TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE

CHAPTER 1. GENERAL RULES OF PRACTICE AND PROCEDURE

[**Authority:** 74 O.S., §§ 5003.6 and 5017; 75 O.S., §§ 302, 305, and 307; 51 O.S., § 24A.1]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. ORGANIZATION

150:1-1-1. Purpose

The rules of this chapter provide the procedures for the general methods and operations of the Oklahoma Department of Commerce, pursuant to the requirements of 75 O.S., Section 302.

150:1-1-2. Director

The Oklahoma Department of Commerce shall be governed and managed by a Director who is appointed by the Governor and who shall be qualified pursuant to law as required by 74 O.S., Sections 5002.3(J), 5003.5 and 5003.6. The Director shall have the power and duty to carry out the responsibilities of Chief Executive Officer of the Department.

[**Source:** Amended at 12 Ok Reg 2003, eff 6-26-95 ; Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-1-3. Deputy; Chief of Staff; Director of CORE; Director of EDGE

The Director shall appoint a Deputy, Chief of Staff, the Director of CORE, or the Director of EDGE who shall perform duties of the Director as requested by the Director. If the office of the Director is vacant or if the Director is absent or unable to act, the Deputy, Chief of Staff, the Director of CORE, or the Director of EDGE shall be the acting Director for all purposes until the Director resumes duties or the successive Director is fully qualified. The Deputy, Chief of Staff, the Director of CORE, or the Director of EDGE may sign all documents on behalf of the Director, except those specifically required to be signed by the Director by law.

[**Source:** Amended at 12 Ok Reg 2003, eff 6-26-95 ; Amended at 13 Ok Reg 2345, eff 6-27-96 ; Amended at 38 Ok Reg 1717, eff 9-11-21 ; Amended at 42 Ok Reg, Number 7, effective 10-14-24 (emergency); Amended at 42 Ok Reg, Number 20, effective 7-11-25]

150:1-1-4. Appointment of personnel; annual business plan

(a) Pursuant to the annual business plan of the Department, The Director shall appoint personnel as are necessary to implement and accomplish the missions, goals, powers and duties of the Department of Commerce.
(b) The annual business plan shall be published or disseminated as required by statute and copies of the plan shall be available during business hours of the Oklahoma Department of Commerce.

(c) The annual business plan may be revised at any time to reflect changes in title, job responsibilities, salary or otherwise as needed.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

SUBCHAPTER 3. POWERS AND DUTIES OF AGENCY [REVOKED]

PART 1. GENERAL [REVOKED]

150:1-3-1. Power and duties, mission [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-2. Local economic development assistance [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-3. Assumption of duties of abolished agencies [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-4. Staff to Oklahoma Futures [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-5. Revolving funds [REVOKED]

[**Source:** Amended at 13 Ok Reg 2345, eff 6-27-96 ; Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-6. Community development programs [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-7. Organization; annual business plan [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-8. Disbursements [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-9. Contracts [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-10. Rules and regulations [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

PART 3. ADMINISTRATION OF VARIOUS ACTS; PROGRAMS [REVOKED]

150:1-3-25. Oklahoma Department of Commerce Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-26. Minority and Disadvantaged Business Enterprise Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-27. Film Office Act [REVOKED]

[**Source:** Revoked at 12 Ok Reg 2003, eff 6-26-95]

150:1-3-28. County Jail Improvement Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-29. Trade Development Program [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-30. Enterprise Zone Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-31. Energy conservation; weatherization [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-32. Data Center [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-33. Capitol Straight Line [REVOKED]

[**Source:** Revoked at 12 Ok Reg 2003, eff 6-26-95]

150:1-3-34. Small Business Incubators' Incentives Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-35. Export Trading Company Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-36. Inventors Assistance Act [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-3-37. SSC Authority [REVOKED]

[**Source:** Revoked at 12 Ok Reg 2003, eff 6-26-95]

150:1-3-38. Office of Federal Assistance Management [REVOKED]

[**Source:** Revoked at 12 Ok Reg 2003, eff 6-26-95]

