

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 140. OKLAHOMA QUICK ACTION CLOSING FUND**

150:140-1-1. Purpose and scope

(a) The purpose of these rules is to implement the Oklahoma Quick Action Closing Fund at the Oklahoma Department of Commerce.

(b) *All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Governor for the purposes of economic development and related infrastructure development in instances in which expenditure of such funds would likely be a determining factor in locating a high-impact business project or facility in Oklahoma, ~~or~~ in retaining such project or facility within the state or for payment of rebates to a high impact production pursuant to the Oklahoma Film Enhancement Rebate Program. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.* [62 O.S. § 48.2(B)]

150:140-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all applicants interested in the Oklahoma Quick Action Closing Fund to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal and determine if the project will result in a net economic benefit to the State of Oklahoma. The application for the Quick Action Closing Fund will be based upon the statutory mandates set forth in 62 O.S. § 48.2 and to provide the information required in 150:140-1-4.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) *In order to qualify for any funds from the Oklahoma Quick Action Closing Fund, the establishment making application shall be engaged in a business activity described by a North American Industry Classification System (NAICS) Code used to define eligibility for incentive payments from the Oklahoma Quality Jobs Program Act as defined in Section 3603 of Title 68 of the Oklahoma Statutes or a business activity described by Section 3603 of Title 68 of the Oklahoma Statutes or be engaged in a "basic industry" used to define eligibility for incentive payments from the 21st Century Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68 of the Oklahoma Statutes or a high impact production company which has been approved for a rebate pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes.* [62 O.S. § 48.2(C)]

(c) ~~The application~~ Applications other than those from high impact production companies which has have been approved for a rebate needs to shall include a full and complete description of the project which includes the following:

(1) The number of jobs to be created if the project is a new or existing company;

(2) The number of jobs to be retained if the project is an existing company;

(3) The average salary of jobs to be created or retained by the company;

- (4) The latest audited financial statements of the company including the credit rating of the company if it has issued publicly held debt;
- (5) The total capital investment to be made by the company;
 - (A) Sources of the capital investment; and
 - (B) If the investment is secured or if applications/solicitations are pending.
- (6) The relative likelihood of other business enterprises locating within the same vicinity or within the state as a result of the company's location or expansion as a result of payments from the Oklahoma Quick Action Closing Fund;
- (7) The relative impact on the economy of the area or community in which the company is or will be conducted;
- (8) The location of the project;
- (9) Any needed infrastructure improvements at the project site for the project to go forward;
- (10) All investment, both in kind and monetary, from local governmental units in support of the project;
- (11) The history of the company including date and location of establishment, and significant accomplishments of the company; and
- (12) North American Industries Classification System ("NAICS") code for qualifying business activity;
- (13) Any other information deemed relevant by the Department.

(d) An application for payment of a rebate to a high impact production pursuant to the Oklahoma Film Enhancement Program shall include:

- (1) Proof that the production has been designated as a high impact production as defined in 68 O.S. §3623;
- (2) Proof that the production has been approved or otherwise prequalified for a rebate pursuant to the Oklahoma Film Enhancement Rebate Program detailed in 68 O.S. §3624;
- (3) Any other information deemed relevant by the Department.

150:140-1-4. Award process

(a) The Oklahoma Department of Commerce shall administer the Oklahoma Quick Action Closing Fund, and expenditures from the fund shall be recommended by the Director of the Oklahoma Department of Commerce to the Governor after a thorough evaluation of selected projects or facilities or after a rebate is approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes. Except for rebates approved pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes, the Director of the Oklahoma Department of Commerce shall only recommend expenditures that the Director determines are expected to result in a net economic benefit to the state through the following:

- (1) The creation of new jobs which offer a basic health benefit plan, as defined in the Oklahoma Quality Jobs Program Act;*
- (2) The maintenance of existing jobs which are at a risk for termination;*
- (3) Investment in new real property, plant or equipment or in the improvement or retooling of existing plant or equipment; or*
- (4) Additional revenues in either ad valorem, income or sales and use taxes. [62 O.S. § 48.2(E)]*

(b) The Governor will make the funding decision, after review of the recommendation and evaluation submitted by the Director of the Oklahoma Department of Commerce.

