 (emergency); Amended at 10 Ok Reg 1397, eff 4-26-93; Amended at 10 Ok Reg 1981, eff 5-27-93; Amended at 12 Ok Reg 37, eff 11-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2905, eff 7-11-97; Amended at 16 Ok Reg 1178 and 1181, eff 5-13-99; Amended at 17 Ok Reg 1595, eff 5-25-00; Amended at 18 Ok Reg 1114, eff 5-11-01; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 25 Ok Reg 1623, eff 6-12-08]

240:10-1-3. Time computation

In computing any period of time prescribed or allowed by the Employment Security Act of 1980, by these rules, or by order of a hearing officer, the day of the act, event, or default from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m.

[Source: Added at 18 Ok Reg 1114, eff 5-11-01; Amended at 24 Ok Reg 1233, eff 5-25-07]

SUBCHAPTER 3 – BENEFITS**PART 1 – GENERAL PROVISIONS****240:10-3-1. Purpose**

This Subchapter establishes the procedures for the payment of benefits to unemployed individuals who qualify under the Oklahoma Employment Security Act.

240:10-3-2. Claimant's notification of change of address

It is the responsibility of the claimant to keep the Commission informed of his or her current mailing address at all times relevant to the claimant's claim for benefits. If the claimant has a change of mailing address, he or she must inform the Commission of this change in writing, by telecommunication, or via the Internet.

[Source: Added at 4 Ok Reg 1419, eff 4-27-92; Amended at 19 Ok Reg 1004, eff 5-13-02; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 26 Ok Reg 1030, eff 5-25-09]

PART 3 – COMPUTATION**240:10-3-10. Approved training**

(a) **Definition of approved training.** "Approved training" means any training program:

- (1) authorized and financed by the United States Congress and under the control of the United States Department of Labor, Employment and Training Administration, or other suitable training program approved by the Commission; and
- (2) in which the trainee would not receive, or be entitled to receive, an educational or training allowance financed under any Act of the United States Congress other than the allowance authorized for the approved training; and

- (3) in which the total duration in weeks is similar to that which is offered by the State Department of Vocational Technical Education; and
 - (4) in which the total hours of training, on a weekly basis, are not less than those required for similar training offered by the State Department of Vocational Technical Education; provided that remedial or training related education may be considered "hours of training" if offered in conjunction with skill training, when so approved by the Executive Director of the Commission.
- (b) **Requirements for approval of training.** Approval of an individual for training will be determined by the Commission through consideration of all of the factors set out in 40 O.S. Section 2-108 (1), (2), (3) and (4). In keeping with Section 2-108, the following definitions of terms are to be followed:
- (1) **"Continued attendance and satisfactory progress"** as used in 40 O.S. Section 2-108 (B) shall be evidenced by continued enrollment at the training facility.
 - (2) **"Recurring demand"** as used in 40 O.S. Section 2-108 (A) (2) means that the demand for workers in such occupation is projected to continue for the foreseeable future.
 - (3) **"Substantial demand"** as used in 40 O.S. Section 2-108 (A) (2) means that for any occupation:
 - (A) the projected percentage rate of growth in the most recent state wide long-term or short-term Commission employment forecast is at least 150% of the overall occupational growth rate; or
 - (B) Any occupation so identified by the Director of the Economic Research and Analysis Division of the Oklahoma Employment Security Commission.
- (c) **Authority of Executive Director.** The Executive Director of the Oklahoma Employment Security Commission is authorized to issue operating procedures as necessary to implement OAC 240:10-3-10.
- [Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 9 Ok Reg 1833, eff 6-11-92; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-11. Priority of deductions from unemployment insurance benefits

- (a) If more than one type of deduction is being made from a claimant's weekly benefit amount, the deductions will be made in the following order until all funds are exhausted:
- (1) Offset of a former benefit overpayment pursuant to 40 O.S. §2-613;
 - (2) Deduction of child support obligations pursuant to 40 O.S. §§2-303 and 2-801;
 - (3) Deductions made to repay a food stamp over issuance pursuant to 40 O.S. §§2-303 and 2-803;
 - (4) Deductions made in compliance with an Internal Revenue Service tax levy issued pursuant to 26 U.S.C. §6331(h);
 - (5) Voluntary deduction of individual income tax withholding pursuant to 40 O.S. §2-305;
 - (6) Voluntary deduction of health insurance premiums pursuant to 40 O.S. §2-304;
- and
- (7) Any other deduction allowed by law.

(b) After the deduction of items listed in (a)(1)(2)(3) and/or (4) are made from the claimant's weekly benefit amount, if the balance remaining is less than that required to pay the income tax deduction, the health insurance premium deduction or any other deduction in full, then no deduction will be made for those items.

[Source: Added at 14 Ok Reg 2909, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-3-12. Payment of benefits

(a) As of July 1, 2007, all unemployment benefits payable by the Commission pursuant to the provisions of the Employment Security Act of 1980, shall be paid by direct deposit to the bank account of the eligible claimant, or by crediting a debit card issued to the eligible claimant. The claimant will have the option to designate which payment method will be used.

(b) The claimant must communicate the choice of payment option to the Commission. The payment option cannot be changed during the claimant's benefit year.

(c) If a claimant chooses to be paid by direct deposit to the claimant's bank account, the claimant must provide the Commission with the following information:

- (1) Claimant's bank account number
- (2) Claimant's bank routing number

(d) If the claimant chooses to be paid by crediting benefit payments on a debit card, the debit card will be mailed to the address given by the claimant in the claimant's initial claim for benefits or in the latest notice of change of address. The claimant will be responsible for the debit card. A claimant must activate the debit card by contacting the debit card service center within ninety days of the date of the issuance of the card. If a claimant fails to activate the card in the time allowed, the card will be cancelled.

(e) Benefits paid by direct deposit or by debit card will be paid under the same conditions as payments formerly made by check. All rules of eligibility, disqualification, fraud, and claimant error will apply.

[Source: Added at 23 Ok Reg 885, eff 5-15-06; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 26 Ok Reg 1030, eff 5-25-09]

PART 5 - ELIGIBILITY

240:10-3-20. Instructions to secure work

(a) **Able and available to accept employment.** When a claimant files an initial claim for benefits, the Commission shall instruct the claimant that, in addition to registering for work, the claimant must diligently search for suitable employment. [40:2-408(2)]

(b) **Seek and accept work.** The Commission shall direct and require that in diligently searching for work the claimant must do those things that a reasonably prudent individual would be expected to do to secure work using any means that are appropriate and customary each week. Special circumstances:

- (1) Union members must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.
- (2) A claimant must participate in all reemployment services offered by the Commission if selected by a profiling program established by the Oklahoma

Employment Security Commission or any other State Employment Service. [40:2-417(4)]

(3) If an employee is involved in a temporary layoff, is receiving partial unemployment insurance pursuant to 240:10-3-24, or is receiving supplemental unemployment benefit payments through an approved plan, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 12 Ok Reg 37, eff 11-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 18 Ok Reg 1114, eff 5-11-01; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-21. Reasonable assurance

A "**reasonable assurance**" means a written, verbal, or implied agreement that the employee will perform such service during the ensuing academic year or term or tenure status. A written agreement is preferable. [40:2-209 and 2-415]

240:10-3-22. Claims for benefits

Claims for unemployment insurance benefits are to be filed via Internet or by telecommunication. Initial claims, additional initial claims, and continued claims shall be deemed to cover "total unemployment" or "partial unemployment."

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-23. Claims for total unemployment benefits

(a) **Definition.** An individual shall be defined as in "**total unemployment**" during a week whenever:

- (1) the individual has been separated from employment with his/her last regular employer; and
- (2) the individual has not during the week performed services in employment for any employer; or
- (3) the individual has worked less than full time for some employer and earned less than his/her weekly benefit amount plus \$100.00. [40:1-217]

(b) **Initial claim.** The initial claim may serve as a registration for work.

(c) **Effective date.** The effective date of an initial claim or additional initial claim shall be the first day of the calendar week in which the individual first files the initial claim or additional initial claim.

(d) **Failure to report/good cause.** When the Commission representative determines that a claimant had good cause for failure to report as directed, a claim may be accepted at a later date, not to exceed seven (7) days from the date originally specified for his/her reporting.

(e) **Continued claim.** A claimant who is filing for benefits under the mail claim system, the Interactive Voice Response System, or the Internet may file a continued claim provided the claimant files the continued claim within fourteen (14) days from the week ending date of the claim or within fourteen (14) days from the date the continued claim is furnished to the claimant.

(f) **Determination of eligibility for benefits.** The OES Act prescribes the following requirements:

- (1) A Commission representative shall determine claimant's eligibility for benefits.
- (2) A Commission representative shall accept written and verbal statements from the claimant and the employer.
- (3) A Commission representative shall take any action necessary to determine the facts and to determine the rights of both the employer and claimant.
- (4) A Commission representative shall write a determination which must include the following:
 - (A) An explanation of the parties' appeal rights;
 - (B) A summary of pertinent facts;
 - (C) The reasons for allowing or denying benefits; and
 - (D) The conclusion or legal results of the decision.
- (5) Any interested party may appeal a determination. The appeal shall be filed with the Commission. When the appeal is filed, all interested parties shall be notified.

[Source: Amended at 11 Ok Reg 4333, eff 8-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-24. Claims for partial unemployment benefits

(a) **Condition for filing claim.**

- (1) Claims for "partial unemployment" may be filed for workers only at the request and assistance of the workers' regular employer and under the conditions set forth herein.
- (2) An employer who places regular, full-time workers on a temporary reduced work week schedule in order to retain the services of such workers until full-time work can be resumed may assist the worker(s) in filing claims for unemployment compensation in "partial unemployment" for each calendar week in which work is performed on a reduced schedule.
- (3) An initial or additional initial claim for partial unemployment shall not be filed for a worker who was employed during the calendar week for his/her normal, customary, full-time working hours, or who did not perform any work or have earnings payable for the week.
- (4) The employer must be in substantial compliance with all requirements of the Employment Security Act of 1980. If an employer is delinquent in payment of taxes, the employer will be deemed in substantial compliance if the employer enters into a payment plan agreement with the Commission and is in compliance with the agreement. All quarterly unemployment tax reports must be filed before an employer requests partial unemployment.

(b) **Partial unemployment defined.** An individual shall be defined as in "**partial unemployment**" during a calendar week whenever:

- (1) the individual has not been separated from employment with his/her last regular employer; and
- (2) the individual has during the week performed services in employment for his/her regular employer; but

(A) because of lack of work was reduced to less than his/her normal, customary, full-time work hours; and

(B) has earnings from such reduced work schedule for that week of less than his/her weekly benefit amount plus \$100.00.

(c) **Partial continued claims.**

(1) A worker who filed a partial initial claim, or who has been receiving benefits for partial unemployment, may continue to file partial continued claims as if he/she were a partially unemployed worker for not more than the first six (6) consecutive weeks of total unemployment (no earnings) or part-total unemployment (some earnings from another employer) immediately following the period of partial unemployment so long as he/she remains attached to his/her regular employer.

(2) A worker who files such partial claims for six (6) consecutive weeks during which he/she has no wages payable from his/her regular employer shall file an initial claim, additional initial claim, or continued claim, as appropriate, under OAC 240:10-3-23 "Claims for Total Unemployment Benefits" for subsequent weeks.

(d) **Effective date.** The effective date of an initial claim or additional initial claim for partial unemployment shall be the first day of the calendar week during which the individual was employed less than his/her normal customary, full-time work because of lack of work and in which earnings from such reduced work is less than his/her weekly benefit amount plus One Hundred Dollars (\$100.00).

(e) **Filing partial claims.** A worker who is "partially unemployed" may, with the assistance of his/her employing unit, claim partial benefits under the following conditions:

(1) The employing unit shall, immediately following the calendar week in which the worker first performed work on a reduced work schedule, execute the Commission's "Claim for Partial Benefits," Form OES-526P, for each worker who has worked during the week in such reduced work schedule of less than full-time. Upon proper execution, the Form OES-526P will be delivered to the worker together with a copy of the Commission's booklet entitled, "Information for Workers Who Are Unemployed."

(2) Not later than fourteen (14) days after receiving such Form OES-526P, the worker shall complete the portion denoted as "Claimant's Report of Other Earnings" and return it to his or her employer to submit or the claimant may mail the completed form to the address listed on the form. Form OES-526P, properly completed, shall constitute the worker's claim for benefits and registration for work within the meaning of 40 O.S. Section 2-203 and 2-204. The form will also constitute the waiting period, required by 40 O.S. Section 2-206, providing the total earnings reported by the regular employing unit plus "other earnings," if any, as reported by the worker does not equal or exceed the "weekly benefit amount of the newly established benefit year plus One Hundred Dollars (\$100.00)."

(3) Upon receipt of the first Form OES-526P, properly completed, the Commission will compute a weekly benefit amount for the worker-claimant. Such computation shall be made effective as of the first day of the calendar week for which the claim was filed that the claimant was partially unemployed. The Commission will furnish the employing unit a "Notice of Partial Benefits," Form OES-532, setting forth the claimant's weekly benefit amount and his/her benefit year ending date. The

Commission will also mail the monetary eligibility for benefits form to the worker-claimant.

(4) Upon receipt of an allowed "Notice of Determination of Partial Benefits," Form OES-532, the employing unit shall execute and deliver to the worker-claimant concerned a "Continued Claim for Partial Benefits," Form OES-527P, immediately for each prior calendar week of partial unemployment applicable and each subsequent calendar week of partial unemployment for further completion by the worker and submission to the Commission for payment processing.

(f) **Late claims.** If a Commission representative determines that a worker-claimant filed no claims due to the failure of the employing unit to comply with the requirements of the Commission Rules, or if the claimant was coerced to refrain from the prompt filing of the claim(s), the Commission representative shall extend the period during which the claims may be filed to a date which shall not be less than one (1) nor more than four (4) weeks after such determination. The Commission shall notify the employing unit and the worker-claimant in writing that the arrangement to execute "Partial Claims for Benefits" has been terminated. Claimants will file claims for subsequent weeks under the rules and statutes for total unemployment benefits.

[Source: Amended at 11 Ok Reg 4333, eff 8-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-25. Payment of claim of deceased worker

(a) **Survivor's entitlement.** Upon the death of any claimant, if claim for benefits has been filed, processed and determined in favor of claimant, or if a check has been issued and unpaid to the decedent, such benefits shall be paid to the administrator or executor of the estate of the deceased claimant. In the event that the estate is in probate, such benefits may, by order of the Commission, be paid to any person or persons designated by the Commission in the following order:

- (1) To the surviving spouse.
- (2) If no surviving spouse, to the surviving children in equal shares.
 - (A) If all children are of legal age, and living, to them directly in equal shares. The issues of any deceased child taking share of deceased parent in equal shares.
 - (B) If all surviving children are minors, to the person in custody of said children for the use and benefit of such minor children.
 - (C) If there are surviving children of legal age and also surviving children who are minors, to them in equal shares. Payment for the minor children to be made to the person in custody of said children for the use and benefit of such minor children.
- (3) In case there is no surviving spouse and no surviving children, to the surviving parents in equal shares. If only one survives, to the surviving parent.
- (4) In case there is no surviving spouse, children or parent or parents, then to the brothers and sisters, or to the surviving brother or sister. In the event there be no surviving brother or sister, then to the issue of any deceased brother or sister in equal shares.

(b) **Survivor's responsibility.** Any person claiming benefits which are due and payable to a deceased claimant as herein provided shall make claim for such benefits which claim shall be supported by an affidavit setting forth the relationship of the person claiming

such benefits to the deceased claimant and that there are no persons prior in order as set forth in Subsection (a) of this Rule to receive said benefits. Said affidavit shall also set forth that said claimant died intestate, that no administrator or executor has been appointed to administer said estate, and that to the best information and belief of the affiant, at the time of death there were benefit payments due claimant under the provisions of the OES Act. The Commission shall be under no obligation to determine the relationship of the affiant or affiants to the deceased claimant.

(c) **Commission's responsibility.** Upon receipt of such affidavit, the Commission may issue written authorization to such affiant or affiants to endorse and cash all unpaid benefit checks or warrants issued to such deceased claimant, by endorsing thereon claimant's name and the affiant's or affiants' names.

(d) **Survivor's filing requirement.** Any claim for benefit payments due a deceased claimant as herein provided must be filed with the Commission within ninety (90) days following the death of the claimant; provided, however, the Commission in its discretion may extend said period.

(e) **Exceptions to survivor's claim.** Unless within the time prescribed herein a claim is made for benefits due a deceased claimant by one of the parties herein authorized to make such claim, any checks or vouchers issued directly to said claimant but not cashed prior to his/her decease shall be cancelled, and any additional benefit payments to said deceased claimant for weeks of unemployment prior to his/her death shall be likewise cancelled, and all sums represented by benefits payable to said deceased claimant prior to his/her death shall remain a part of the Unemployment Compensation Fund.

240:10-3-26. Payment of benefits to interstate claimants

(a) **Interstate agreement.** This Section shall govern the Commission in its administrative cooperation with other states adopting a similar rule for the payment of benefits to interstate claimants.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Agent state"** means any state in which an individual files a claim for benefits from another state.

(2) **"Benefits"** means the compensation payable to an individual, with respect to his/her unemployment, under the unemployment insurance law of any state.

(3) **"Interstate benefit payment plan"** means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(4) **"Interstate claimant"** means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Commission finds that this exclusion would create undue hardship on such claimants in specified areas.

(5) **"Liable state"** means any state against which an individual files, through another state, a claim for benefits.