SUBCHAPTER 5. POWERS AND DUTIES OF DIRECTOR [REVOKED]

PART 1. GENERAL [REVOKED]

150:1-5-1. Chief Executive Officer [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-2. Hiring [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-3. Chief Executive Officer; Futures [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-4. Administrator of economic development organizations [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-5. Promulgated rules [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-6. Cabinet secretary [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

PART 3. MEMBERSHIP ON VARIOUS BOARDS [REVOKED]

150:1-5-21. Member OIFA board [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-22. Member OCAST board [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-23. Member ODFA board [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-24. Member Executive Bond Oversight Commission [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-25. Member Ordinance Works Authority [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-26. Member Council on Juvenile Justice [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-27. Member TISRAD [REVOKED]

[**Source:** Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-28. Member Private Prisons Industries Board [REVOKED]

[**Source:** Amended at 13 Ok Reg 2345, eff 6-27-96]

150:1-5-29. Member Agroindustry Policy Commission [REVOKED]

[**Source:** Amended at 13 Ok Reg 2345, eff 6-27-96]

150:1-5-30. Oklahoma Indian Affairs Commission [REVOKED]

[**Source:** Added at 12 Ok Reg 2003, eff 6-26-95 ; Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-31. Oklahoma International Trade Development Council [REVOKED]

[**Source:** Added at 12 Ok Reg 2003, eff 6-26-95 ; Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-5-32. Oklahoma Homeless Prevention Committee [REVOKED]

[**Source:** Added at 12 Ok Reg 2003, eff 6-26-95 ; Revoked at 38 Ok Reg 1717, eff 9-11-21]

SUBCHAPTER 7. GENERAL COURSE AND METHODS OF OPERATIONS

150:1-7-1. Offices

The principal office of the Oklahoma Department of Commerce is 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104-3234. All mail shall be received at the present address; provided, the Department may change its principal office as required pursuant to law. The Department may maintain subsidiary offices as may be needed to accomplish its programs.

[**Source:** Amended at 18 Ok Reg 3495, eff 9-14-01]

150:1-7-2. Hours

Public business hours of the Department of Commerce shall be from 8:00 a.m. to 5:00 p.m., unless otherwise designated by the Director of the Department, Monday through Friday, inclusive excepting legal holidays established by statute or by proclamation of the Governor.

150:1-7-3. Exercise of powers

The Department may exercise its powers at any location deemed necessary to transact the business of the Oklahoma Department of Commerce both nationally, internationally, and within the state.

150:1-7-4. Communications

All communications to the Department of Commerce shall be addressed to the Director of the Department at the principal office designated herein or as otherwise directed by the Department either in writing or as provided by the Annual Business Plan.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-7-5. Notices

All notices and agendas of public meetings which are staffed by the Department of Commerce shall be posted in compliance with the Oklahoma Open Meetings Act. [25:301-314]

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-7-6. Duties of personnel

The Division Directors, supervisors, and offices designated in the Annual Business Plan shall perform the duties set out in the plan and shall manage the business of their divisions and offices in accordance with the plan, the rules of this title and enabling statutes.

150:1-7-7. Annual reports

The Oklahoma Department of Commerce shall summarize its activities in its annual report which shall be published in accordance with 74 O.S., Sections 3106.1 and 5003.8.

150:1-7-8. Required reports

(a) Upon development of performance criteria, the Department shall prepare an annual performance review which shall be submitted to the Legislature to assist the appropriation process on or before February 1 of each year. [74:5003.9]
(b) Additionally, the Department shall make budget reports as required by law regarding quarterly expenditures. Such reports shall be directed to the Governor and the Legislature. [S.B. 61 of the first session of the 41st Legislature and 74:500.2, 500.18]

150:1-7-9. Audits

The Department shall have an annual audit performed by a certified public accountant or a licensed public accountant of all the funds, accounts and fiscal affairs of the Department in accordance with federal and state laws.

150:1-7-10. Process Service

Any and all service of process upon the Oklahoma Department of Commerce concerning the Department and its employees shall be served upon the Director, Deputy Director, Chief of Staff, or General Counsel. Service will be received during public business hours only.