(c) ~~The~~ Except in the case of a high impact production company which has been approved for a rebate pursuant to the provisions of Title 68 of the Oklahoma Statutes, the Governor shall not approve payments from the Oklahoma Quick Action Closing Fund unless the Department of Commerce has conducted a complete analysis of the potential impact of the applicant's business activity which shall include, but not be limited to:

- (1) The number of jobs to be created by a new business establishment;
- (2) The number of jobs to be retained by an existing business establishment;
- (3) The average salary of jobs to be created by a new establishment;
- (4) The average salary of jobs to be retained by an existing business establishment;
- (5) The total capital investment to be made by the business establishment;
- (6) The likelihood of other business establishments locating within the same vicinity or within the state as a result of the business activity to be conducted by the entity to receive payments from the Oklahoma Quick Action Closing Fund;
- (7) The impact on the economy of the area or community in which the business activity of the applicant is or will be conducted; and
- (8) Such other factors as the Governor and the Department of Commerce determine to be relevant. [62 O.S. § 48.2(D)]

(d) The Director of the Oklahoma Department of Commerce may consider the following factors when determining whether to recommend expenditures from the Closing Fund to a high impact production company:

- (1) The amount of money available in the fund for payment of rebates;
- (2) The amount of the anticipated rebate;
- (3) The anticipated economic impact to the State of the production;
- (4) The degree of net benefit or net cost to the State of the production;
- (5) Any other factor that the Director deems relevant to the Governor's funding decision.

(e) At the beginning of each fiscal year, the lesser amount of five hundred thousand dollars (\$500,000.00) or twenty percent (20%) of the available funds held within the closing fund may be set aside by the Director for qualified expenditures affecting cities, towns or unincorporated rural areas, the population of which does not exceed fifty thousand persons according to the most recent Decennial Census. This set aside shall expire and become available for all otherwise permissible uses on January 1st of the fiscal year. This provision shall in no way be construed to limit the amount of funds that can be expended from the Quick Action Closing Fund for projects affecting these communities.

150:140-1-5. Award Agreement

(a) Upon approval by the Governor, the Oklahoma Department of Commerce shall enter into an agreement that sets forth the conditions for payment of monies from the Oklahoma Quick Action Closing Fund. The agreement must include:

- (1) The total amount of funds awarded;
- (2) ~~Except in the case of a rebate approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes,~~ the performance conditions that must be met to obtain the award, including, but not limited to, net new employment in the state, average salary, and total capital investment;
- (3) If appropriate, a baseline of current service and measure of enhanced capability;
- (4) The methodology of validating performance;

(5) *The schedule of payments from the fund, and claw-back provisions for failure to meet performance conditions; and*

(6) *A requirement that no monies paid from the Oklahoma Quick Action Closing Fund shall be used by a recipient or any other person or entity for purposes of any political contribution to or on behalf of any candidate or for the support of or opposition to any measure including but not limited to an initiative petition or referendum. [62 O.S. § 48.2(H)]*

(b) If any or all of the amount to be awarded is used to build a capital improvement, except in the case of an amount approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes:

(1) The funds used for the capital improvement shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law; and

(2) If the capital improvement is sold, the recipient of the award shall:

(A) repay the state the money awarded to pay for the capital improvement, with interest at the rate and according to the other terms provided by the agreement, and

(B) share with the state a proportionate amount of any profit realized from the sale. [62 O.S. § 48.2(J)]

(c) If, as of the date certain provided in the agreement, the award recipient has not used monies awarded for the intended purposes, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms and any such amounts shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law. [62 O.S. § 48.2(K)]