- (6) **"States"** include *the United States, the District of Columbia, Puerto Rico and the Virgin Islands*. [40:1-216]
- (7) **"Week of unemployment"** includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.
- (c) **Registration for work.**
- (1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.
- (2) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.
- (d) **Canadian claims.** Extension of interstate benefit payments will include claims taken in and for Canada. OAC 240:10-3-26 shall apply in all its provisions to claims taken in and for Canada.
- [Source: Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-27. Social Security account numbers or claim ID number

- (a) **Submittal by employing unit.** Each employing unit shall submit the name and Social Security account number of a worker when communicating with the Commission in connection with any report, claim, or proceeding under the OES Act with respect to such worker.
- (b) **Submittal by individual.** Any individual shall submit his/her name and Social Security account number or a claim ID number when communicating with the Commission in connection with any report, claim, or proceeding under the OES Act with respect to such individual.
- [Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-3-28. Application of payments made to repay an overpayment of benefits

When a person makes a payment to the Commission to repay an indebtedness created by a previous overpayment of unemployment benefits, the payment shall be applied in the following manner:

- (1) First to any fees that have been charged to the debtor until all fees are paid.
- (2) Second to the accrued interest until all interest is paid.
- (3) Third to the principal amount of the overpayment.

[Source: Added at 9 Ok Reg 1419, eff 4-27-92; Amended at 24 Ok Reg 1233, eff 5-25-07]

PART 7 – PROTECTION OF RIGHTS AND BENEFITS

240:10-3-30. Notice to claimants of income tax withholding program

All claimants of unemployment insurance benefits will be notified of the program in which state and federal income taxes may be deducted from the claimant's weekly benefit amount. The notice shall advise each claimant that:

- (1) Unemployment insurance benefits are subject to state and federal income tax;
- (2) State and federal requirements exist pertaining to estimated tax payments;

(3) The claimant may elect to have state and federal income taxes deducted and withheld from the claimant's payment of unemployment benefits at the percentages specified in 40 O.S. Section 2-305;

(4) Participation by the claimant in the income tax withholding program is voluntary; and

(5) The claimant shall be permitted to change a previously elected withholding status one time each benefit year. A change in withholding status must be requested by the claimant in writing or by telecommunication.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97; Amended at 19 Ok Reg 1004, eff 5-13-02; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-31. Amounts deducted held in Unemployment Trust Fund

Amounts of money deducted and withheld by the Commission from unemployment benefits shall remain in the unemployment trust fund for the State of Oklahoma until transferred to the federal and state taxing authorities as a payment of income tax.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97]

240:10-3-32. Federal procedures followed

The Commission shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service of the United States pertaining to the deducting and withholding of income tax.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97]

240:10-3-33. Priorities of deductions from benefits [REVOKED]

[Source: Added at 14 Ok Reg 2905, eff 7-11-97; Revoked at 15 Ok Reg 1496, eff 5-11-98]

240:10-3-34. Calculation of deductions

The amount of claimant's income tax deduction will be calculated as a percentage of the gross weekly benefit amount due the claimant, before any other deductions are made. The percentages to be used in this calculation are specified in 40 O.S. Section 2-305.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97]

240:10-3-35. Personal identification numbers

At the claimant's option, the weekly filings for a continued unemployment claim can be made by telecommunication through the Commission's automated voice response system or via the Internet. In order to utilize these methods, the claimant will establish a personal identification number (PIN). It is the responsibility of the claimant to keep his or her personal identification number confidential at all times. A third party may not utilize a claimant's personal identification number to file a continued claim on behalf of, or in place of, the claimant. If a third party uses a claimant's personal identification number to obtain benefits, this will be considered unemployment compensation fraud.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97; Amended at 24 Ok Reg 1233, eff 5-25-07]

PART 9 - DISQUALIFICATION

240:10-3-40. Normal working day [REVOKED]

[Source: Revoked at 15 Ok Reg 1496, eff 5-11-98]

240:10-3-41. Application of retirement proceeds and severance pay

(a) **Retirement proceeds.** A lump-sum distribution from a retirement plan shall be deductible from benefits in the week received.

(b) **Severance pay.** Severance pay which is deemed wages shall be deductible from benefits in the week received.

[Source: Amended at 9 Ok Reg 1327, eff 2-27-92 (emergency); Amended at 9 Ok Reg 1833, eff 6-11-92; Amended at 21 Ok Reg 779, eff 5-1-04]

240:10-3-42. Labor disputes

(a) **Initial notice to Commission.** In cases of unemployment due to a strike, lockout or other labor dispute, the employing unit shall mail to the Oklahoma Employment Security Commission, Benefits, P. O. Box 52003, Oklahoma City, Oklahoma 73152-2003, a notice setting forth the existence of such dispute and the approximate number of workers affected.

(b) **List of participants.** Upon request by the Commission, such employing unit shall furnish to the Commission the names and Social Security account numbers of workers ordinarily attached to the department or the establishment where unemployment is caused by strike, lockout, or labor dispute.

(c) **Status report of labor dispute.** After the Appeal Tribunal has determined that a labor dispute exists, the Commission shall, once a month, send a request to the employer and the union representative or employee representative asking for the status of the labor dispute.

(d) **Claim processing.** In order to expedite the determination of whether or not a labor dispute exists, once the Appeal Tribunal has received notice that a possible labor dispute exists, and it has received the names and Social Security account numbers of workers ordinarily attached to the department or the establishment where the dispute exists (OAC 240:10-3-42 (a) and (b)), the Appeal Tribunal may accept a stipulation from any claimant, on a form to be designated by the Commission, that said claimant will be represented in his/her claim before the Appeal Tribunal as to the existence or not of a labor dispute by a named agent or representative. Said form shall enable the Appeal Tribunal to rule on the existence of a labor dispute, which determination shall be binding on all claimants who have stipulated to the representation by the agent.

(e) **Interim employment.** Any claimant for unemployment benefits who has been determined to be ineligible to receive benefits because he/she is involved in a labor dispute may become eligible for benefits if he/she has accepted other employment and has earned wages equal to or in excess of ten (10) times his/her weekly benefit amount, provided he/she otherwise qualifies. Provided further, that the base period employer or employers shall not be charged for any benefits paid.

[Source: Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-43. Performed service and earned remuneration; reemployed and has earned wages

(a) The terms *performed service and earned remuneration* as used in 40 O.S. Section 2-109, and *reemployed and has earned wages* as used in 40 O.S. Sections 2-404, 2-406, and 2-418 shall mean that the individual has performed service *in employment and earned wages for that service and employment*.

(b) Wages (or remuneration) as used and applied in 40 O.S. Sections 2-109, 2-404, 2-406 and 2-418 in conjunction with the term *ten (10) times his weekly benefit amount* shall be those wages that are subject to coverage by the OES Act and subject to Federal Social Security Taxes and/or Federal and State Income Tax laws.

(c) "**Earned remuneration**" means reasonable compensation derived from the providing of a service, declared or undeclared, based upon the average remuneration paid to like service providers in like industries.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-44. Domestic violence or abuse [REVOKED]

[Source: Added at 21 Ok Reg 779, eff 5-1-04; Amended at 23 Ok Reg 888, eff 5-15-06]

240:10-3-45. Cases involving positive drug or alcohol tests

In order to establish that the drug or alcohol test of an unemployment insurance claimant was conducted in accordance with the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §551 through 565, the employer must produce the following:

- (1) Documentation of a positive test result issued by the testing facility that performed the test.
- (2) Documentation of the chain of custody of the testing sample from the point of collection to the testing facility.
- (3) The medical review officer's certification of proper testing standards and procedures.
- (4) A statement concerning the circumstances, as set out in 40 O.S. §554, under which the testing was requested or required.
- (5) A copy of the employer's drug testing policy as required by 40 O.S. §555.
- (6) Documentation showing that the employer provides an employee assistance program as required by 40 O.S. §561.
- (7) Any evidence relevant to the adjudication of questions of fact or law regarding drug or alcohol testing that may be an issue in the claim for unemployment benefits.

[Source: Added at 21 Ok Reg 779, eff 5-1-04]

PART 11 – FILING CLAIMS - NOTICE**240:10-3-50. Employers who shall receive a notice of determination**

The phrase *to each other employer who timely filed a written objection to the claim* [40:2-507] refers to "each employer" involved in the claim for benefits. Thus both last and base period employers must timely file a written objection to the claim in order to have a right to receive a notice of a determination upon a claim.

240:10-3-51. Information to be posted

Each employing unit subject to the OES Act shall post and maintain in places readily accessible to individuals in its employ a printed statement styled "Notice to Workers." [40:2-502]. Notice(s) are to be furnished by the Commission without cost to the employer.

240:10-3-52. Information to separated worker

(a) Each employing unit shall upon request furnish each worker separated from its employ (permanently or for an indefinite period, or for an expected duration of seven (7) or more days) at the time of such separation, or if delivery is impossible or impracticable, then by mail:

- (1) a copy of the Commission's booklet entitled "Rights and Responsibilities of the Unemployed Workers (OES-341);" and
- (2) sufficient identification of the employer's name, address and account number under which the worker's wages were, or will be, reported to the Commission.

(b) Mailing shall be to the last known address of the employee as recorded in the employer's personnel records.

[Source: Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-53. Third party administrators – filing requirement

Any third party administrator that files more than 30 protests in any month during the previous calendar year in response to benefit claim notices, on behalf of its client employers, shall file the protests by telefax only to the telefax number set out on the Notice of Benefit Claim form. The Oklahoma Employment Security Commission shall not accept hand delivery, postal mailing, or e-mailing of protests by third party administrators meeting the volume of filings set forth above.

[Source: Added at 25 Ok Reg 1625, eff 6-12-08]

PART 12 – INTEREST WAIVER FOR BENEFIT OVERPAYMENTS**240:10-3-60. Definitions**

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

"Interest" means the interest that accrues in a claimant's overpayment pursuant to 40 O.S. Section 2-613.

"Overpayment" means an unemployment benefit overpayment established pursuant to 40 O.S. Section 2-613.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-61. Filing a request for waiver

(a) A claimant who wants a waiver of interest that has accrued in his or her overpayment, must make a request for waiver in writing and file it with the Oklahoma Employment Security Commission.

(b) Filing must be accomplished by mailing or delivering the request document to the Benefit Payment Control Unit of the Oklahoma Employment Security Commission at the

following address: Oklahoma Employment Security Commission, Benefit Payment Control Unit, P. O. Box 52925, Oklahoma City, OK 73152-2925.

(c) A request for waiver is deemed filed on the date the request letter is received by the Oklahoma Employment Security Commission.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-62. Three year limitation, assessment of penalty and accrual of interest

(a) No interest can be waived if it accrued at a time more than three years before the date of the filing of the request letter.

(b) On appeal, the Appeal Tribunal shall summarily dismiss any request for waiver to the extent that the request pertains to interest that accrued at a time more than three years before the date of the filing of the request letter.

(c) Interest accrues on the principle amount of the overpayment on the first day of each month.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-63. Request letter

(a) The request letter prepared by the claimant must contain the following information:

- (1) Claimant's name, address and telephone number
- (2) Claimant's Social Security number or claim ID number
- (3) The time period for which interest is requested to be waived or the amount of interest requested to be waived.
- (4) A statement of all reasons the claimant will rely on to explain why interest should be waived.

(b) The request letter must be signed by the claimant.

(c) If the claimant is represented by an attorney, the name, address, telephone number and Oklahoma Bar Association number of the attorney must also be included in the request letter.

(d) The claimant must attach to the request letter a copy of all notices, statements, determinations, correspondence, or any other documents relevant to the request for waiver.

[Source: Added at 20 Ok Reg 833, eff 5-12-03; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-64. Initial determination

(a) Upon receipt of the request letter, the Oklahoma Employment Security Commission will make the initial determination regarding whether or not a waiver should be allowed based on the information supplied by the claimant and the records of the Oklahoma Employment Security Commission on the overpayment in question.

(b) The Oklahoma Employment Security Commission will set forth its determination in writing and mail it to the claimant at the claimant's last known address.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-65. Appeal of initial determination

- (a) In order to appeal the determination of the Oklahoma Employment Security Commission, the claimant must file an appeal within 10 days of the date the determination letter was mailed to the claimant pursuant to 40 O.S. Section 2-603.
- (b) The appeal document or communication must contain the following:
- (1) The name, address and telephone number of the claimant.
 - (2) The claimant's Social Security number or claim ID.
 - (3) The date of the determination letter issued by the Oklahoma Employment Security Commission.
 - (4) Signature of the claimant.
- (c) The appeal may be filed by any method allowed in 40 O.S. Section 1-224 or by telecommunication.
- (d) If any claimant fails to file his or her appeal letter within the 10 days provided for in subsection (a) of this Section, then the determination of the Oklahoma Employment Security Commission shall be final, and no appeal shall thereafter be allowed.

[Source: Added at 20 Ok Reg 833, eff 5-12-03; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-3-66. Jurisdiction and authority of Appeal Tribunal

- (a) The Appeal Tribunal of the Oklahoma Employment Security Commission shall have jurisdiction to hear all cases involving the appeals of determinations regarding claimant's requests for waiver of interest.
- (b) The Appeal Tribunal shall have complete authority and discretion to determine whether any part or all of the interest at issue should be waived.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-67. Appeal Tribunal hearing

After the claimant's appeal has been filed, a hearing will be set before the Appeal Tribunal to allow the claimant and the Commission an opportunity to present their arguments for or against the waiver. The notice of the hearing and the procedure regarding the conduct of the hearing shall be in accordance with, and governed by, the Oklahoma Employment Security Commission rules concerning Appeal Tribunal procedure found in OAC 240:10-13.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-68. Appeal

Appeal of the decision of the Appeal Tribunal shall be governed by the Oklahoma Employment Security Commission rules found in Part 11 of OAC 240:10-13 and by the appeal provisions of the Employment Security Act of 1980 found at 40 O.S. Sections 2-605 through 2-609.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

240:10-3-69. Waiver to be denied

A waiver of interest will not be granted if it is determined that the claimant received an overpayment of benefits through fraud.

[Source: Added at 20 Ok Reg 833, eff 5-12-03]

PART 13 - APPEALS [Reserved]

PART 15 - EXTENDED BENEFITS [Reserved]

PART 17 - CHILD SUPPORT [Reserved]

SUBCHAPTER 5 – CONTRIBUTIONS

PART 1 – GENERAL PROVISIONS

240:10-5-1. Purpose

This Subchapter establishes procedures for payment of contributions, collection of taxes and judicial review of assessment of taxes and employer tax rates.

240:10-5-2. Definitions

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

"Lessor Employing Unit" is defined in 40 O.S. §1-209A(a). The terms "employee leasing company" and "staff leasing company" shall have the same meaning as the term "lessor employing unit."

"Multiple Worksite Employer" means an employer that operates its business at more than one permanent location.

"Predecessor" or **"Predecessor Employer"** means the employer who operated a business entity before it was acquired by the successor or acquiring employer.

"Successor" or **"Successor Employer"** means the acquiring employer of a business entity formerly operated by a predecessor employer.

"Substantially All" as used in the context of 40 O.S. §3-111, means that the successor or acquiring employer has acquired the predecessor's trade, employees, organization, business, or assets to such an extent that the predecessor is unable to continue in business.

[Source: Added at 14 Ok Reg 2909, eff 7-11-97; Amended at 17 Ok Reg 1595, eff 5-25-00; Amended at 23 Ok Reg 885, eff 5-15-06]

240:10-5-3. Notice of change of address, organization or ownership

Any employer who has a change of address or a change of organization or transfer of ownership, or who sells or otherwise disposes of a part or all of its business or assets, shall give written notice to the Commission immediately following the effective date of such change, sale or disposition. [40:4-302]

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-5-4. Surety bond for lessor employing units

(a) **Statute.** This Section applies to the application for, and issuance of, the Surety Bond for lessor employing units that is provided for in 40 O.S. 1991 §1-209A.

(b) **Form of bond.** The Surety Bond shall be on a form prescribed by the Oklahoma Employment Security Commission. Forms can be obtained from the Contributions Department of the Oklahoma Employment Security Commission at the following

address: Oklahoma Employment Security Commission, Contributions Department, P.O. Box 52003, Oklahoma City, Oklahoma 73152-2003.

(c) **Corporate surety.** The Surety Bond shall be issued by a corporate surety authorized to do business in this state by the Oklahoma Insurance Department.

(d) **Bond application.** Any lessor employing unit that desires to purchase a Surety Bond must make its initial application with the Commission each year before March 1. The initial application and renewal application shall be on a form prescribed by the Commission. The application forms can be obtained at the address listed in (b) of this Section. Completed application forms shall be returned to the same address.

(e) **Client list.** The lessor employing unit wishing to apply for a bond or a bond renewal shall supply with their application a list of Oklahoma clients that will include the client's name, federal identification number, and the number of employees the lessor employing unit is leasing to each client lessee.

(f) **Term of bond.** The term of the Surety Bond shall be a one year period from April 1 of any given year to March 31 of the succeeding year. Any bond issued on a date other than April 1 shall extend from the date of issuance until the next March 31st, at which time the bond will expire.

(g) **Amount of bond.** The Surety Bond shall be in an amount equivalent to the contributions for which the lessor employing unit was liable in the last calendar year in which it accrued contributions, or in the sum of one hundred thousand dollars (\$100,000.00), which ever is greater. The exact amount of the bond will be certified by the Oklahoma Employment Security Commission upon receipt of the initial application or renewal application for a bond from the lessor employing unit. The certification shall be mailed to the corporate surety that will be issuing the bond.

[Source: Added at 11 Ok Reg 1601, eff 5-12-94; Amended at 26 Ok Reg 1375, eff 5-12-95]

240:10-5-5. Coverage of Indian tribes [EXPIRED]

[Source: Added at 18 Ok Reg 3432, eff 7-1-01 through 7-14-02 (emergency)¹]

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 240:10-5-5 was no longer effective. For the official text of the emergency rule that was in effect from 7-1-01 through 7-14-02, see 18 Ok Reg 3432.