[**Source:** Amended at 12 Ok Reg 2003, eff 6-25-95 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 38 Ok Reg 1717, eff 9-11-21]

SUBCHAPTER 9. RECORDS AND INSPECTIONS

150:1-9-1. Location of records

The Oklahoma Department of Commerce shall maintain all 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. Notwithstanding the foregoing sentence, the records shall include the rules of this title, the Annual Business Plan, the Annual Report, performance review reports and all statements of policy or

interpretations formulated or used by the Department.

150:1-9-2. Inspections
(a) Any person may inspect any record that is not deemed confidential by law at the offices of the Department of Commerce during regular business hours.
(b) The person requesting inspection of any record shall complete a Request for Inspection/Copies form detailing the record(s). The person making the request shall include on the form the name, address, and telephone number and a specific description of the record to be inspected.

150:1-9-3. Copies
(a) Any person wishing to obtain copies of any records may do so by completing a Request for Inspection/Copies of Records form or by e-mailing a Request for Inspection/Copies of Records. This request mustdetail the records, and set out the name, address, e-mail address, and telephone number of the person requesting a copy of such records. The description of the record requested for copying should be as specific as possible.
(b) In the event more than twenty (20) copies are requested, the Department may arrange to mail the copies to the applicant, within ten (10) days.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-9-4. Charges
(a) The Department of Commerce may charge for copies of records and may charge for staff time spent in obtaining the records after staff time of more than one hour for the same record or group of related records has been necessary in order to retrieve such records for inspection or copying.
(b) The search fee charges and copying charges shall be posted on the bulletin boards of the Department of Commerce and shall be on file at the Oklahoma County Courthouse. Provided, charges for particular materials or copies set by law shall be in accordance with statute.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-9-5. Search fees
The search fee shall only be applicable to materials requested solely for commercial purposes or when clearly an excessive disruption of the essential function of the Department has or will occur, unless it is determined by the Director, in his discretion, that the public interest is served to such an extent that no charge should be applicable.

150:1-9-6. Receipt of requests
The Director shall designate a public information officer as the individual authorized to receive Request for Inspection/Copies forms and

to forward the request to the custodian of the specific record for response thereto. In the absence of the designated public information officer, the designees of said officer shall act in his absence.

150:1-9-7. Notices to requestors

(a) Upon receipt of a request for inspection or copy of any records held by the Department of Commerce, 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) That the request is granted and the estimated charge of (50%) of the costs may be required if costs exceed one hundred fifty dollars ($150) or the person or party requesting the copy(s) owes the Department in excess of that amount for copies and services already rendered.

(2) That the request is denied and the reasons for the denial. Such denial mayprovide statutory citations or other reasons for denial.

(3) That 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 public information officer.

(b) In the event a delay is necessary, the custodian of the record shall notify the person requesting the record when 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 applicant.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-9-8. Private copier

In the event essential business of the Department prevents copying activities impossible or impracticable within ten (10) days of the written receipt of the request, Department personnel may provide materials to be copied by a private copier at the expense of the person or entity requesting the copies after arrangements have been made by the applicant with the private copier.

150:1-9-9. OKNET [REVOKED]

[**Source:** Added at 11 Ok Reg 3129, eff 7-1-94 ; Revoked at 38 Ok Reg 1717, eff 9-11-21]

150:1-9-10. Destruction of records

The Director of Financial Services and the Purchasing Officer, in consultation with the Executive Director and General Counsel, will develop a process for the destruction of records complies with the rules and requirements of the programs administered by the Oklahoma Department of Commerce. Financial records of the Oklahoma Department of Commerce shall be destroyed after five (5) to seven (7) years, depending upon the financial records and applicable rules and regulations, after the applicable audits have been completed and all applicable audit reports have been accepted and resolved by all

applicable federal and state agencies and provided no legal actions are pending. If legal action is pending the affected records are to be destroyed two (2) years after exhaustion of all legal remedies provided the records meet all stipulated retention requirements.

[**Source:** Added at 24 Ok Reg 1201, eff 5-25-07 ; Amended at 38 Ok Reg 1717, eff 9-11-21]

SUBCHAPTER 11. INDIVIDUAL PROCEEDINGS

150:1-11-1. Interpretation

All individual proceedings shall be governed by this subchapter and the Oklahoma Administrative Procedures Act, 75 O.S., Section 301 et seq., as amended. The rules of this subchapter shall be given the most reasonable meaning, taken in its total context and will be construed to secure due process in the proper resolution of every controversy. It may not be construed to limit legal rights or obligations of any party.

150:1-11-2. Petition for hearing; form of petition

(a) Any person or entity adversely affected by an act or decision by Oklahoma Department of Commerce is entitled to an individual hearing and shall file a Petition for Hearing before the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma,, 73104-3234 Attention: General Counsel.
(b) A request for hearing shall be made in writing in the form of a petition captioned as set forth in Appendix A of this Chapter.
(c) The Petition must include a statement of the facts leading up to the Petition. The Petition must specify the particular program and the statute or rule the petitioner believes serves as the basis for the petition.
(d) The Petition must contain names known to the petitioner of any other parties who may be affected if such relief or remedy by the Department of Commerce is granted and a short statement of the effects of such known parties, if applicable. Joinder of interested parties is permissible only if an identified, pecuniary interest of the party to be joined is threatened. The Petition must contain a statement of the relief requested. The relief requested must be within the lawful authority and power of the Department of Commerce. Alternative or several different types of relief may be requested.
(e) An instrument which does not include the basic allegations required herein may not constitute a valid petition and may be dismissed upon request of the applicable division of the Department.

[**Source:** Amended at 18 Ok Reg 3495, eff 9-14-01]

150:1-11-3. Filing

(a) The date of filing for a petition for a hearing shall be the date on which the petition is received in the main office according to the date and time stamp of the Department.
(b) The Department must receive a petition in regard to an action or decision of the Department within thirty (30) days of the Department

action adversely affecting the individual petitioner in order for the petition to be valid. If the petition is not timely filed, it may be dismissed by the Department.

150:1-11-4. Pre-hearing conference

(a) Usually within thirty (30) days after receipt of a petition for a hearing, there shall be mailed to all participating parties a notice of pre-hearing conference if all outstanding preliminary motions have been resolved.
(b) The pre-hearing conference is for the purpose of informally resolving the conflict, if possible. It will be conducted by the hearing examiner. In the event resolution is not accomplished, the pre-hearing conference should result in identification of the legal issues and disputed facts; resolution of scheduling of discovery; and exchange of names of witnesses and exhibits list. A pre-hearing conference order form addressing these issues will accompany the pre-hearing conference and should be completed by the parties to the extent possible, before the pre-hearing conference.

150:1-11-5. Pre-hearing conference order

Date of hearing on the merits shall be determined at the prehearing conference but may be changed for good cause shown by any party or by the hearing examiner. The pre-hearing conference order shall set forth the date and all agreements reached by the parties. The order shall also set forth:

(1) A statement of the time, place, and nature of the hearing;
(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
(3) Specific reference to statutes or rules which may be involved;
(4) A short and plain statement of the issues asserted in as much detail as possible at the time of the notices; and
(5) A statement that any interested party may appear and be represented by an attorney, who shall be paid at their expense.

150:1-11-6. Hearing examiner

(a) The hearing examiner for administrative appeals regarding individual proceedings shall be the General Counsel of the Department of Commerce unless it is determined that a conflict exists regarding the particular matter at issue.
(b) In the event the hearing examiner must disqualify, the Executive Director shall appoint an alternate hearing examiner who must be a licensed attorney at law.
(c) Any party may request disqualification of the hearing examiner by filing an affidavit with the Executive Director, stating the specific grounds upon which the request is made.
(d) The Director shall promptly make a determination either granting or denying the request. Denial of the request is not an appealable order.