PART 3 - RATES

240:10-5-10. Payment of contributions

(a) **Date payment due.** Contributions shall become due and be paid on or before the last day of the month following the calendar quarter to which they relate, provided that:

(1) If, under the provisions of 40 O.S. Section 3-306, the Commission shall declare the period for which any contribution may become due to have terminated for an employer, and assesses the contributions for such period, such contributions shall immediately become due and be paid by such employer; and

(2) If an employing unit has not previously qualified as an employer under the OES Act and first qualifies as an employer during a calendar year, the employing unit shall

pay contributions for all past periods of that year for which said employer is liable for the payment of contributions, on or before the due date for that quarter in which such employing unit becomes an employer subject to the OES Act. [40:3-102]

(b) **Date of receipt defined.**

(1) Payments of contributions received through the mail shall be deemed to have been received as of the date shown by the postmark on the envelope properly addressed to the Commission's office and containing such payment.

(2) Payment of contributions received through an electronic fund transfer system shall be deemed to be have been received by the Commission on the date on which the electronic payment was authorized for immediate payment to the Oklahoma Employment Security Commission.

(3) All other payments of contributions shall be deemed to have been received on the date on which payments are received by a representative of the Commission.

[Source: Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-5-11. Subject employer acquiring the experience rating account of another employer

When any employing unit acquires the experience rating account of one or more employers under the provisions of 40 O.S. Section 3-111 or 3-111.1, and the employing unit was an employer subject to the Employment Security Act of 1980 at the time of the acquisition, the contribution rate for the acquiring employing unit after the acquisition shall be determined as follows:

(1) The compensation experience of the successor employer and the predecessor, or predecessors, shall be consolidated for the experience period immediately preceding the acquisition, and the Benefit Wage Ratio shall be computed on the total experience of all the employers.

(2) The Benefit Wage Ratio so computed shall be used to determine the successor's contribution rate for the remainder of the calendar year in which the acquisition occurred. The contribution rate so established shall be applicable to the successor employer beginning with the first day of the calendar quarter in which the acquisition occurred.

[Source: Amended at 12 Ok Reg 1375, eff 5-12-95; Amended at 22 Ok Reg 733, eff 5-15-05; Amended at 23 Ok Reg 885, eff 5-15-06]

240:10-5-12. Nonsubject entity acquiring the experience rating account of an employer

(a) **One employer acquired.** When any employing unit acquires the experience rating account of an employer under the provisions of 40 O.S. Section 3-111 or 3-111.1, and the employing unit was not an employer subject to the Employment Security Act of 1980 prior to the acquisition, the employing unit shall acquire the contribution rate of the employer for the entire calendar year in which the acquisition occurred.

(b) **Two or more employers acquired.** When any employing unit acquires the experience rating account of two or more employers under the provisions of 40 O.S. Sections 3-111 or 3-111.1, and the employing unit was not an employer subject to the Employment Security Act of 1980 prior to the acquisition, the contribution rate for the employing unit shall be determined by consolidating the compensation experience of the two or more employers acquired for the three calendar years immediately preceding the

acquisition, and the Benefit Wage Ratio computed on the total experience of all the employers so acquired. The Benefit Wage Ratio so computed shall be used to determine the successor's contribution rate for the calendar year in which the acquisition occurred.

(c) An employing unit that was not an employer subject to the Employment Security Act of 1980 prior to acquiring the predecessor employer shall not be allowed to acquire the experience history or contribution rate of the predecessor employer if the Commission finds that the employing unit acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

[Source: Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 22 Ok Reg 733, eff 5-15-05; Amended at 23 Ok Reg 885, eff 5-15-06]

240:10-5-13. Experience rating contribution rates - appeal [REVOKED]

[Source: Revoked at 24 Ok Reg 1233, eff 5-25-07]

240:10-5-14. Experience rating - date of benefit payments

For the purpose of computing contribution rates under the provisions of 40 O.S., Article 3, Part I, benefits for any compensable week ending in a prior calendar year shall be deemed to have been paid in the calendar year in which payment is made to the claimant in accordance with 40 O.S. Sections 1-221 and 3-105.

240:10-5-15. Successor acquiring the experience rating account of predecessor

(a) **Notification to transferring employer.** When any employing unit acquires a portion of the experience rating account of an employer under the provisions of 40 O.S. Section 3-111(C), and makes written application for such transfer as provided by the Act, written notice of such application for partial transfer shall be mailed or delivered to the transferring employer by a duly authorized Commission representative within fifteen (15) days after receipt of such application.

(b) **Protesting partial transfer.** Within twenty (20) days after the date of mailing or delivery by a duly authorized Commission representative of such written notice, the transferring employer may file a written protest to such transfer and request an oral hearing to present evidence in support of such protest. Such hearing shall be conducted in the manner prescribed in 40 O.S. Section 3-305. Pending a final determination of such protest, no transfer of experience rating account shall be made, but if pursuant to such final determination a transfer of experience rating account is made, then the accounts and contributions of the transferring and acquiring employers shall be adjusted in accordance with such transfer.

(c) **Partial transfer to subject employer.** In the event of a partial transfer of the experience rating account of an employer to an acquiring employing unit, who was not an employer prior to such acquisition, the contribution rate of the acquiring employing unit shall be determined in accordance with the provisions of 40 O.S., Article 3, Part I, based upon that portion of the experience rating account so transferred. That portion of the experience rating account so transferred shall not thereafter be used to compute an experience rating contribution rate for the transferring employer. The contribution rate so computed shall be applicable to such acquiring employing unit as of the date of the acquisition.

(d) **Partial transfer to non-subject employer.** If the acquiring employing unit was an employer prior to such acquisition and transfer, then the experience rating account so transferred shall be consolidated with the employer's experience rating account prior to such acquisition, and a contribution rate computed on the combined experience under the provisions of 40 O.S., Article 3, Part I. The contribution rate so computed shall be applicable to such employer beginning with the first day of the calendar quarter in which such acquisition occurred. That portion of the experience rating account so transferred shall not be used in computing an experience rating contribution rate for the transferring employer for any year subsequent to the year in which the transfer was effective.

[Source: Amended at 11 Ok Reg 1603, eff 5-12-94]

240:10-5-16. Recall credit

If an employer recalls a laid-off or separated employee, the employer shall be entitled to have the benefit wage charge reduced by the ratio of the weeks of remaining eligibility of said employee to the total number of weeks of original entitlement. If recalled, the employer shall notify the Commission of such recall within thirty (30) days following the end of the benefit year or the notice of a charge, whichever is later.

[Source: Added at 8 Ok Reg 2301, eff 6-13-91]

240:10-5-17. Relief from benefit wage charges-disasters

In order for an employer to remove a benefit wage charge from his or her account because of a separation of employees from employment that occurred due to a natural disaster, fire, flood, or explosion pursuant to 40 O.S. Section 3-106.1, the following requirements must be met:

(1) The affected employer must request in writing that the benefit wage charge be removed and shall state in this writing:

- (A) date of the occurrence of the disaster;
- (B) type of disaster;
- (C) name of the business;
- (D) physical location of the building, office, or plant involved in the disaster; and
- (E) nature of the business conducted by this employer at the location that was damaged.

(2) The disaster must be reported to the Commission within one year and four months of the date of occurrence.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97]

PART 5 - PERIOD, TERMINATION, ELECTION [Reserved]

PART 7 – COLLECTION OF CONTRIBUTIONS

240:10-5-30. Jeopardy assessments security defined

In accordance with the provisions of 40 O.S. Section 3-306(4) relating to security which employers may furnish during the appeal of a jeopardy assessment, the Commission prescribes that such security shall be:

(1) Good and lawful money of the United States of America, or cashier's checks, certified checks and money orders.

- (2) Bonds of the United States of America, and bonds whose principal and interest is guaranteed by the United States of America.
- (3) Surety bond to be first approved by the Commission.
- (4) Securities of a ready marketable value, to be first approved by the Commission.

240:10-5-31. Claims for refund - procedure

Each employer who files an application for refund under 40 O.S. Section 3-304 shall be notified of the determination made on said application. Any employer aggrieved by the determination made on said application for refund may file protest to such determination and request oral hearing thereon. The procedure provided by 40 O.S. Section 3-305 with reference to assessment of contributions shall be applicable to such protests and hearings.

240:10-5-32. Application of payments to delinquent tax indebtedness

- (a) When making payments on a delinquent account, an employer may designate a particular calendar quarter to which he or she wants the payment applied. This designation must be made in writing at the time the payment is made to the Commission.
- (b) If an employer designates a particular calendar quarter to which he or she wants the payment applied, the payment shall be applied to the indebtedness owing for the quarter in the following manner:
 - (1) First, to the interest owing in the designated quarter until the interest amount is paid in full.
 - (2) Second, to the penalties owing in the designated quarter until the penalty amount is paid in full.
 - (3) Third, to the fees owing in the designated quarter until the fee amount is paid in full.
 - (4) Fourth, to the tax owing in the designated quarter until the tax amount is paid in full.
 - (5) Fifth, to the surtax owing in the designated quarter until the surtax amount is paid in full.
 - (6) If there is any sum of money left over after the payment has been applied to the indebtedness owing for the designated quarter, the remainder of the money shall be applied as set out in subsection (c) of this section.
- (c) If an employer makes a payment on a delinquent account and does not designate a particular quarter to which he or she wants the payment to be applied, the payment will be applied in the following manner:
 - (1) First, to the interest owing in the earliest delinquent quarter until the interest amount is paid in full.
 - (2) Second, to the penalties owing in the earliest delinquent quarter until the penalty amount is paid in full.
 - (3) Third, to the fees owing in the earliest delinquent quarter until the fee amount is paid in full.
 - (4) Fourth, to the tax owing in the earliest delinquent quarter until the tax amount is paid in full.
 - (5) Fifth, to the surtax owing in the earliest delinquent quarter until the surtax amount is paid in full.

(6) After the payment has been applied in the manner described in paragraphs (1) through (5) of this subsection, any money left over shall be applied in the same manner to the delinquent quarter that is next in time, and this procedure shall be repeated until the payment is exhausted.

[Source: Added at 9 Ok Reg 1419, eff 4-27-92]

240:10-5-33. Application of payments to Computer Assessment Fund

For all calendar quarters in which the computer fund assessment provided for in 40 O.S. Section 6-104 is applicable, any money received in payment of any indebtedness related to those quarters will be first applied to any amounts owing for the computer fund assessment. Any money remaining shall be applied pursuant to rule 240:10-5-32.

[Source: Added at 15 Ok Reg 1496, eff 5-11-98]

PART 8 – WAIVER OF PENALTY AND INTEREST

240:10-5-40. Definitions

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

"Interest" means the interest that accrues in an employer's account pursuant to 40 O.S. Sections 3-301 and 3-806(A).

"Penalties" means the penalties assessed against an employer and added to his or her account pursuant to 40 O.S. Sections 3-301(B) and 3-806(B).

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-5-41. Filing a request for waiver

(a) An employer who wants a waiver of penalty and/or interest that has been assessed or accrued in his or her account, must make a request for waiver in writing and file it with the Oklahoma Employment Security Commission.

(b) Filing must be accomplished by mailing or delivering the request document to the Contributions Department of the Oklahoma Employment Security Commission at the following address: Oklahoma Employment Security Commission, Contributions Department, P.O. Box 52003, Oklahoma City, OK 73152-2003.

(c) A request for waiver is deemed filed on the date the request letter is received by the Oklahoma Employment Security Commission.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 12 Ok Reg 1375, eff 5-26-95]

240:10-5-42. Three year limitation, assessment of penalty and accrual of interest

(a) The employer must file the request for waiver with the Commission within three years of the date the penalty or interest at issue was assessed or accrued.

(b) No penalty or interest can be waived if it was assessed or accrued at a time more than three years before the date of the filing of the request letter.

(c) On appeal, the Assessment Board shall summarily dismiss any request for waiver to the extent that the request pertains to penalty and/or interest that was assessed or accrued at a time more than three years before the date of the filing of the request letter.

(d) A penalty assessed by the Oklahoma Employment Security Commission is deemed to be assessed on the day it is charged against an employer's account.

(e) Interest accrues on the principle amount of tax owing in an employer's account on the first day of each month.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-5-43. Request letter

(a) The request letter prepared by the employer must contain the following information:

- (1) Employer's name, address and telephone number
- (2) Employer's Oklahoma account number
- (3) The calendar quarters associated with the penalties and/or interest the employer is requesting to be waived
- (4) A statement of all reasons the employer will rely on to explain why penalty or interest should be waived

(b) The request letter must be signed by the employer, or the employer's agent or representative.

(c) If the employer is represented by an attorney, the name, address, telephone number and Oklahoma Bar Association number of the attorney must also be included in the request letter.

(d) The employer must attach to the request letter a copy of all notices, statements, determinations, correspondence, reports, or any other documents relevant to the request for waiver.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-5-44. Initial determination

(a) Upon receipt of the request letter, the Oklahoma Employment Security Commission will make the initial determination regarding whether or not a waiver should be allowed based on the information supplied by the employer and the records of the Oklahoma Employment Security Commission on the particular account in question.

(b) The Oklahoma Employment Security Commission will set forth its determination in writing and mail it to the employer at the employer's last known address. Contact information for the filing of an appeal will be set forth in the determination letter.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 25 Ok Reg 1625, eff 6-12-08]

240:10-5-45. Appeal of initial determination

(a) If an employer wants to appeal the determination of the Oklahoma Employment Security Commission, the employer must file a letter appealing the determination within 20 days of the date the determination letter was mailed to the employer.

(b) The appeal letter must contain the following:

- (1) The name, address and telephone number of the employer.
- (2) The employer's Oklahoma account number.
- (3) The date of the determination letter issued by the Contributions Department.
- (4) Signature and title of person requesting appeal.

(c) The appeal must be filed with the Oklahoma Employment Security Commission by any method set forth in 40 O.S. §1-224(A). Contact information for filing the appeal will be set forth in the determination letter.

(d) If any employer fails to file his or her appeal letter within the 20 days provided for in subsection (a) of this section, then the determination of the Oklahoma Employment Security Commission shall be final, and no appeal shall thereafter be allowed.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 25 Ok Reg 1625, eff 6-12-08]

240:10-5-46. Jurisdiction and authority of Assessment Board

(a) The Assessment Board of the Oklahoma Employment Security Commission shall have jurisdiction to hear all cases involving the appeals of determinations regarding employers' requests for waiver of penalty and interest.

(b) The Assessment Board shall have complete authority and discretion to determine whether any part or all of the penalty and/or interest at issue should be waived.

[Source: Added at 9 Ok Reg 3549, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-5-47. Assessment Board hearing

After the employer's appeal has been filed, a hearing will be set before the Assessment Board to allow the employer and the Commission an opportunity to present their arguments for or against the waiver. The notice of the hearing and the procedure regarding the conduct of the hearing shall be in accordance with, and governed by, the Oklahoma Employment Security Commission rules concerning Assessment Board procedure found in OAC 240:10-11.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-5-48. Judicial review

Judicial review of the decision of the Assessment Board shall be governed by the Oklahoma Employment Security Commission rules found in Part 11 of OAC 240:10-11 and by the judicial review provisions of the Oklahoma Employment Security Act found at 40 O.S. Sections 3-401 to 3-408.

[Source: Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-5-49. Waiver to be denied

A waiver of penalty and/or interest will not be granted if:

(1) The sole reason for the employer's failure to file a report or remit a payment is that of forgetfulness or neglect on the part of the employer or the employer's agent, or

(2) The account history of the employer reflects a chronic pattern of late report filing, late payment of taxes, or both, or

(3) The employer has failed to fully cooperate and act in good faith in conducting his or her business with the Oklahoma Employment Security Commission or its authorized representative.

[Source: Added at 9 Ok Reg 3549, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

PART 9 - JUDICIAL REVIEW [Reserved]**240:10-5-60. Tax warrant filing fees**

(a) The Oklahoma Employment Security Commission may file tax warrants in the office of a county clerk or any other office charged with the filing and recording of liens against real and personal property located within that county or political subdivision.

(b) If the Oklahoma Employment Security Commission is charged a fee for the filing of a tax warrant, the amount of the fee will be added to the indebtedness owed by the employer against whom the tax warrant was filed. The fee will be added to the indebtedness owing for the latest calendar quarter listed on the face of the tax warrant.

[Source: Added at 12 Ok Reg 1375, eff 5-26-95]

240:10-5-61. Sheriff service fees for tax warrants

(a) The Oklahoma Employment Security Commission may deliver its tax warrants to the sheriff of the county in which an employer can be found. The sheriff shall then proceed to serve and execute the warrant in the same manner as a judgment of a court of record.

(b) The amount of the sheriff's service fee shall be added to the indebtedness owed by the employer against whom the tax warrant was issued. The fee will be added to the indebtedness owing for the latest calendar quarter listed on the face of the tax warrant. After the Commission collects the sheriff's service fee from the employer, the amount of the service fee shall be remitted to the sheriff's office that served the tax warrant.

[Source: Added at 12 Ok Reg 1375, eff 5-26-95]

PART 13 - UNEMPLOYMENT COMPENSATION FUND [Reserved]**PART 11 - WARRANTS****240:10-5-70. Termination of individual reimbursing employers**

(a) **Assessment of regular and extended benefits.** Title 40 O.S. Sections 3-701 through 3-706 and Sections 3-801 through 3-810 establish provisions whereby state, local governments and nonprofit organizations may elect to reimburse the Commission for benefits paid in lieu of payment of contributions.

(1) Each employer must file a quarterly wage report on or before the last day of the month following the calendar quarter to be reported.