150:1-11-7. Depositions; subpoenas

(a) The Oklahoma Department of Commerce or any other party, upon notice, may take depositions of witnesses in the same manner as

provided for in civil proceedings before the district court. The depositions may be admitted into evidence in the same manner as other evidence. Costs of depositions shall be borne by the deposing party(s).
(b) The Oklahoma Department of Commerce through its General Counsel or the appointed hearing examiner may issue subpoenas and subpoenas duces tecum for the production of witnesses and documents. The Oklahoma Department of Commerce and any other party, upon written motion, may request that subpoenas be issued. The party requesting the subpoena shall fill it in before issuance.
(c) In order to allow sufficient time, a request for subpoenas must be received by the Department of Commerce at least five (5) days prior to any hearing or deposition at which attendance of a witness is required. Subpoenas may be served bya designee of the Executive Director at his or her discretion, or as subpoenas are served in civil actions. The party requesting the subpoena shall bear the costs of serving it and any fees.
(d) Obedience of any subpoena may be enforced by the Department of Commerce in the District Court.
(e) In the event questions arise regarding discovery procedures, the Oklahoma Discovery Code, 12 O.S., Sections 3201 et seq., shall apply.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-11-8. Default orders

(a) If a party fails to attend or participate in a pre-hearing conference, hearing, or other stage of an adjudicative proceeding, the hearing examiner may service upon all parties written notice of a proposed default order, including a statement of the grounds.
(b) Within seven (7) days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated, stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the hearing examiner may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.
(c) The hearing examiner shall either issue or vacate the default order promptly after expiration of the time within which the party may file a written motion.
(d) After issuing a default order, the hearing examiner shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party.

150:1-11-9. Petition for intervention

(a) The hearing examiner shall grant a petition for intervention if:
    (1) The petition is submitted in writing to the hearing officer, with copies mailed to all parties named in the hearing officer's notice of the hearing, at least three days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as a intervener under any provision of law; and

(3) The hearing examiner determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(b) Provided, the hearing examiner may grant a petition for intervention at any time, upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the hearing examiner may impose conditions upon the intervener's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervener's participation to designated issues in which the intervener has a particular interest demonstrated by the petition;

(2) Limiting the intervener's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more interveners to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(d) The hearing examiner, at least twenty-four (24) hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing examiner may modify the order at any time, stating the reasons for the modification. The hearing examiner shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

150:1-11-10. Evidence; privilege; procedural questions

(a) The rules of evidence and confidential privilege established in the Oklahoma Administrative Procedures Act, 75 O.S. Sections 309 through 326 shall govern all hearings. The hearing examiner may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs.

(1) The rules of privilege are to be given effect in individual proceedings and evidence excluded because of any privilege recognized by the courts of this State shall not be admitted into evidence;

(2) Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded by the hearing examiner;

(3) Unless otherwise provided by law, the burden of proof shall be upon the petitioner to show in what manner the act or decision affecting petition is incorrect; and

(4) Upon a hearing, if a petitioner fails to show a prima facie case for lack of sufficient evidence, the hearing examiner may

recommend dismissal of a petition forthwith to the Director, upon grounds of failure to prove sufficient facts which would entitle petitioner to relief requested. The Director may dismiss a petition based upon the recommendation

(b) Documentary evidence may be received in the form of copies or excerpts. Parties may challenge the authenticity of any copies. Any part of the evidence may be received in written form, when a hearing will be expedited and the interests of the parties will not be prejudiced.
(c) Objections to evidence may be made and shall be included in the record of the proceedings.
(d) All witnesses' testimony shall be made under oath or affirmation. A party may conduct cross-examination of witnesses called by other parties.
(e) The hearing examiner, upon notice to the parties, may take judicial notice of facts, including facts within the specialized knowledge of the Department of Commerce.
(f) The hearing examiner may question witnesses and determine the order in which evidence shall be received and presented. Individual proceedings shall be recorded. They may be recorded by stenographic means or by audio tape. If a party requests a certified court reporter, necessary arrangements for the presence of the reporter at hearing, the cost thereof, and the cost of transcribing will be borne by the requesting party who must furnish the hearing examiner with a true copy of such transcript. The hearing examiner may continue a hearing from time to time and may allow the record to remain open for the receipt of further evidence or argument, or for the receipt of proposed orders.
(g) In the event of questions about procedure before the Department are not satisfied by rules set out in the Administrative Procedures Act, Article II, or in the rules of this subchapter, the Department will rely on Rules for District Courts of Oklahoma, currently outstanding, adopted by the Supreme Court.