(2) At the end of each calendar quarter, the Commission shall assess and notify the reimbursing employer as to the amount of regular and extended benefits paid by the Commission during such quarter that is attributable to service in the employ of such employer.

(3) Said assessment shall be immediately due and payable and shall bear interest after forty-five (45) days from date of statement at the rate of one percent (1%) per month until paid.

(b) Penalties.

(1) If the employer fails or refuses to pay said assessment after same has become delinquent within forty (45) days after written notice for payment has been mailed, *a penalty of five percent (5%) of the amount due shall be added to the assessment.* [40:3-806 A]

(2) If the employer who elects to make such reimbursement in lieu of contributions fails or refuses to file required wage report(s) within fifteen (15) days after written notice has been mailed to such employer by the Commission, *a penalty of Ten Dollars (\$10.00) for each day until such report is filed with a maximum of One Hundred Dollars (\$100.00)* [40:3-806 B] will be imposed against such employer and shall be collected as provided by the OES Act.

(3) Any employer who has elected to make a reimbursement and such election has been in effect for two (2) or more calendar years that is delinquent in filing wage reports as required, or fails to pay the full reimbursement costs, including any interests and penalties and where such delinquency is more than forty-five (45) days and continues through the last day of the calendar year, shall result in the Commission automatically terminating such reimbursing employer's election to "reimburse payments in lieu of contributions."

(c) Reimbursement of regular and extended benefits. Title 40 O.S. Sections 3-701 through 3-706 and Sections 3-801 through 3-810 provide that electing employers are to reimburse the Commission in full for any amount on both regular or extended benefits paid that are attributable to service in the employ of such employers. Reimbursement shall be made by the employers with respect to payments made for weeks of unemployment which begin during the "effective period" of such election. The "**effective period**" is hereby defined to begin with the first day of the calendar quarter or year such employers' election to reimburse is effective that is approved by the Commission. The "effective period" shall continue through each calendar year until such election has been terminated by the Commission and thereafter until such time that any regular or extended benefits could be payable based on wages having been paid and reported to the Commission for any calendar quarters prior to the effective date of termination to reimburse payments in lieu of contributions.

(d) Application to terminate. Application to terminate the reimbursement procedure after two (2) calendar years may be made on or before the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 11 Ok Reg 1603, eff 5-12-94]

240:10-5-71. Group accounts

OAC 240:10-5-80 shall also apply to governmental organizations and their instrumentalities which apply for group accounts.

PART 17 – FINANCING BENEFITS TO EMPLOYEES OF NONPROFIT ORGANIZATIONS

240:10-5-80. Establishment of group accounts for state, local governments and nonprofit organizations

(a) **Applying for group accounts.** Title 40 O.S. Section 3-809 provides that two (2) or more approved reimbursing employers may file a joint application for the purpose of establishing a group account to share the cost of benefits paid that are attributable to service in the employ of such employer.

(1) **Information required.** Application to form such a group must include:

(A) Identification of the name, address and account number, if any, previously assigned by the Commission to each employer desiring to participate in the group.

(B) Identification of the group name, mailing address and identity of the individual representative authorized to act as the group representative in all matters before the Commission.

(C) A certified copy of the group's by-laws, rules and regulations adopted by the group, board of directors, trustees or other governing body.

(i) By-laws adopted by the group must include requirements established for membership into and termination from the group.

(ii) The by-laws must include rules and procedural requirements to the effect that the group account is requested and established for the purpose of sharing the cost of benefits paid by the Commission that are attributable to service in the employ of each such reimbursing employer in the group.

(iii) By-laws must include the method agreed upon by group members for prorating full benefit costs, including any interest and penalties as required by the OES Act.

(2) **Termination of account.** A group account established and approved as such by the Commission may after two (2) or more calendar years make application to terminate the group account by filing a request with the Commission on or before the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective.

(b) **Reporting requirements for group accounts.**

(1) Each group account approved by the Commission will be assigned a group number. Each individual employer member of the group will also be assigned a reimbursing account number within the group account.

(2) Each individual employer member of the group will be responsible for the proper separate reporting of wages paid to employees of his/her organization under the account number assigned by the Commission as a member of such group. Wages will be reported under such assigned account number on a designated form or format authorized by the Commission. Reports so prepared must be submitted to the Commission through the authorized representative of the group.

(3) A quarterly wage report for each employer member of the group must be filed with the Commission on or before the last day of the month following the calendar quarter to be reported. Any such electing employer or group of employers that fails or refuses to file required wage report(s) within fifteen (15) days after written notice has been mailed to such employer or the group representative by the Commission, a penalty of Ten Dollars (\$10.00) for each day *with a maximum of One Hundred Dollars (\$100.00)* [40:3-806 B] until such report is filed will be imposed against such employer or group and shall be collected as provided by the OES Act.

(4) Any group account that has been in effect for two (2) or more calendar years and is delinquent in filing separate wage reports as required for each member of the group or fails to pay the full reimbursement costs, including any interest and penalties in excess of forty-five (45) calendar days after written notice will result in the Commission automatically terminating such group account. The penalty assessed of Ten Dollars \$10.00 per day *with a maximum of One Hundred Dollars (\$100.00)* [40:3-806 B] will continue to be applied to each former member of the group whose reports remain delinquent.

(5) Any employer or group of employers who are delinquent in filing any quarterly report or payment of reimbursements as herein required as of the last day of a calendar year shall result in the Commission automatically terminating such reimbursing employer's election to "reimburse payments in lieu of contributions."

(6) At the end of each calendar quarter, the Commission shall notify the authorized group representative as to the amount of regular and extended benefits paid by the Commission during such quarter that is attributable to service in the employ of such members of the group account and that is assessed against the group. Said assessment shall be immediately due and payable and shall bear interest after forty-five (45) days from date of statement at the rate of one percent (1%) per month until paid. If the group account fails or refuses to pay said assessment after same has become delinquent within forty-five (45) days after written notice for payment has been mailed to the group, a penalty of five percent (5%) of the amount due shall be added to the assessment.

(c) **Responsibilities of group representative.** Responsibilities of the group representative shall include:

(1) Proper and timely filing of the separate employer quarterly wage reports with the Commission.

(2) Receiving quarterly statements of required payments for regular and extended benefits paid by the Commission resulting from any wages reported by a reimbursing employer that is or has been a member of a group.

(3) Making timely payments, including any interest and penalties applicable for any member of the group, in response to statements received from the Commission.

(4) Responsibility for replies to all correspondence from the Commission concerning reports and payments for employer members in the group.

(5) Responsibility for representation for each employer member of the group in all matters before the Commission.

(d) **Reimbursement of regular and extended benefits.**

(1) 40 O.S. Sections 3-701 through 3-706 and Sections 3-801 through 3-810 provide that employers in group accounts are to reimburse the Commission in full for any amount on both regular or extended benefits that are paid and are attributable to service in the employ of such employers. Reimbursement shall be required by the group for payments made for weeks of unemployment which begin during the "effective period" of such election. The "effective period" is hereby defined as beginning with the first day of the calendar quarter or year such employers' election to reimburse is effective that is approved by the Commission. The "effective period" shall continue through each calendar year until such election has been terminated by the Commission and thereafter until such time that any regular or extended benefits could be payable based on wages

having been paid and reported to the Commission for any calendar quarters prior to the effective date of termination to reimburse payments in lieu of contributions.

(2) Application to terminate the reimbursement procedure after two (2) calendar years may be made on or before the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective.

(3) Each individual employer member of the group shall be responsible for the full amount of any reimbursement due the Commission applicable to his/her organization when a group account no longer exists, or the group fails to pay such required costs, or the employer is no longer a member of the group.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 12 Ok Reg 1375, eff 5-26-95]

PART 19 – MAINTENANCE AND PRODUCTION OF WORK RECORDS

240:10-5-90. Records

Records shall be maintained by employers for a period of four (4) years. For purposes of audits, investigations, verifications, or certifications, each employer shall be required to maintain and produce to a representative of the Commission, the following records:

(1) Records that show the proprietary interest, type of organization and identity of the employing unit.

(2) All accounting records, business and personal.

(3) All bank statements and banking records for all checking and savings accounts, business and personal.

(4) All federal and state income tax returns, business and personal, including all schedules.

(5) All payroll records including federal Internal Revenue Service forms W-2, W-3, 940, 941, and 1099.

(6) All general ledgers, cash disbursement ledgers or journals, cash receipts journals, check registers, and check stubs for the employer's business.

(7) For each pay period, records that show:

(A) The beginning and ending dates of such period.

(B) The total amount of wages paid with respect to all employment.

(8) For each worker, records that show:

(A) Name.

(B) Social Security account number.

(C) Wages for each pay period showing separately:

(i) Cash wages.

(ii) Reasonable cash value of all remuneration in any medium other than cash (See OAC 240:10-1-2(b), Wages, Noncash remuneration).

(iii) Actual or estimated amount of gratuities received from persons other than his/her employing unit (See OAC 240:10-1-2 (a), Wages, Gratuities and tips).

(iv) Special payments for services rendered in prior periods, designating the period in which the service was performed.

(v) The total amount of wages paid for each pay period.

(9) Records showing the date on which the worker was hired, and the date he/she was separated from employment.

(10) Records showing the circumstances under which the worker was separated from employment shall be maintained with respect to the following:

(A) If separation from employment was because of lack of work, the records shall so state.

(B) If separation from employment was voluntary on the part of the worker, the records shall reflect the fact together with any reason(s) given by the worker.

(C) If separation from employment was a discharge of the worker for other than "lack of work," the record shall reflect such circumstances and reason given by the employer to the worker for the discharge. It shall also be in sufficient detail to reflect if there was, or was not, any misconduct connected with his/her work.

(D) If the separation from employment was other than those three listed above, the record shall reflect details of such "other reason."

(11) Records showing each day during the pay period that such individual was in employment if the individual was not regularly employed.

(12) Records showing the state or states in which his/her services are performed, and if such services are performed outside of this state, his/her base of operations (or if there is no base of operations, then the place from which his/her services are directed or contracted) and his/her residence (by state). All work records required by the Commission shall be kept safely and readily accessible at the place of business of the person or firm required to keep same. Nonresident employing units who customarily maintain work records required by OAC 240:10-5-90 outside the State of Oklahoma shall furnish to the Commission, upon request, certified copies of such records.

(13) Records that will confirm, verify, or supply data that is required in any field on any Commission report form that is required to be filed by an employer or on behalf of an employer.

(14) Any other books, papers, correspondence, memoranda, and any other records deemed necessary for review by a Commission representative.

[Source: Added at 12 Ok Reg 1375, eff 5-26-95; Amended at 26 Ok Reg 1031, eff 10-25-09]

240:10-5-91. Reports

(a) **Due date of report.** Each employer shall report both contributions and "wages paid" (as defined in OAC 240:10-1-2) on Form OES-3, Employer's Quarterly Contribution and Wage Report, for each quarterly period in which said employer is subject to the OES Act, on or before the last day of the month following the calendar quarter to be reported. However, an employing unit which has not previously qualified as an employer under the OES Act and who first qualifies as an employer during a calendar year shall file Form OES-3, Employer's Quarterly Contribution and Wage Reports, for all past periods of that calendar year on or before the due date for the quarterly report for that quarter in which such employing unit becomes an employer subject to the OES Act. [40:4-503]

(b) **Information required.**

(1) All instructions furnished with the official forms must be followed.

(2) All information required on the official forms shall be given.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-5-92. Industrial classification statement

On a periodic basis, all employers within the State of Oklahoma will be mailed an Industrial Classification Statement. Each employer is required to complete the statement by truthfully answering all questions posed in the statement and giving an accurate figure for all quantitative questions.

[Source: Added at 17 Ok Reg 1595, eff 5-25-00]

240:10-5-93. Lessor employing unit reports

Each lessor employing unit operating within the State of Oklahoma shall report the following information to the Oklahoma Employment Security Commission on a quarterly basis for each client lessee:

- (1) Industrial Classification for the client lessee.
- (2) Number of employees being leased to that client lessee.
- (3) County in which the leased employees are working.
- (4) Total wages paid to the employees leased to the client lessee.

[Source: Added at 17 Ok Reg 1595, eff 5-25-00]

240:10-5-94. Multiple worksite reports

Each multiple worksite employer shall file a multiple worksite report each quarter that will set out the following information for every worksite:

- (1) Industrial classification.
- (2) Number of employees employed at that worksite.
- (3) Physical address of the worksite.
- (4) Total wages paid employees at that worksite.

[Source: Added at 17 Ok Reg 1595, eff 5-25-00]

240:10-5-95. Occupational employment statistics survey

(a) Each year, the Bureau of Labor Statistics of the United States Department of Labor randomly selects a number of Oklahoma Employers to participate in Occupational Employment Statistics Survey pursuant to 29 U.S.C. §2. The Oklahoma Employment Security Commission is required to mail the survey to each randomly selected employer and collect the information once the surveys are complete. Each selected employer will be required to provide the following information on all of its employees:

- (1) Occupational level employment data.
- (2) Wage data.

(b) No employee names, social security numbers or other identifying information will be collected in this report.

[Source: Added at 17 Ok Reg 2365, eff 6-25-00]

PART 21 – RECIPROCAL ARRANGEMENT**240:10-5-100. Employer elections to cover interstate workers**

(a) **Arrangement.** This Section shall govern the Commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the arrangement."

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning unless the context clearly indicates otherwise:

"**Agency**" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"**Interested jurisdiction**" means any participating jurisdiction to which an election submitted under this Rule is sent for its approval; and "interested agency" means the agency of such jurisdiction.

"**Jurisdiction**" means any state of the United States, the District of Columbia, or, with respect to the Federal Government, the coverage of any Federal unemployment compensation law.

"**Participating jurisdiction**" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

"**Services customarily performed**" by an individual in more than one jurisdiction means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

(c) **Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.**

(1) **Application.** Any employing unit may file an election on Form RC-1, to cover under the law of a single participating jurisdiction all of the services performed for him/her by any individual who customarily works for him/her in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

- (A) any part of the individual's services are performed;
- (B) the individual has his/her residence; or
- (C) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(2) **Approval.**

(A) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

(B) If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

(C) In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of and have acquiesced in, the election.

(3) **Disapproval.** If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

(4) **Effective only if approved.** Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An

election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(5) **Withdrawal of election.** In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten (10) days after being notified of such action.

(d) **Effective period of elections.**

(1) **Commencement.** An election duly approved under this Rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(2) **Termination.**

(A) The application of an election to any individual under this Rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

(B) Except as provided in (A) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(C) Whenever an election under this Rule ceases to apply to any individual, under (A) or (B) of this paragraph, the electing unit shall notify the affected individual accordingly.

(e) **Reports and notices by the electing unit.**

(1) **Notification of affected employees.** The electing unit shall promptly notify each individual affected by its approved election, on the Form RC-2 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(2) **Notification for proper filing by separated employee.** Whenever an individual covered by an election under this Rule is separated from his/her employment, the electing unit shall again notify him/her, forthwith, as to the jurisdiction under whose unemployment compensation law his/her services are covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him/her as to the procedure for filing interstate benefit claims.

(3) **Change in status.** The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him/her to perform services in a new participating jurisdiction.

(f) **Approval of reciprocal coverage elections.** The Commission hereby delegates to its Executive Director, Director of Unemployment Insurance, or Chief of Contributions

authority to approve or disapprove reciprocal coverage elections in accordance with this Section.

SUBCHAPTER 7 – ADMINISTRATION

PART 1 – GENERAL PROVISIONS

240:10-7-1. Purpose [REVOKED]

[Source: Revoked at 15 Ok Reg 1496, eff 5-11-98]

PART 3 - COMMISSION [Reserved]

PART 5 – BOARD OF REVIEW

240:10-7-20. Board of Review appeals and procedure [REVOKED]

[Source: Revoked at 15 Ok Reg 1496, eff 5-11-98]

SUBCHAPTER 9 – PENALTIES AND REPRESENTATION

PART 1 - GENERAL PROVISIONS [Reserved]

PART 3 - PENALTIES

240:10-9-10. Willful violation of Act

The term *willfully violate* [40:5-103] is clarified with respect to the following: "willful" shall mean a willful determination not to perform a known duty, or a reckless disregard of the performance of a known duty. It shall include the conscious and intentional omission of the care proper under the circumstances.

[Source: Added at 8 Ok Reg 2301, eff 6-13-91]

PART 5 - REPRESENTATION [Reserved]

SUBCHAPTER 11 – ASSESSMENT BOARD PROCEDURE

PART 1 – GENERAL PROVISIONS

240:10-11-1. Purpose

This Subchapter establishes procedures for the Assessment Board to hear and issue decisions in the following cases:

- (1) Assessments of contributions or reimbursement payments;
- (2) Contribution rate notices;
- (3) Successorship;
- (4) Waivers of penalty or interest;
- (5) Base period employer charges;
- (6) Tax refund intercepts ; and
- (7) Workforce Investment Act audit resolutions .

[Source: Amended at 9 Ok Reg 3549, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 10 Ok Reg 4191, eff 7-7-93 (emergency); Amended at 11 Ok Reg 773, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3789, eff 7-11-94; Amended at 19 Ok Reg 1004, eff 5-13-02]

240:10-11-2. Definitions [RESERVED]**240:10-11-3. Organization**

(a) The Director of the Appellate Division of the Oklahoma Employment Security Commission shall administer the Assessment Board. The Director shall have supervisory authority over the chief hearing officer, hearing officers, and support staff of the Assessment Board. The Director, or designee, may reschedule hearings upon notice to the parties, administratively vacate decisions for good cause, grant or deny requests for continuances, and issue subpoenas in Assessment Board cases.

(b) All hearing officers appointed to the Appeal Tribunal shall also be hearing officers for the Assessment Board.

[Source: Amended at 9 Ok Reg 3549, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 10 Ok Reg 4191, eff 7-7-93 (emergency); Amended at 11 Ok Reg 1605, eff 5-12-94; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2905, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-11-4. Quorum [REVOKED]

[Source: Revoked at 9 Ok Reg 3549, eff 7-20-92 (emergency); Revoked at 10 Ok Reg 1393, eff 4-26-93]

240:10-11-5. Jurisdiction

- (a) The Assessment Board shall have jurisdiction to hear the following types of cases:
- (1) An appeal to a determination regarding employer liability for unemployment contributions, pursuant to 40 O.S. Sections 1-208 and 1-210.
 - (2) An appeal to a determination regarding whether a worker is an independent contractor or an employee, pursuant to 40 O.S. Section 1-210(14).
 - (3) An appeal to a determination regarding the contribution rate of an employer, pursuant to 40 O.S. Section 3-102.
 - (4) An appeal to a determination to charge a base period employer, pursuant to 40 O.S. Section 3-106.
 - (5) An appeal to a determination of an acquiring employer (successor employer) and predecessor, pursuant to 40 O.S. Section 3-111.
 - (6) An appeal to a determination regarding unemployment contribution assessments, pursuant to 40 O.S. Section 3-305.
 - (7) An appeal to a determination regarding a request for refund of penalty or interest, or a portion thereof, pursuant to 40 O.S. Section 3-310.
 - (8) An appeal to a determination to intercept state tax refunds through the Oklahoma Tax Commission, pursuant to 68 O.S. Section 205.2(B).

(9) An appeal filed by a Workforce Investment Act subrecipient, as a result of audit findings issued by the Commission pursuant to the Workforce Investment Act, pursuant to 20 C.F.R. Sections 661.120, 667.400, and 667.500.

(10) An appeal concerning the voluntary election of an employer for coverage pursuant to 40 O.S. §3-203.

(11) Any other appeal pursuant to 40 O.S. §3-115.

(b) The Commission, or its appointee, may assign other subjects of appeal to the Assessment Board as it deems appropriate.

[Source: Amended at 9 Ok Reg 3550, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 10 Ok Reg 4191, eff 7-7-93 (emergency); Amended at 11 Ok Reg 773, eff 12-13-93 (emergency); Amended at 11 Ok Reg 1605, eff 5-12-94; Amended at 11 Ok Reg 3789, eff 7-11-94; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2905, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 19 Ok Reg 1004, eff 5-13-02]

240:10-11-6. Address of Board

(a) The Assessment Board is located at 2800 Northwest 36th Street, Suite 102, Oklahoma City, Oklahoma 73112. The telephone number of the Assessment Board is (405)601-3311. The telefax number of the Assessment Board is (405)601-3337.

(b) All instruments or correspondence pertaining to a protest before the Board shall be sent to: Assessment Board, P. O. Box 53345, Oklahoma City, Oklahoma 73152-3345.

[Source: Amended at 9 Ok Reg 3550, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2909, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 25 Ok Reg 1626, eff 6-12-08; Amended at 26 Ok Rev 1032, eff 5-25-09]

240:10-11-7. Address of Appellant

(a) It shall be the responsibility of each party to an appeal to notify the Assessment Board, in writing, of any change of address and maintain a good address for correspondence from the Assessment Board.

(b) If the party has representation, correspondence shall be mailed to the representative with a courtesy copy to the party. Notice shall be deemed given when mailed to the representative or, if no representative, to the party.

[Source: Added at 9 Ok Reg 3550, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

240:10-11-8. Judicial ethics

The hearing officers that conduct Assessment Board hearings shall be governed at all stages of the administrative decision making process by the canons of *The Model Code of Judicial Conduct for State Unemployment Insurance Appeals Officers*, established by the National Association of Unemployment Insurance Appellate Boards.

[Source: Added at 17 Ok Reg 1595, eff 5-25-00; Amended at 20 Ok Reg 833, eff 5-12-03]

PART 3. APPEALS TO ASSESSMENT BOARD**240:10-11-11. Filing of protests**

The protest shall be addressed to the Board setting forth a detailed explanation as to the reason(s) for the protest. The protest shall also include, the name of the protestant, the protestant's Oklahoma account number, or Social Security number, whichever is applicable, and any other pertinent information.

[Source: Amended at 14 Ok Reg 2905, eff 7-11-97]

240:10-11-12. Timeliness of filing - jurisdiction

Each protest must be filed with the Board within the time limit set out in the initial determination letter which is the subject of the appeal. If the appeal is filed untimely, the initial determination will be final and binding, and the Assessment Board will be without jurisdiction to hear the appeal.

[Source: Added at 14 Ok Reg 2905, eff 7-11-97]

PART 5 - HEARINGS**240:10-11-20. Notice of hearings**

The Board shall schedule the hearing and notify the protestant in writing of the date and place of the hearing at least ten (10) days prior to the hearing date. [40:3-305 (2)]

240:10-11-21. Continuances and rescheduled hearings

(a) Requests for continuances prior to the hearing will only be granted for good cause by the Director, chief hearing officer, or designee. The request must:

- (1) be in writing and received by the Assessment Board four (4) days prior to the date of the scheduled hearing, and;
- (2) provide a detailed explanation for the reasons for such a request.

(b) If a continuance is granted, the parties will be notified of this decision and will subsequently receive a new notice of hearing.

(c) A request for continuance may be made at the hearing. The hearing officer will rule immediately. If a case is a continued, the case will be set for a date and time certain. If the case is not continued, all parties should be prepared to proceed.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-11-22. Conduct of hearings

(a) **Rules of evidence.** All hearings will be conducted in a manner to ascertain the substantial rights of the parties.

(b) **Record of hearings.** All testimony shall be electronically recorded and the Board shall retain originals of all exhibits entered into evidence for as long as required by law.

(c) **Representation.** All protestants have the right to be represented by an attorney or other representative of his/her choice.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-11-23. Telephone hearings

(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.

(b) A request for an in-person hearing must be made five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the employer's name, and an explanation of the reasons for the request.

(c) Requests for in-person hearings will be considered based upon the following:

(1) Good cause shown, such as hearing impairment or language interpretation difficulties.

(2) Geographic location of the parties.

(3) Complexity of the issues.

If the director or designee agrees that the request is reasonable, the case will be rescheduled as an in-person hearing.

(d) Each party to a telephone hearing must exchange all documents that will be introduced as evidence with the opposing party and send a copy to the Assessment Board, at least five (5) days prior to the scheduled date of the telephone hearing.

[Source: Added at 15 Ok Reg 1496, eff 5-11-98]

240:10-11-24. Good cause

Good cause is defined as a situation beyond the control of the parties. Situations considered beyond the control of the party may include, a disabling personal illness, death in the immediate family, jury duty, military obligations or any other circumstance that would make it impossible for a party to appear for a hearing or comply with a requirement of these rules, the Employment Security Act of 1980, or any determination or notice served on the party.

[Source: Added at 15 Ok Reg 1496, eff 5-11-98]

240:10-11-25. Motion to reopen after failure to appear

(a) If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within five (5) days after the mailing of the Assessment Board's Order of Decision. The motion shall provide the reasons for the party's failure to appear and will become a part of the record. Upon receipt of the motion, the Assessment Board shall set the case for hearing. All interested parties shall be notified of the hearing.

(b) If the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on the merits.

(c) If the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.

[Source: Added at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-11-26. Cameras

Cameras shall not be allowed in any hearing conducted by the Assessment Board.

[Source: Added at 26 Ok Reg 1032, eff 5-25-09]

PART 7 – WITNESSES AND SUBPOENAS**240:10-11-30. Subpoenas**

Each party to an appeal shall be entitled to present documents and witnesses in support of the presenting party's position.

(1) If a witness will not voluntarily appear, or if documents are not voluntarily tendered to a requesting party, the party may request that a subpoena be issued to compel the witness to appear and testify or to compel the production of documents.

(2) The request shall be made in writing and the requesting party shall furnish the Clerk of the Assessment Board the name and home address of the witness. The requesting party may furnish the work address of the witness if the home address is unknown and not reasonably ascertainable. The requesting party may request a subpoena for a witness to appear at the Assessment Board hearing or at a deposition to be held prior to the hearing. For a document subpoena, the requesting party shall furnish the clerk of the Assessment Board the name or title of the person with possession of the documents, the address of that person, and a description of the documents.

(3) The request for a subpoena must be filed with the Assessment Board not less than five (5) days prior to the scheduled hearing and the requesting party must justify the need for the witness' testimony, the deposition or the documents requested.

(4) The Director or designee will review the subpoena request for approval or denial. Requests for subpoenas can be denied if:

(A) The subpoena would be unduly burdensome or oppressive to the witness or person possessing the documents requested.

(B) The subpoena requests witnesses or documents that are irrelevant to the claim for unemployment benefits.

(5) Subpoenas will be served by certified mail at least five (5) days prior to the scheduled date of hearing.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-11-31. Witness fees and expenses

A witness who is not an employee of the Commission and who is compelled by subpoena to attend a hearing shall receive a witness fee and mileage as provided for a witness in a civil proceeding in a court of this state. No mileage fee shall be paid to an individual for more than one case scheduled for the same period of time at the same location.

PART 9 - RECORDS OF ASSESSMENT BOARD [Reserved]**PART 11 – APPEALS TO DISTRICT COURT****240:10-11-50. Intent to appeal notice [REVOKED]**

[Source: Revoked at 15 Ok Reg 1496, eff 5-11-98]

240:10-11-51. Petition for review

The decision of the Board may be appealed to District Court by filing a petition for review with the clerk of that court *within thirty (30) days after the date of mailing of the decision.* [40:3-403]

240:10-11-52. Payment of assessment or bond

As a condition precedent to the right of appeal to District Court and as a jurisdictional prerequisite to the District Court to entertain such appeal, the employer must pay all amounts owing in the employer's account after the Board's decision is rendered or post a bond with the Commission in double the amount owing. The bond shall be written by a surety company licensed to do business in the State of Oklahoma by the Oklahoma Insurance Commission. [40:3-405 and 3-406]

[Source: Amended at 18 Ok Reg 1114, eff 5-11-01]

SUBCHAPTER 13 – APPEAL TRIBUNAL PROCEDURE**PART 1 – GENERAL PROVISIONS****240:10-13-1. Purpose**

This subchapter establishes procedures to provide for a fair hearing before an impartial tribunal for all individuals appealing from determinations of the Commission or its representatives.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-13-2. Definitions [RESERVED]**240:10-13-3. Authority**

The Commission of the Oklahoma Employment Security Commission promulgates this Subchapter pursuant to the provisions of the Oklahoma Employment Security Act, 40 O.S., Section 2-607. Any matter or procedure not specifically dealt with by either the Oklahoma Employment Security Act or by this Subchapter will be guided by the Administrative Procedures Act.

240:10-13-4. Organization

(a) **Creation of Appeal Tribunal.** The Commission hereby establishes the Appeal Tribunal. A Director shall be appointed by the Commission to administer the duties of the Appeal Tribunal and shall be answerable to the Executive Director.

(b) **Authority of Director.**

(1) The Director shall have supervisory authority over the Chief Hearing Officer, hearing officers and support staff of the Appeal Tribunal.

(2) The Director or designee may reschedule hearings upon notice to the parties, administratively vacate decisions for good cause, grant or deny request for continuance, and issue subpoenas in Appeal Tribunal cases.

[Source: Amended at 9 Ok Reg 1833, eff 6-11-92; Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-13-5. Jurisdiction

Pursuant to provisions of 40 O.S. Section 2-602, the Appeal Tribunal is empowered to decide an appeal from determinations of the Commission and/or its representatives. Pursuant to 40 O.S. Section 2-603, an appeal from a determination by the Commission must be filed within ten (10) days from the date of mailing by the Commission. Pursuant to 40 O.S. Section 2-616, an appeal from a determination of the Commission that a benefit overpayment occurred under 40 O.S. Section 2-613(1) or (2), must be filed within twenty (20) days from the date of mailing by the Commission. If not timely filed, the Appeal Tribunal is without jurisdiction, unless good cause for late filing is found by the Appeal Tribunal. Claims for exemption and any other matters relating to an income levy issued pursuant to 40 O.S. Section 2-618 may be filed at any time before the thirtieth day after the expiration date or termination of the levy.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 20 Ok Reg 833, eff 5-12-03; Amended at 25 Ok Reg 1626, eff 6-12-08]

240:10-13-6. Administrative review

If the Director of the Appeal Tribunal determines that an erroneous decision has been issued by a hearing officer, the Director may establish a three-member panel consisting of two (2) hearing officers and the Director to review the decision and issue a new corrected decision confirming or reversing the original decision. This shall only be accomplished during the ten (10) day appeal period or after the decision is written and prior to publishing.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91]

240:10-13-7. Disqualification of hearing officer

No hearing officer shall conduct a hearing in which he/she has any conflict of interest or bias.

(1) A challenge of conflict of interest or bias of a hearing officer may be made before the scheduled hearing with the Director or Chief Hearing Officer. The Director will decide whether or not good cause to disqualify has been shown, and if shown, will reassign the case.

(2) If a challenge for a conflict of interest or bias of a hearing officer is made during the hearing, the hearing officer shall determine whether or not to disqualify. If the challenge is sustained by the hearing officer, the case will be reassigned and rescheduled.

(3) A hearing officer may disqualify on his/her own volition with no challenge having been made if he/she feels a fair and impartial decision cannot be rendered.

(4) If a challenge is made within ten (10) days after the decision is issued, the challenge shall be considered as an appeal to the Board of Review.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 26 Ok Reg 1032, eff 5-25-09]

240:10-13-8. Address of Appeal Tribunal

The main office of the Appeal Tribunal is located in Oklahoma City at 2800 Northwest 36th Street, Suite 102, Oklahoma City, Oklahoma 73112, with telephone number (405)601-3311, and telefax number (405) 601-3337.

(1) All instruments or correspondence pertaining to a case shall be sent to: Appeal Tribunal, P. O. Box 53345, Oklahoma City, Oklahoma 73152

(2) All instruments and correspondence shall bear the claimant's name and Social Security number.

(3) Copies of all documents, instruments, and correspondence mailed, telefaxed, or delivered to the Appeal Tribunal by an interested party to a case shall be sent to the other interested parties to the same case by the Clerk of the Appeal Tribunal.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 14 Ok Reg 2909, eff 7-11-97; Amended at 25 Ok Reg 1626, eff 6-12-08; Amended at 26 Ok Reg 1032, eff 5-25-09]

240:10-13-9. Judicial ethics

The hearing officers that conduct Appeal Tribunal hearings shall be governed at all stages of the administrative decision making process by the canons of *The Model Code of Judicial Conduct for State Unemployment Insurance Appeals Officers*, established by the National Association of Unemployment Insurance Appellate Boards.

[Source: Added at 17 Ok Reg 1595, eff 5-25-00; Amended at 20 Ok Reg 833, eff 5-12-03]

PART 3. APPEALS TO APPEAL TRIBUNAL

240:10-13-20. Filing an appeal

The appeal should be filed with the Commission in any manner set forth in 40 O.S. §1-224 or by telephone through the Commission's interactive voice response system or by speaking with one of the Commission's claim representatives. A Commission representative will then forward the appeal to the Appeal Tribunal.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 21 Ok Reg 779, eff 5-1-04; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-13-21. Notice of appeal

All parties to an appeal will be notified that an appeal is filed. With notice that the appeal is filed, the parties shall also receive information of their rights.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-13-22. Date filed

(a) All instruments and correspondence mailed to the Appeal Tribunal shall be stamped with the date of receipt. Timely filing of documents shall be calculated pursuant to the provisions of 40 O.S. Section 1-224.

(b) Immediately upon receipt of the appeal document by any office of the Commission, an official date stamp shall be placed on its face.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

PART 5 - HEARINGS

240:10-13-30. Case assignment

Cases are assigned by the Director or his/her designee.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-13-31. Location

The hearing location shall be reasonably convenient for all parties to the appeal.

240:10-13-32. Telephone hearings

(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.

(b) A request for an in-person hearing must be received by the Director five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the claimant's name, and an explanation of the reasons for the request.

(c) Request for in-person hearings will be considered based on the following:

- (1) Good cause shown, such as hearing impairment or language interpretation difficulties.
- (2) Geographic location of the parties.
- (3) Complexity of the issues.
- (4) Timely disposition of cases as required by federal law.

If the Director or designee agrees that the request is reasonable, the case will be rescheduled as an in-person hearing.

[Source: Amended at 10 Ok Reg 1981, eff 5-27-93; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99]

240:10-13-33. Notices of hearing

Notices of Hearing shall be mailed by the Appeal Tribunal to all interested parties not later than ten (10) days prior to the scheduled hearings.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91]

240:10-13-34. Content

The notice shall contain a statement of the issue(s) on appeal; the nature of the controversy; date, time and place of the hearing; the type of hearing and name of the hearing officer to whom the case is assigned; unless it is a pool docket, which requires three or more hearing officers, hearing large groups of varied cases; and whether the hearing is to be conducted as an in-person hearing or telephone hearing.

240:10-13-35. Commission-party

The Commission is a party and entitled to notice in any proceeding before the Appeal Tribunal.

240:10-13-36. Change of address

It shall be the responsibility of each party to an appeal to notify the Appeal Tribunal in writing of any change of address and maintain a good address for correspondence from the Appeal Tribunal.

240:10-13-37. Good cause

Good cause is defined as a situation beyond the control of the parties. Situations considered beyond the control of a party may include, among other factors, a disabling personal illness, death in immediate family, jury duty, or military obligations.