150:1-11-11. Motions

(a) The Department will consider motions and applications for Orders. All such motions and/or applications must be in writing and must set forth the facts giving rise to the motion, any legal authority to support the motion and the requested remedy if the motion is granted.
(b) Parties involved in the appeal or in the action will have twenty (20) days after receipt of the motion to set forth in writing reasons why the motion should not be granted unless the motion on its face demonstrates that it must be granted forthwith or irreparable harm will result.
(c) In the event such a motion is immediately granted, any adverse party may object to the granting of the motion and such objection will be considered immediately, and an answer in writing delivered expeditiously.
(d) All resolutions of motions, applications or objections, shall be issued by the hearing examiner, in writing.

150:1-11-12. Hearing examiner reports

(a) The hearing examiner shall prepare a report setting forth findings of fact and conclusions of law in an expeditious manner following the close of the hearing.
(b) The report shall be mailed to each party and their representatives. The date the report is mailed is the date of its issuance and shall be stated on the order. If the hearing examiner requests it and receives proposed orders, then the final order shall also include a ruling on each proposed finding proffered in the proposed orders.

150:1-11-13. Objections
(a) Any party aggrieved by a report may submit motions and briefs to the Director objecting within ten (10) days of the date of issuance of the report. The Director will reconsider the report of the hearing examiner in light of the written objections.
(b) In any event, the Executive Director shall determine whether or not whether to grant the application objecting to the report within sixty days (60) and issue a final order.

150:1-11-14. Rehearings
Upon receipt of an application for rehearing, the Executive Director or his designee may remand the proceeding to the original hearing examiner or to a newly appointed hearing officer at his discretion for further evidence or argument; the Director may reject the application; or the Director may grant the application in part or in its entirety.

150:1-11-15. Appeal of final orders; transcripts; transmittal of confidential materials
(a) Any party aggrieved by a final order may appeal to the district within thirty (30) days of the issuance of a final order or thirty (30) days from a final disposition of a properly filed application for rehearing.
(b) A transcript of oral testimony at the hearing shall be provided to the court by the Oklahoma Department of Commerce upon payment of the costs of preparation of the transcript by the appealing party. Requests for transcripts shall be made in writing and filed with the Department of Commerce. Costs shall be assessed as provided in Subchapter 9 of this chapter–one dollar ($1.00) for each page of the certified original and ten dollars ($10.00) per hour for creation of the document after the first hour.
(c) In the event the record of the hearing must be transmitted to a District Court for review, those parts of the record containing confidential materials shall be segregated and the court shall be notified at the time of transmission of the confidential nature of the records; the Department shall move the court to issue a protective order so that the materials will not be available to the extent that disclosure of any of the information would harm any financial interests or become broadcast.

150:1-11-16. Stay of Order
In the event a stay of any Department order or decision is requested by any party affected or prejudiced by the Order pending a

Motion for Reconsideration or a Petition for Judicial Review of the Order, the Department shall stay the order unless it is demonstrated or apparent from the record that the stay of the order will result in irreparable harm and unreasonable delay of any Department action or irreparable harm to any party or person.

[**Source:** Amended at 18 Ok Reg 3495, eff 9-14-01]

150:1-11-17. Ex parte communications

No ex parte communications concerning individual proceedings shall be made to the Director or the hearing examiner during the pendency of the administrative proceedings or judicial review.

SUBCHAPTER 13. REQUESTS FOR DECLARATORY RULINGS

150:1-13-1. Requests; petition contents

(a) All requests for declaratory rulings as to the applicability of any rule or order of the Department shall be made by filing a petition with the Department requesting such a ruling.