240:10-13-38. Continuances

(a) Requests for continuance prior to the hearing will only be granted for good cause by the Director or designee.

(1) The request must be in writing and received by the Director four (4) days prior to the date of the scheduled hearing.

(2) The written request must provide a detailed explanation of the reasons for such a request.

(3) Parties will be notified of a continued hearing and subsequently receive a new notice of hearing.

(b) A request for continuance may be made at the hearing. The hearing officer will rule immediately and should set the continued case for a date and time certain.

240:10-13-39. Nonappearance

(a) If the appellee fails to appear after having been duly notified of the hearing, the hearing officer will proceed with the hearing. Testimony and evidence will be received from the parties in attendance and a decision rendered.

(b) If the appellant fails to appear after having been duly notified of the hearing, the hearing officer shall review the documentation upon which the Commission based its determination. If the hearing officer's review of the documentation demonstrates that the determination is not incorrect as a matter of law and that it is supported by some evidence in the documentation, the hearing officer shall enter a default judgment or order favoring the appellee. If the hearing officer's review of the documentation demonstrates that the determination is incorrect as a matter of law or that it is wholly unsupported by evidence in the documentation, the hearing officer shall proceed with the hearing. Testimony and evidence will then be received from the parties in attendance and a decision rendered.

[Source: Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-13-40. Reopen

(a) If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within five (5) days after the mailing of the Appeal Tribunal's Order of Decision. The motion shall provide reasoning for failure to appear and will become a part of the record. Upon receipt of the motion, the Chief Hearing Officer shall set the case for hearing on the issue of good cause for the nonappearance. All interested parties shall be notified of the newly scheduled hearing.

(b) If the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on its merits.

(c) If the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.

(d) If the party who failed to appear at the originally scheduled hearing appears for the new hearing and the party who appeared at the originally scheduled hearing does not appear, testimony and evidence from the party present will be taken, the tape made at the original hearing played, and the decision shall be rendered based upon the sworn testimony and other evidence submitted at both the first hearing and the second hearing.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-13-41. Withdrawal

(a) An appeal may be withdrawn by the appealing party at any time prior to the decision being rendered only with approval of the Director of the Appeal Tribunal or his/her designee. A request to withdraw must be submitted in writing.

(b) The case will be dismissed with prejudice (meaning it cannot be brought forth again at a later date). The determination will then stand as final and binding on the parties.

240:10-13-42. Conduct of hearings

(a) **Hearings (in-person and telephonic).** Hearings will be conducted in a manner to protect the substantial rights of the parties. Hearings will be in accordance with the requirements of the Employment Security Act of 1980 and the Administrative Procedures Act.

(b) **Rules of evidence.**

(1) The parties may present testimony and evidence in their own behalf and each party shall be allowed the right of cross examination. The hearing officer may also examine the parties and witnesses.

(2) The Hearing Officer will rely upon the best evidence presented. The offering party must be able to lay the foundation for authentication.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99]

240:10-13-43. Record of hearings

There shall be a record made of each hearing by electronic device. The record shall include the appeal document and Commission records necessary to the appeal; testimony and exhibits introduced at the hearing; motions made by parties and rulings thereon; and any decision or order made by the hearing officer.

240:10-13-44. Representation at hearings

In all proceedings before the Appeal Tribunal, the parties may appear in person, by counsel, or by representative. Counsel or representative wishing to notify the Appeal Tribunal of an appearance for an interested party may do so by letter addressed to the Clerk of the Appeal Tribunal. All correspondence shall contain the name of the case and the claimant's Social Security number. When a party is represented by an attorney or other authorized representative, the party shall be deemed to have received notice, correspondence, decision, or order mailed by the Appeal Tribunal when said written communications are mailed to the attorney or representative.

240:10-13-45. Legal fees [REVOKED]

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Revoked at 21 Ok Reg 779, eff 5-1-04]

240:10-13-46. Cameras

Cameras shall not be allowed in any hearing conducted by the Appeal Tribunal.

[Source: Added at 26 Ok Reg 1032, eff 5-25-09]

PART 7 – WITNESSES AND SUBPOENAS**240:10-13-60. Subpoenas**

Each party to an appeal shall be entitled to present documents and witnesses in support of the presenting party's position.

(1) If a witness will not voluntarily appear, or if documents are not voluntarily tendered to a requesting party, the party may request that a subpoena be issued to compel the witness to appear and testify or to compel the production of documents.

(2) The request shall be made in writing and the requesting party shall furnish the Clerk of the Appeal Tribunal the name and home address of the witness. The requesting party may furnish the work address of the witness if the home address is unknown and not reasonably ascertainable. The requesting party may request a subpoena for a witness to appear at the Appeal Tribunal hearing or at a deposition to be held prior to the hearing. For a document subpoena, the requesting party shall furnish the clerk of the Appeal Tribunal the name or title of the person with possession of the documents, the address of that person, and a description of the documents.

(3) The request for a subpoena must be filed with the Appeal Tribunal not less than five (5) days prior to the scheduled hearing and the requesting party must justify the need for the witness' testimony, the deposition or the documents requested.

(4) The Director or designee will review the subpoena request for approval or denial. Requests for subpoenas can be denied if:

(A) The subpoena would be unduly burdensome or oppressive to the witness or person possessing the documents requested.

(B) The subpoena requests witnesses or documents that are irrelevant to the claim for unemployment benefits.

(5) Subpoenas will be served by certified mail at least five (5) days prior to the scheduled date of hearing.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 24 Ok Reg 1233, eff 5-25-07]

240:10-13-61. Witness fees and expenses

An individual compelled to attend a hearing by subpoena shall receive a witness fee and mileage as provided for witnesses in civil proceedings in courts of this State. No mileage fees shall be paid for more than one case covering the same time period on the same travel.

PART 9 – RECORDS OF APPEAL TRIBUNAL**240:10-13-70. Transcript of hearings**

Parties to the appeal may obtain a copy of the cassette tape by mailing a blank tape to the Appeal Tribunal along with a specific request.

[Source: Amended at 15 Ok Reg 1496, eff 5-11-98]

240:10-13-71. Requests for copies

Request for information from the records of the hearing to be used for an appeal of the unemployment insurance benefits must be made to the Director of the Appeal Tribunal in

writing. The request shall clearly list the information being requested and reason therefor. The nonpublic record or any document or copy thereof relating to a hearing in the Appeal Tribunal shall only be furnished to the requester for the purpose of a determination of unemployment benefits, without an order from a court of competent jurisdiction.

[Source: Amended at 8 Ok Reg 2301, eff 6-13-91]

240:10-13-72. Inspection of records

Prior to the hearing, the parties may request the records of the Appeal Tribunal that will be available at the hearing. The request may be informal but must be no later than one hour before the scheduled time of hearing. After the decision is rendered and before an appeal is perfected to the Board of Review, the records may also be inspected by a party to the case.

240:10-13-73. Decisions

Each party in a case shall receive a copy of the written decision in that case, which shall include findings of fact and conclusions of law based upon the record of the Appeal Tribunal.

[Source: Amended at 16 Ok Reg 1178, eff 5-13-99]

PART 11 – APPEALS TO BOARD OF REVIEW

240:10-13-80. Appeal rights of interested parties

In any appeal wherein a decision has been mailed to the interested parties and an appeal has been filed there from to the Board of Review by any interested party within ten (10) days after the certified mailing date of the decision, the Appeal Tribunal is divested of jurisdiction and cannot set any cause for hearing, nor withdraw, modify or reverse any decision. The decisions shall clearly explain the appeal rights and instruct the parties on how to appeal to the Board of Review.

240:10-13-81. Certification to Board of Review [REVOKED]

[Source: Revoked at 15 Ok Reg 1496, eff 5-11-98]

CHAPTER 12 – TRADE ACT PROGRAMS**SUBCHAPTER 1 – GENERAL PROVISIONS****240:12-1-1. Purpose**

This Chapter informs the public about the Trade Adjustment Assistance (TAA) program and Trade Readjustment Allowance (TRA) benefits created by the Trade Act of 1974. TAA/TRA was created to *assist individuals who became unemployed as a result of increased imports return to suitable employment*. This Chapter addresses the requirements an applicant must meet in order to receive assistance and the procedures that the Oklahoma Employment Security Commission (OESC) will follow in acting on applications for assistance.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-1-2. Definitions

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

"**Commuting areas**" means the area within a radius of 50 miles of the applicant's place of residence.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92; Amended at 10 Ok Reg 1391, eff 4-26-93]

240:12-1-3. Federal rules

The federal rules concerning the application for, and granting of, the benefits and allowances under the TAA and TRA programs are found at 20 C.F.R. Sections 617.1 through 617.66, and for the purposes of this Chapter shall be known as the "federal rules". The federal rules are hereby incorporated into this Chapter of the OESC rules by reference. The federal rules set out the basic rules concerning TAA/TRA benefits and allowances and take precedence over the rules of the OESC. The OESC rules in this Chapter have been created to implement, interpret, and clarify the requirements of the federal rules and to describe the procedure and practice requirements of the OESC concerning TAA and TRA benefits and allowances. If there is a conflict between a federal rule and any OESC rule, the federal rule will take precedence over the OESC rule and will pre-empt the provisions of the OESC rule.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-1-4. Application information

Individuals seeking information or assistance regarding applications for TAA/TRA benefits or allowances should contact any local office of the OESC. The OESC is the state agency responsible for administering the TAA/TRA programs in Oklahoma.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

SUBCHAPTER 3 – TRADE READJUSTMENT ALLOWANCES

[Reserved]

SUBCHAPTER 5 – REEMPLOYMENT SERVICES**240:12-5-1. Approval of training**

If an applicant applies for financial assistance for TAA training, the application process must be completed and approval of training granted before the first day of classes of training begins.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-5-2. Subsistence and transportation payments

To be entitled to subsistence or transportation payments for TAA training, the applicant must be required to travel outside his or her commuting area to reach the training facility.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-5-3. Receipts for reimbursement

In order to receive reimbursements for subsistence and/or transportation, an applicant must show a receipt from each vendor from which goods and services were purchased during the trip. Each receipt must show the name of the vendor and date of purchase.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-5-4. Maximum cost of training [REVOKED]

[Source: Added at 9 Ok Reg 1827, eff 5-27-92; Revoked at 21 Ok Reg 780, eff 5-1-04]

240:12-5-5. Usual and customary cost of training

(a) Usual and customary cost of training is the reasonable cost of training after considering all factors relating to the type of training and the training facility.

(b) Training will not be approved at one institution when, all costs being considered:

- (1) the same training can be obtained at another institution at a lower total cost, and
- (2) the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other institutions or facilities.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

SUBCHAPTER 7 – JOB SEARCH ALLOWANCES**240:12-7-1. Eligibility for allowances**

(a) The applicant must meet all requirements of the federal rules concerning job search allowances found at 20 C.F.R. Sections 617.30 through 617.39 to be eligible for a job search allowance.

(b) A job search allowance will be allowed only when the applicant is required to travel outside the applicant's commuting area for a job interview.

(c) To be eligible for a job search allowance, an applicant must:

- (1) File an application for job search allowance before traveling to the interview; and
- (2) Schedule the job interview with the prospective employer before attending the interview.

(d) No job search allowance will be paid if the claimant fails to attend a scheduled interview.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-7-2. Information required

To receive a job search allowance, the applicant must provide the following information for each scheduled interview attended:

- (1) Name of the company;
- (2) Address of the company;
- (3) Name of the contact person;
- (4) Telephone number of the contact person; and,
- (5) Date of the interview.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-7-3. Allowable expenses

The TAA job search allowance will be granted to reimburse only the applicant's expenses and not the expenses of another party or family member.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-7-4. Mode and time of travel

An applicant will be granted a job search allowance for subsistence and travel based on the cost of travel in the most cost effective and reasonably available mode of transportation that the individual can be expected to take and within a time period that is reasonable for the applicant to make the job search trip.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-7-5. Calculation of mileage

Mileage reimbursement for job search allowances will be calculated based on round-trip mileage using the most direct route from the applicant's residence to the place of job interview.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-7-6. Receipts for reimbursement

In order to receive reimbursements for subsistence and/or transportation, an applicant must show a receipt from each vendor from which goods and services were purchased during the trip. Each receipt must show the name of the vendor and date of purchase.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-7-7. Suitable employment/employment of long-term duration

For the purpose of making determinations regarding job search allowances and job relocation allowances only, the term "suitable employment" means suitable work as defined in 40 O.S. Sections 2-408 or 2-715, whichever is applicable, and the term "employment of long-term duration" means employment that is expected to last 182 days or more.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

SUBCHAPTER 9 – RELOCATION ALLOWANCES**240:12-9-1. Information required**

To receive a job relocation allowance, the applicant must provide a letter from his/her new employer, on the company's official letterhead, stating the following:

- (1) The date the applicant was hired by the employer.
- (2) The date the applicant will start work for the employer.
- (3) A list of all expenses of relocation, if any, that will be paid by the employer.

[Source: Added at Ok Reg 1827, eff 5-27-92]

240:12-9-2. Receipts for reimbursement

In order to receive reimbursements for subsistence and/or transportation, an applicant must show a receipt from each vendor from which goods and services were purchased during the trip. Each receipt must show the name of the vendor and date of purchase.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-9-3. Suitable employment/employment of long-term duration

For the purpose of making determinations regarding job search allowances and job relocation allowances only, the term "suitable employment" means suitable work as defined in 40 O.S. Sections 2-408 or 2-715, whichever is applicable, and the term "employment of long-term duration" means employment that is expected to last 182 days or more.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

240:12-9-4. Commercial carrier

If the applicant elects to use a commercial carrier to move his/her household goods and personal effects, he/she must use the commercial carrier designated by the OESC.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

SUBCHAPTER 11 – JOB SEARCH PROGRAMS [Reserved]**SUBCHAPTER 13 - ADMINISTRATION****240:12-13-1. Determinations/appeals**

Determinations regarding entitlement to TRA and TAA will be made by designated representatives of the OESC. If an applicant desires to appeal a determination made on his or her application, the appeal shall be filed with the local TRA or TAA representative or any office of the Oklahoma State Employment Service. All appeals of TRA and TAA determinations shall be considered by the Appeals Tribunal of the OESC. The appeal shall be subject to all rules and procedures of the Appeals Tribunal as set out in OAC 240:10-13.

[Source: Added at 9 Ok Reg 1827, eff 5-27-92]

CHAPTER 15 – BOARD OF REVIEW PROCEDURES**SUBCHAPTER 1 – GENERAL PROVISIONS****240:15-1-1. Purpose**

The Board of Review for the Oklahoma Employment Security Commission reviews the decisions of the Appeal Tribunal of the Oklahoma Employment Security Commission. This Chapter establishes the procedures which will be used for cases which are appealed to the Board of Review.

240:15-1-2. Definitions [RESERVED]**240:15-1-3. Board of Review Chairman; Vice-Chairman; quorum**

The Board of Review shall designate one of its members to serve as Chairman for a period of one (1) year. The Chairman shall designate a Vice-Chairman to serve for a one (1) year term. A quorum of the Board shall consist of any two members.

240:15-1-4. Clerk of the Board of Review

The Clerk of the Board of Review shall administer oaths and affirmations, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of records and documents, correspondence, books, papers and memoranda deemed necessary as evidence in the review of an Appeal Tribunal decision. The Clerk of the Board of Review is further designated as the proper party upon which copies of petitions for review to the District Court shall be served.

240:15-1-5. Attorneys and representatives

Parties to proceedings before the Board of Review may be represented by a licensed attorney or an unlicensed representative. When a party is represented by an attorney or representative, the party shall be deemed to have received notice of hearing, correspondence, decision or order mailed by the Board of Review when these written communications are mailed to the attorney or representative.

[Source: Amended at 15 Ok Reg 1503, eff 5-11-98; Amended at 21 Ok Reg 780, eff 5-1-04]

240:15-1-6. Hearing officer-conflict of interest

No members of the Board of Review or designated Hearing Officer shall participate in decision making or conducting hearings wherein the person has a conflict of interests, bias, or prejudice.

240:15-1-7. Attorney fees - approval [REVOKED]

[Source: Added at 21 Ok Reg 780, eff 5-1-04; Amended at 24 Ok Reg 1244, eff 5-25-07; Revoked at 25 Ok Reg 1626, eff 6-12-08]

240:15-1-8. Attorney fees - approval

When a claimant for unemployment benefits is represented by an attorney at law, the Board of Review must approve the fee of the attorney. Upon final disposition of the

claim, the attorney for the claimant shall make a motion to the Board of Review for approval of the attorney fee. The motion must be filed with the Board of Review within one (1) year of the final disposition of the claim. The approval of the attorney fee will be on a quantum meruit basis, provided that the maximum amount of the fee shall not exceed 20% of the claimant's maximum benefit amount. It shall be the responsibility of the claimant to pay all attorney fees approved by the Board of Review.

[Source: Added at 25 Ok Reg 1627, eff 6-12-08]

SUBCHAPTER 3 – APPEALS TO THE BOARD OF REVIEW

240:15-3-1. Correspondence; stamping; time; mailing

All instruments and correspondence mailed to the Board of Review shall be stamped by the Clerk with the date of receipt. Timely filing of documents shall be calculated pursuant to the provisions of 40 O.S. Section 1-224.

[Source: Amended at 15 Ok Reg 1503, eff 5-11-98]

240:15-3-2. Correspondence with Board of Review; address

(a) An appeal from the Appeal Tribunal decision and all instruments and correspondence regarding any matter before the Board of Review shall be sent to Board of Review, Oklahoma Employment Security Commission, P.O. Box 53345, Oklahoma City, Oklahoma 73152. The Board of Review's telephone number is (405) 522-5363, and the telefax number is (405)522-5371.

(b) Correspondence pertaining to an appeal shall bear the name of the case and the Appeal Tribunal docket number. Copies of all documents and correspondence sent to the Board by any party to an appeal shall be sent to the other interested parties by the Clerk. A brief or Memorandum of Law may be filed by the appealing party at the time the appeal is filed. If the non-appealing party desires to respond, a brief or Memorandum of Law shall be filed within ten (10) days from the date the appeal was filed.

[Source: Amended at 15 Ok Reg 1503, eff 5-11-98; Amended at 26 Ok Reg 1033, eff 5-25-09]

240:15-3-3. Review of Appeal Tribunal decision

(a) Any interested party desiring to appeal the decision of the Appeal Tribunal shall file an appeal with the Board of Review. Any legible document that reflects the appealing party's desire to appeal and bears the party's signature and date shall constitute the appeal document. The appealing party shall state the reasons for the appeal in the appeal document. The appeal documents shall be filed with the Board of Review at its office in Oklahoma City, Oklahoma, within ten (10) days of the certified mailing of the Appeal Tribunal decision. Filing may be accomplished in any manner set out in 40 O.S. Section 1-224. The certificate of mailing on the Appeal Tribunal decision shall constitute prima facie evidence of mailing and create the presumption of receipt of the decision. The Clerk of the Board of Review shall notify the non-appealing party that an appeal has been filed. No response to the appeal shall be necessary by the non-appealing party. If the appeal is to be submitted on the record, the case shall be assigned for review and decision.

(b) On appeal, the Board of Review shall have access to all documents submitted by the Commission to the Appeal Tribunal, all testimony and exhibits introduced at the Appeal

Tribunal hearing, motions made by the parties and rulings thereon, and the decision of the Appeal Tribunal. After reviewing all documents and the record of the case, if the Board of Review finds that a document of the Commission is relevant and should be considered in deciding the case, although it was not introduced or entered into evidence at the original Appeal Tribunal hearing, then the Board of Review may remand the case to the Appeal Tribunal for further hearing. At the hearing, the Appeal Tribunal shall move to admit the document in question into evidence. Each party shall be given the opportunity to state its objection to the document. After hearing all objections, the Appeal Tribunal shall rule on whether the document in question should be admitted into evidence. After the hearing is closed, the Appeal Tribunal shall issue a new decision.

(c) If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand.

(d) If new or additional information is discovered by a party after the original Appeal Tribunal hearing and the information could not have been produced or discovered by the party before the original hearing, the Board of Review may admit the new or additional information into evidence and remand the case to the Appeal Tribunal for further hearing and a new decision in light of the new evidence. The proponent of the new or additional information shall bear the burden of proving, by a preponderance of the evidence, that the information was not, and could not have been, obtained by the propounding party before the original Appeal Tribunal hearing. The propounding party shall present his or her arguments and evidence concerning this issue in the form of a brief filed with the Board of Review. If the opposing party objects to the inclusion of the new or additional information into the evidence of the case, the objection shall be set out in a brief in response. Briefing times shall be set by order of the Board of Review.

[Source: Amended at 15 Ok Reg 1503, eff 5-11-98; Amended at 16 Ok Reg 1183, eff 5-13-99]

240:15-3-4. Withdrawal of appeal

The appealing party, with the permission of the Board, may withdraw the appeal at any time prior to a decision being rendered and the Board shall enter a dismissal of the appeal. In such case, the decision of the Appeal Tribunal shall stand as final, conclusive and binding on the parties.

240:15-3-5. Untimely appeals; good cause; notice

The failure to file a timely appeal from an Appeal Tribunal decision may be excused by the Board of Review for good cause shown. The question of whether there is good cause shall be determined by the Board of Review. Good cause is defined as a situation beyond the control of the parties. When an appeal is received untimely and there is no explanation for the late filing, the appellant and the appellee will be notified and the appellant will be given ten (10) days to give an explanation, after which the Board of Review will issue their opinion.

[Source: Amended at 15 Ok Reg 1503, eff 5-11-98]

240:15-3-6. Certification of fact finding and questions of law from Appeal Tribunal

When a Hearing Officer of the Appeal Tribunal has certified findings of fact together with the question of law presented, to the Board of Review, the Board shall give notice of the certification to all interested parties in the proceeding and provide reasonable opportunity for hearing. The Board shall then certify to the Hearing Officer and all interested parties in the proceeding its answer to the question submitted. If the question certified to the Board by the Hearing Officer is in connection with a claim for benefits, the Board may remove the entire proceedings from the Appeal Tribunal and hear the proceedings with notice to all interested parties in accordance with these rules and with respect to proceedings before the Appeal Tribunal. In such case, the Board shall render a Board of Review decision upon the entire claim, subject to appeal rights and judicial review. The record in the case shall include all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's decision.

SUBCHAPTER 5 - HEARINGS**240:15-5-1. Request for hearing; new additional evidence**

The Board may conduct a hearing upon request of any of the interested parties or upon its own motion. The hearing shall be conducted by all Board members sitting en banc, or by any one of the Board members, or by a designated Hearing Officer. If a request for hearing is made by a party, the party must explain, in a brief, why the record of the original Appeal Tribunal hearing cannot, or should not, be relied upon, and include a list of all witnesses and exhibits that the party will present at a new hearing if one would be scheduled. The Board shall determine whether the request should be granted. If the request for hearing is denied, the case shall be considered as submitted on the record and a decision rendered.

[Source: Amended at 16 Ok Reg 1183, eff 5-13-99]

240:15-5-2. Hearings; notice; Appeal Tribunal testimony; failure to appear

If the request for the hearing is granted by the Board for the purposes of taking new additional evidence, all interested parties to the appeal shall be notified of the time, date and location of the scheduled hearing at least ten (10) days prior to the date of the scheduled hearing.

(1) The hearing location shall be reasonably convenient for all parties to the appeal. If the parties are in different geographical locations and no convenient location can be determined, telephone hearings shall be scheduled and the parties notified. Exhibits shall be received five (5) days in advance if they are to be introduced by the parties and sent to the opposing party by the Clerk. All other aspects of the telephone hearing will be the same as an in-person hearing.

(2) If the hearing is conducted in person, all parties shall be allowed to introduce new additional evidence and/or rebut any new additional evidence introduced at the hearing and shall be afforded the right of cross examination of the other party and witnesses. Both parties shall be furnished a tape and copies of documentation presented at the Appeal Tribunal hearing. The Board is not bound by common law or the statutory rules of evidence or by technical rules of procedure. The hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

(3) If the appealing party fails to appear, after having been duly notified, the appeal shall be considered as submitted on the record without the introduction of new additional evidence. However, if within five (5) days after the scheduled hearing, the Board of Review receives written notice from the appealing party as to the reason for non-appearance, the Board shall then schedule a hearing on the issue of showing good cause for the appealing party's non-attendance. All interested parties shall receive notice of the time, date and location of the hearing. If the non-appearance of the appealing party is excused for good cause, the case will proceed on its merits. If the Board determines that the appealing party's failure to appear was not for good cause, the appeal shall be submitted on the record without the introduction of new additional evidence. If the appealing party appears at the show cause hearing and the non-appealing party appears not, testimony shall be taken on the issue of good cause.

(4) If good cause cannot be shown, the Board shall consider the case as submitted on the record. If good cause can be shown, the appealing party shall present new additional evidence and the case shall be submitted for decision.

240:15-5-3. Continuances

Requests for continuances shall only be granted for good cause by the Board of Review when the request is communicated in writing to the Clerk of the Board of Review. Such request shall fully explain the reasons for the request for continuance and shall be received by the Clerk at least three (3) days prior to the date of any scheduled hearing. Continuances shall be granted only for good cause.

240:15-5-4. Recording hearings

Hearings before the Board of Review shall be recorded by electronic device and shall constitute the transcript of the hearings. Parties to the appeal may obtain a copy of the cassette tape of the hearing, if a request is made in writing to the Clerk of the Board of Review. If a tape of the hearing is requested by either party, the cost of the tape shall be borne by the requesting party.

240:15-5-5. Cameras

Cameras shall not be allowed in any hearing conducted by the Board of Review.
[Source: Added at 26 Ok Reg 1033, eff 5-25-09]

SUBCHAPTER 7 – WITNESSES AND SUBPOENAS**240:15-7-1. Attendance at hearing**

Each party to an appeal to the Board of Review shall be entitled to call witnesses to testify in support of his/her position. If witnesses will not voluntarily appear, the following process shall be available to aid any party in compelling attendance of witnesses. The requesting party shall furnish the Clerk of the Board of Review with the names and home addresses of the witnesses prior to the issuance of subpoenas. The Clerk must be in receipt of the request for subpoena six (6) days prior to the date of the scheduled hearing. Upon receipt of a timely request from the parties to the appeal, the Clerk shall issue subpoenas for the witnesses by certified mail at least six (6) days before the scheduled hearing. The Clerk shall have the power to issue subpoenas for the

production of books, papers, correspondence, memoranda and other records necessary as evidence in connection with a disputed claim or in the administration of this Act. Witnesses who are not employees of the Commission who have been compelled by subpoena to attend hearings shall receive witness and mileage fees as provided for witnesses in civil proceedings in courts of this state. No mileage fees shall be paid for more than one case covering the same time period on the same travel.

SUBCHAPTER 9. RECORDS OF THE BOARD OF REVIEW

240:15-9-1. Inspection of records

Any interested party may inspect the case file of its appeal by notifying the Clerk of the request.

240:15-9-2. Board of Review records

The record in an appeal filed with the Board of Review shall include the testimony and exhibits admitted into evidence by the Appeal Tribunal or Board of Review, motions made by the parties and rulings thereon, the decision of the Appeal Tribunal, the decision of the Board of Review and additional evidence presented at a hearing, if granted, conducted by the Board of Review or its designated Hearing Officer.

[Source: Amended at 16 Ok Reg 1183, eff 5-13-99]

SUBCHAPTER 11 – APPEALS TO DISTRICT COURT

240:15-11-1. Board of Review decision; appeal to district court

The Board of Review decision shall be based upon the record and additional evidence submitted at the Board of Review hearing if granted. Within a reasonable time, the Board shall enter a decision affirming, modifying, remanding or reversing the decision of the Appeal Tribunal. The decision shall be in writing and shall be signed by a majority of the members of the Board. Copies of the decision shall be promptly mailed by the Clerk to all parties of record in the case and shall bear appeal rights of the parties. Said decision shall be final and binding unless within ten (10) days after the mailing of the decision to the parties' last known address, a petition for review of the Board decision is filed by an interested party in a District Court pursuant to Section 2-610, Title 40 Okla. Stat. 1980.

CHAPTER 20 – JOB TRAINING PARTNERSHIP ACT [REVOKED]

CHAPTER 21 – WORKFORCE INVESTMENT ACT

SUBCHAPTER 1 – GENERAL PROVISIONS

240:21-1-1. Purpose

The Governor of the State of Oklahoma appointed the Governor's Council for Workforce and Economic Development (State Council) in compliance with the Section 111 of the Workforce Investment Act. The State Council assists the Governor in developing the Strategic State Workforce Investment Plan (State Plan) for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act pursuant to Section 112 of WIA. In the State Plan, the Governor designated the Oklahoma Employment Security Commission (OESC) as the WIA Title I administrative entity responsible for WIA Title I and Wagner-Peyser program implementation and oversight. The purpose of these rules is to facilitate the implementation of the WIA, U.S. Department of Labor regulations, and State Plan.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-1-2. Definitions

In addition to definitions found at WIA section 101 and 20 CFR 660.300, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Assessment Board" is a hearing Board for the OESC, which is designated to adjudicate certain appeals specified herein.

"Chief Local Elected Official" or **"CLEO"** means (a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement designed in WIA section 117(c)(1)(B).

"Department" or **"DOL"** means the U.S. Department of Labor, including its agencies and organizational units.

"Division of Internal Audit" means the OESC division responsible for conducting audit resolutions.

"Fiscal Agent" means an entity chosen by the CLEO to serve as grant subrecipient of the WIA grant funds. Such designation does not relieve the CLEO or the Governor of the liability for any misuse of grant funds.

"Local Area" means a local workforce investment area designated pursuant to WIA section 116.

"Local Board" means a Local Workforce Investment Board established pursuant to WIA section 117, to set policy for the local area workforce investment system.

"Secretary" means the Secretary of the U.S. Department of Labor.

"State Council" means the Governor's Council for Workforce and Economic Development established pursuant to WIA section 111.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-1-3. Addresses for appeals

When a rule in this Chapter allows for an appeal, the following addresses are to be used:

- (1) **Secretary**, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
- (2) **Regional Administrator**, Regional Office, U.S. Department of Labor, 525 S. Griffin Street Dallas, Texas 75202.
- (3) **Director of Workforce Integrated Programs**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152-2003.
- (4) **Division of Internal Audit**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.
- (5) **Assessment Board**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.
- (6) **Director of Workforce Quality**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152-2003.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

SUBCHAPTER 3 – DENIAL OR TERMINATION OF ELIGIBILITY OF A TRAINING PROVIDER**240:21-3-1. Reporting - termination**

Pursuant to WIA section 122 (i) the Governor designated the Oklahoma Employment Security Commission (OESC) to make the determinations required by WIA section 122 (e)(2) and (f) unless this requirement is waived by the U.S. Department of Labor.

(1) Each Local Board shall submit the list of training providers, including their performance information and program cost information as described in WIA section 122 (b) or (c), to the Director of Workforce Integrated Programs. If the Director of Workforce Integrated Programs determines within thirty (30) days after the date of submission that the provider does not meet the performance levels in WIA section 122 (c)(6), the Director of Workforce Integrated Programs may remove the training provider from the list for the program. This does not apply to an agency submitting an application under WIA section 122 (b) (1).

(2) If the Director of Workforce Integrated Programs, after consultation with the Local Board, determines that an eligible training provider, or an individual providing information on behalf of an individual training provider, violated WIA section 122 (f) (1) and (2), the Director of Workforce Integrated Programs shall terminate the eligibility of the training provider.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-3-2. Notice to the training provider

The Director of Workforce Integrated Programs shall send a certified letter to the training provider at the training provider's address of record with the local board.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-3-3. Appeal

The training provider has twenty (20) days from the date the decision is mailed to appeal the determination to OESC's Assessment Board. If a timely appeal is not received, the decision shall become final and no further appeal shall be allowed.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-3-4. Hearing

If a timely appeal is received, the Assessment Board will conduct a hearing pursuant to its rules at 240:10-11-20 through 240:10-11-31. The Assessment Board will issue a decision within sixty (60) days from the date the appeal is filed.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-3-5. District court appeal

If the training provider's appeal is denied by the Assessment Board, it may file an appeal to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. Section 318.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-3-6. Administrative record

OESC will provide the administrative record to the district court in the time period provided for in 40 Okla. Stat. Section 3-403.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

**SUBCHAPTER 5 – DENIAL OF REQUEST FOR DESIGNATION AS
A LOCAL WORKFORCE INVESTMENT AREA****240:21-5-1. Appeal**

A unit of general local government (including a combination of such units) or a grant recipient that is denied designation as a workforce investment area may file an appeal. The designation process will continue while the appeal is in progress and will be modified should the initial denial of designation be overturned.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-5-2. Appeal time

The appeal must be filed with the State Council within twenty (20) days from the date of receipt of the denial of designation. The Governor's designation is final if a timely appeal is not filed and no further appeal shall be allowed.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-5-3. Hearing

Upon receipt of a timely appeal, the State Council will refer the case to the Assessment Board for hearing. A hearing will then be conducted by the Assessment Board pursuant to its rules at 240:10-11-20 through 240:10-11-31. Within (30) days from the date the appeal is received from the State, Council the Assessment Board will issue its

findings of fact to the Governor, State Council, and Chief Local Elected Official. A copy of the administrative record will be sent to the Governor.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-5-4. Decision

The Governor will issue his decision within thirty (30) days from the date he receives the Assessment Board's findings of fact.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-5-5. Appeal of decision

If the Governor denies the designation after the above described appeal process is complete, the entity may file an appeal to the Secretary. The appeal must be filed not later than thirty (30) thirty days after receipt of written notification of the Governor's decision and must comply with the requirements set forth in the WIA statutes and regulations.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

SUBCHAPTER 7 - MONITORING**240:21-7-1. Monitoring**

(a) OESC will annually monitor each local area fiscal agent, Local Board, and grant recipient pursuant to the requirements set forth in WIA section 184 (a)(4) and 20 CFR section 667.410.

(b) OESC's grant recipients and Local Boards must monitor their subrecipients or service providers. Monitoring shall be conducted as outlined in the "Governor's Oversight and Monitoring Plan".

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 19 Ok Reg 1006, eff 5-13-02; Amended at 22 Ok Reg 735, eff 5-15-05]

240:21-7-2. Monitoring report

(a) A monitoring report will be issued by the Director of Workforce Quality to the CLEO, local area fiscal agent, Local Board, or grant recipient after each monitoring review. Copies of this report will be addressed to the Director of Workforce Integrated Programs, and copies sent to the Executive Director, Deputy Director, and the Director of Internal Audit of the OESC. If evidence of possible violations is discovered, they will be detailed in the report. The report shall be based, in part, on the requirements of WIA, the regulations promulgated thereunder, administrative requirements, applicable cost principles, grant agreements, and state policies.

(b) Monitoring reports and resolutions generated by a grant recipient or Local Board must be submitted to the OESC on an annual basis and at least sixty (60) days prior to expiration of the service provider or subrecipient's contract with its subrecipient.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 19 Ok Reg 1006, eff 5-13-02; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-7-3. Monitoring resolution

(a) The Director of Workforce Quality is responsible for monitoring resolution.

(b) Resolution of a monitoring finding is required when there are disallowed/questioned costs, and administrative findings or deficiencies.

(c) The CLEO, local area fiscal agent, Local Board or grant recipient has thirty (30) days from the date of the monitoring report to submit its response to the designated portions of the monitoring report to the Director of Workforce Quality. The response must contain all additional information, documents, or arguments the CLEO, local area fiscal agent, Local Board or grant recipient wants the Director of Workforce Quality to consider in making the initial monitoring determination. An entity submitting a response to the monitoring report may request in writing an additional thirty (30) day time period. The Director of Workforce Quality will determine if additional time will be allowed and advise the entity in writing of his or her decision. The Director of Workforce Quality may request additional information from the entity submitting a response, if clarification is needed. The Director of Workforce Quality may schedule or the CLEO, local area fiscal agent, Local Board or grant recipient may request, an informal resolution conference in order to discuss the findings in the monitoring report. The request for the informal resolution conference should be submitted to the Director of Workforce Quality prior to the first thirty (30) day deadline.

(d) The Director of Workforce Quality shall issue an initial monitoring determination within sixty (60) days from the date the response is received. The CLEO, local area fiscal agent, Local Board or grant recipient has thirty (30) days from the date of the initial monitoring determination to submit its response to the initial monitoring determination to the Director of Workforce Quality.

(e) The Director of Workforce Quality shall issue a final monitoring determination in compliance with 240:21-7-4.

(f) All monitoring findings must be resolved within six (6) months after the initial monitoring report is issued.

(g) The Director of Workforce Quality will maintain a monitoring resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

(h) After follow-up procedures are completed, if the grant recipient is found in non-compliance, the Director of Workforce Integrated Programs will send a notice in the form of a certified letter of impending sanctions. The notice will indicate the violation, the corrective action to be taken, the impending sanction, and the process by which the grant recipient may appeal the sanction.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 19 Ok Reg 1006, eff 5-13-02; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-7-4. Final monitoring determination

(a) A final determination on the issues raised in the initial monitoring report will be issued within thirty (30) days from the date the response to the initial monitoring determination is received. This time may be extended an additional thirty (30) days if an informal resolution conference is requested.

(b) If all issues have not been resolved, a final determination shall be sent to the local area by certified mail. A final determination will:

- (1) enumerate the efforts that were made to resolve the issues in the initial monitoring report;

- (2) list the issues upon which the parties do not agree;
- (3) list any changes to the factual findings and conclusions set forth in the monitoring report;
- (4) establish a debt, if appropriate;
- (5) require corrective action, when needed;
- (6) determine liability, method of restitution of funds and sanctions; and
- (7) advise recipient of appeal rights.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05]

240:21-7-5. Appeal

- (a) If the CLEO, local area fiscal agent, Local Board or grant recipient is not satisfied with the findings issued in the final determination, it has fifteen (15) days from the date of the final determination to file an appeal.
- (b) The appeal must be filed with the Director of Workforce Quality.
- (c) The Director of Workforce Quality will then forward a copy of the appeal to the Assessment Board within five (5) days from receipt.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-7-6. Hearing

- (a) The Assessment Board will conduct a hearing within thirty (30) days from the receipt of the appeal by the Assessment Board unless the parties and the Assessment Board agree to waive this requirement in order to allow additional time to resolve the matter. The hearing will be conducted pursuant to the Assessment Board's rules at 240:10-11-20 through 240:10-11-31.
- (b) The Assessment Board will issue a decision within thirty (30) days from the date the hearing record is closed.
- (c) The decision of the Assessment Board will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.
- (d) The Assessment Board will provide the administrative record to the district court in the time provided for in 40 Okla. Stat. section 3-403.
- (e) At the hearing, the CLEO, local area fiscal agent, Local Board, and grant recipient bear the burden of proof to show that the WIA funds granted or paid to the Local Area or grant recipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program. The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.
- (f) Any fee charged to the CLEO, local area fiscal agent, Local Board, or grant recipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Assessment Board or District Court cannot be charged to grant or contract

funds received from OESC. This includes fees charged by an accountant, expert witness, attorney, or other representative.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05]

SUBCHAPTER 9 - AUDITS

240:21-9-1. Audit requirements

(a) A financial and compliance audit by an independent auditor is required annually for each subrecipient.

(1) Each subrecipient is subject to the audit requirements of 29 CFR Part 95, 29 CFR Part 97, or 29 CFR Part 99 (as appropriate) and shall comply with applicable OMB Circulars, including OMB Circular A-133.

(2) The audit shall be performed by a certified public accountant or firm, or by a public accountant or public accounting firm.

(A) Except as provided in subparagraph (B) of this paragraph, no single person or firm shall perform the annual audit for an Oklahoma WIA grant recipient for more than three (3) consecutive years.

(B) The restriction in subparagraph (A) of this paragraph is waived if WIA funds constitute less than fifty percent (50%) of a grant recipient's total budget.

(3) The audit shall be performed in accordance with standards required by the federal government, requirements issued by OESC, and guidelines established by the Generally Accepted Governmental Auditing Standards (GAGAS).

(b) If the subrecipient does not receive a sufficient amount of federal grant money to require a full audit, the OESC may require a limited scope audit in accordance with federal requirements. The OESC will be responsible for arranging and paying for all limited scope audits. The limited scope audit will address one or more of the following types of compliance requirements.

- (1) Activities allowed or disallowed;
- (2) Allowable cost and cost principles;
- (3) Eligibility;
- (4) Matching;
- (5) Level of effort;
- (6) Earmarking;
- (7) Reporting.

(c) The OESC Internal Audit Division is charged with the responsibility of audit resolution.

(d) The subrecipient must notify the Internal Audit Division of the name and address of the person or firm that will be performing the annual audit no later than thirty (30) days after the end of the grant recipient's fiscal year. The audit report is to be filed with the Director of Internal Audit Division within thirty (30) days after the completion of the audit and no later than nine (9) months from the end of the grant recipient's fiscal year. A copy of the audit report shall be delivered to the Director of Workforce Integrated Programs within the same time period. If a management letter is issued to a subrecipient, the subrecipient shall submit the management letter and the responses thereto to the

OESC Internal Audit Division within thirty (30) days from the receipt of the management letter.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06; Amended at 26 Ok Reg 1033, eff 5-25-09]

240:21-9-2. Delinquent audit

If the audit has not been received within one (1) year after the end of the grant recipient's fiscal year, the Director of the Internal Audit Division will send a certified letter to the subrecipient advising it that it has fifteen days to provide its reasons for failing to comply with the requirements set forth in Rule 240:21-5-1. If no response is received within fifteen (15) days, or the response received is not adequate, the Director of Workforce Integrated Programs will send a certified letter to the subrecipient advising it that its current funding and eligibility for future contracts are suspended.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-9-3. Audit resolution

(a) Resolution of an audit is required when there are disallowed/questioned costs, administrative findings or deficiencies.

(b) All audits must be resolved within six (6) months after receipt of the audit report by the Commission.

(c) The Internal Audit Division shall maintain an audit resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

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

(a) The Internal Audit Division shall review the audit including all financial statements, schedules, notes, disallowed/questioned costs, administrative findings, and management letters and responses thereto. Financial statements shall be verified by the Internal Audit Division.

(b) If there are no disallowed/questioned costs or administrative findings to be resolved, the audit review is closed and the grant recipient shall be notified of the closure in writing.

(c) If the audit review contains findings, disallowed/questioned costs or discrepancies in the financial schedules, a letter requesting additional information and/or a response shall be sent to the subrecipient by certified mail.

(d) Audit resolution information is due within twenty (20) days from the date the written request is made to the subrecipient.

(e) The Internal Audit Division will review the information submitted by the subrecipient and may ask for additional information. An initial determination will be issued if the audit findings have not been resolved to the satisfaction of the Internal Audit Division.

(f) If the disallowed/questioned costs or administrative findings are resolved, the audit review is closed and the subrecipient shall be notified in writing.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05]

240:21-9-5. Initial determination

(a) The Internal Audit Division shall issue an initial determination on the audit findings for those portions of the audit where there are agreement and disagreement with the subrecipient's resolution, including the allowability of questioned costs or activities. Such initial determination will be based on the requirements of the WIA, regulations promulgated thereunder, administrative requirements, applicable cost principles, grants, contracts, or other agreements with subrecipient.

(b) The initial determination shall be issued within sixty (60) days from the receipt of the audit.

(c) The subrecipient shall have thirty (30) days from the date of the determination to submit its response to the Internal Audit Division.

(d) The subrecipient may request an informal resolution conference in order to meet with members of the Internal Audit Division staff to discuss the initial determination and the information subsequently submitted by the recipient. This request must be made in writing when the subrecipient submits its response to the initial determination.

(e) The Internal Audit Division shall issue its final determination within thirty (30) days from the receipt of the subrecipient's response to the initial determination. This time may be extended for up to thirty (30) days if an informal resolution conference is requested.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-9-6. Final determination

If the disallowed/questioned costs, administrative findings or deficiencies are not resolved, the Commission shall provide the subrecipient with a written final determination by certified mail. A final determination under this section shall:

(1) Indicate the efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(2) List those matters upon which parties continue to disagree;

(3) List any modifications to the factual findings and conclusions set forth in the initial determination;

(4) Establish a debt, if appropriate;

(5) Require corrective action, when needed;

(6) Determine liability, method of restitution of funds and sanctions; and

(7) Advise recipient of appeal rights.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-9-7. Appeal

(a) If the subrecipient is not satisfied with the findings issued in the final determination, it has fifteen days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Internal Audit Division.

(c) The Internal Audit Division will then forward a copy of the appeal to the Assessment Board.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-9-8. Hearing

(a) The Assessment Board will conduct a hearing within thirty (30) days from the receipt of the appeal by the Assessment Board unless the parties and the Assessment Board agree to waive this requirement in order to allow additional time to resolve the matter. The hearing will be conducted pursuant to the Assessment Board's rules at 240:10-11-20 through 10-11-23 and 240:10-11-25 through 240:10-11-31.

(b) The Assessment Board will issue a decision within thirty (30) days from the date the hearing record is closed.

(c) The decision of the Assessment Board will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.

(d) The Assessment Board will provide the administrative record to the district court in the time provided for in 40 Okla. Stat. section 3-403.

(e) At the hearing, the CLEO, local area fiscal agent, Local Board, and grant recipient bear the burden of proof to show that the WIA funds granted or paid to the Local Area or grant recipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program. The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.

(f) Any fee charged to the CLEO, local area fiscal agent, Local Board, or grant recipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Assessment Board or District Court cannot be charged to grant or contract funds received from OESC. This includes fees charged by an accountant, expert witness, attorney, or other representative.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05]

SUBCHAPTER 11 – GRIEVANCE PROCEDURES**PART 1 – GENERAL PROVISIONS****240:21-11-1. Grievances**

(a) A grievance filed with the Oklahoma Employment Security Commission (OESC) by a participant or affected party alleging a violation(s) of Title I of WIA is governed by the procedure set forth herein.

(b) An appeal to the OESC from a grievance decision issued at the local level regarding alleged violation(s) of Title I of WIA is governed by the procedure set forth herein.

(c) This procedure does not apply to grievances alleging discrimination or Title I of WIA, Subtitle C, Job Corps.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

PART 3 – GRIEVANCES FILED DIRECTLY WITH THE OESC**240:21-11-10. Filing**

A participant or affected party may file a grievance with the Director of Workforce Integrated Programs.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

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

If an individual elects to file his or her grievance with OESC, the grievance must be filed within 20 days from the date of the violation(s) which is the basis of the grievance.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-11-12. Contents of a grievance

Each grievance shall be in writing and should:

- (1) Be signed by the grievant or his authorized representative;
- (2) Contain the grievant's name and address (or specify another means of contacting him or her);
- (3) Identify the individual against whom the grievance is filed, if applicable;
- (4) List the date(s) on which the acts which are the basis of the grievance occurred, or if continuing, when such acts began and describe the continuing nature;
- (5) List the names and addresses of persons who may have knowledge of the facts of the grievance;
- (6) Describe the grievant's allegations in sufficient detail to allow the Director of Workforce Integrated Programs to determine whether:
 - (A) The Director of Workforce Integrated Programs has jurisdiction over the grievance;
 - (B) The grievance was timely filed; and
 - (C) The grievance has apparent merit, i.e., whether the allegations if true, would violate any Title I of WIA.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-11-13. Referral of a grievance filed with OESC

The Director of Workforce Integrated Programs may refer a grievance, originally filed with the OESC, to the local area if there is a likelihood that it could be resolved at that level. If the referred grievance is not resolved within ten (10) days from the date of receipt by the local area, the Director of Workforce Integrated Programs will attempt to resolve the issue informally.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

PART 5 – APPEALS TO THE OESC FROM GRIEVANCE DECISIONS OF A LOCAL AREA

240:21-11-20. Filing grievance with local area

A participant or affected party may file a grievance with the local area. It will be resolved according to the procedures of the local area, established pursuant to 20 C.F.R. §667.600 (c).

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-11-21. Appeals with OESC

An appeal may be filed with the Director of Workforce Integrated Programs from a grievance decision issued at the local area level if:

(1) No decision is reached within 60 days from the date the grievance is received at the local area level; or

(2) Either party is dissatisfied with the local area hearing decision.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-11-22. Time limit for filing an appeal with OESC

(a) If the local area does not render a decision within sixty (60) days from the date of receipt of the grievance, an appeal must be filed with the Director of Workforce Integrated Programs within 30 days from the expiration of the sixty (60) day time period.

(b) If the local area renders a decision that a party is dissatisfied with, the appeal must be filed with the Director of Workforce Integrated Programs within 30 days of the date the local area mails the decision to the party by certified mail.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

PART 7 – INFORMAL AND FORMAL RESOLUTIONS OF GRIEVANCES**240:21-11-30. Informal resolution**

The Director of Workforce Integrated Programs or his or her designee will attempt to resolve any grievance or appeal informally by meeting with the parties in person or discussing the grievance with the parties by telephone. If the grievance is not resolved informally within fifteen (15) days from the receipt of the grievance or appeal, the Director of Workforce Integrated Programs will forward the grievance or appeal to the Assessment Board.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 22 Ok Reg 735, eff 5-15-05; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-11-31. Hearing

The Assessment Board will conduct the hearing pursuant to its rules at 240:10-11-20 through 240:10-11-31. The hearing process will be completed within sixty (60) days from the date the grievance was received by the Director of Workforce Integrated Programs.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01; Amended at 23 Ok Reg 889, eff 5-15-06]

240:21-11-32. Remedies

The remedies that may be imposed under this grievance procedure are enumerated in WIA section 181(c).

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-11-33. Appeal to Secretary or investigation by Secretary

The Secretary will investigate an allegation of a violation as set forth above if:

- (1) a decision relating to such violation has not been reached within sixty (60) days after the date of filing of the grievance and either party appeals to the Secretary; or
- (2) a decision relating to such violation has been reached within sixty (60) days and the party to which such decision is adverse appeals such decision to the Secretary.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

240:21-11-34. Decision of the Secretary

The Secretary will make a final determination relating to an appeal no later than 120 days after receiving such appeal.

[Source: Added at 18 Ok Reg 1122, eff 5-11-01]

**CHAPTER 25 – TAX EXEMPTIONS FOR
QUALIFYING EMPLOYERS****SUBCHAPTER 1 – GENERAL PROVISIONS****240:25-1-1. Purpose**

Title 68 O.S. Sections 1357(14) & (18), 1359(8), 2357.59(D)(2), 2902 and 54002(1) provide that the Oklahoma Employment Security Commission will certify whether an employer has met certain conditions under the above-cited sections of law. This Chapter provides procedures for employers to request the certification.

[Source: Amended at 15 Ok Reg 1506, eff 5-11-98; Amended at 16 Ok Reg 1186, eff 5-13-99; Amended at 18 Ok Reg 1128, eff 5-11-01]

240:25-1-2. Definitions

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

"Full-time equivalent employees" means those employees who are employed for one full year.

"New employees" means those employees who constitute a net increase in total employment as compared with employment levels prior to the starting date of business expansion and whose employment is directly attributable to such expansion.

SUBCHAPTER 3 – PROCEDURAL RULES**240:25-3-1. Certification - new employees hired by new or expanding business**

(a) **Notification to the Oklahoma Employment Security Commission.** The Oklahoma Tax Commission will notify the Oklahoma Employment Security Commission when a new or expanding business has completed a request for tax exemption.

(b) **Information required.**

(1) As soon as the requesting facility hires the required number of employees as a result of the new or expanded facility, the requesting facility shall furnish to the Oklahoma Employment Security Commission the names, Social Security numbers, job titles and starting dates of employment of each new employee.

(2) At the end of one year, the employer shall again furnish to the Oklahoma Employment Security Commission the names, Social Security numbers, job titles and starting dates of employment of employees who were hired as a result of the new or expanded facility.

(c) **Method for counting employees.** The counting of new employees shall be determined by comparing the monthly average number of full-time employees for each month during the tax exemption status with the corresponding month of the prior year as substantiated by such reports as may be required by the Oklahoma Employment Security Commission. The Oklahoma Employment Security Commission shall determine the appropriate month which is deemed most representative of meeting the requirements of the statutes.

(d) **Notice of certification to new or expanded business.** The Oklahoma Employment Security Commission will notify the employer and the Oklahoma Tax Commission by certified mail whether or not the employer has been certified as having hired the required number of full-time equivalent employees.

(e) **Appeal process.** In the event any party wishes to appeal the certification decision, the party may file an appeal with the Assessment Board. The appeals process shall be the same as that used for the normal tax assessment appeal procedures of the Oklahoma Employment Security Commission.

[**Source:** Amended at 16 Ok Reg 1186, eff 5-13-99]