BEFORE THE

OKLAHOMA DEPARTMENT OF COMMERCE

IN RE (nature of proceeding, or - - e.g. request for request for declaratory ruling)))))) Case No._____ (to be completed by staff)

(b) The petition shall identify the rule or order questioned, the date on which rule or order became effective, and shall set forth the contents of the rule or order.

(c) The petition shall include a brief statement of the issue or issues raised by the rule or order which caused such a request to be made, and a statement as to the petitioner's personal interest in the ruling of the Department and how much a ruling by the Department will affect those interests.

(d) The petition shall set forth names known to petitioner of persons or entities who may have an interest in the outcome. The Department's hearing examiner may entertain oral presentation or argument on the request of petitioner, and the Department may, on its own motion, request argument, briefing or presentation from the petitioner and from Department personnel.

150:1-13-2. Consideration of petition

On considering a petition for declaratory ruling, the hearing examiner may in sound discretion refuse to issue a declaratory ruling or may decide the issues and determine the validity of the applicability to the petitioner of the rule or order.

150:1-13-3. Motion for Reconsideration

Motion for Reconsideration of a declaratory ruling must be brought within ten (10) days and shall be considered and determined by the Executive Director or his designee, within sixty (60) days.

SUBCHAPTER 15. SHOW CAUSE HEARINGS

150:1-15-1. Interpretation

All show cause hearings shall be governed by this subchapter and the Oklahoma Administrative Procedures Act, 75 O.S., Section 301 et seq. as amended. The rules of this subchapter shall be given the most reasonable meaning, taken in its total context and will be construed to secure due process in the proper resolution of every controversy. It may not be construed to limit the legal rights or obligations of any party.

150:1-15-2. Notice to Show Cause

(a) Prior to taking any corrective or remedial actions, a Notice to Show Cause shall be issued by the Oklahoma Department of Commerce.
(b) The Notice shall be captioned as follows:

OKLAHOMA DEPARTMENT OF COMMERCE EX REL (NAME OF DIVISION), PETITIONER,	))))))	Case No._____ Number: (to be completed by staff)
vs.	))	
(NAME OF RESPONDENT), RESPONDENT.	))	
SHOW CAUSE HEARING		

(c) The Notice shall include a statement concerning the activities or actions that have resulted in the proposed corrective or remedial actions.
(d) The Notice shall specify the particular statute or rule that serves as the basis for the show cause hearing.
(e) The Notice shall state the corrective or remedial actions or sanction that the petitioner has requested. Alternative or several different types of corrective or remedial action or sanction may be requested.
(f) The Notice shall state the date, time and place of the show cause hearing.
(g) The date of the show cause hearing shall be no less than ten (10) working days from issuance of the Notice to Show Cause.

150:1-15-3. Service of notice

Service of a Notice of Show Cause hearing shall be bya designee of the Executive Director of the Department or by certified mail. Certified mail shall be addressed to the last address of record of the party to be served and requires the return of a signed, dated receipt of delivery.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-15-4. Failure to appear; default order

Failure to appear at the show cause hearing set forth in a Notice properly served in accordance with the requirements of 150:1-15-3, shall result in a default order. The noticed sanction shall become the final order.

150:1-15-5. Hearing examiner

Show cause hearings shall be conducted by a hearing examiner who shall have the authority to administer oaths and affirmations, examine witnesses, rule upon motions and the admissibility of evidence. The hearing examiner shall have the authority to continue or recess any hearing, to control the record and to issue final orders. The hearing examiner must be a licensed attorney at law.

150:1-15-6. Representation

In any show cause hearing, a party may represent themselves or be represented by an attorney or other representative at the party's own expense. The Oklahoma Department of Commerce shall be represented by the General Counsel or other representative designated by the Executive Director.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-15-7. Disqualification of hearing examiner

(a) In the event that a hearing examiner must disqualify, the Executive Director shall appoint an alternate hearing examiner.
(b) Any party may request disqualification of the hearing examiner by filing an affidavit with the Executive Director, stating the specific grounds upon which the request is made.
(c) The Executive Director shall promptly make a determination either granting or denying the request. Denial of the request is not an appealable order.

150:1-15-8. Depositions; subpoenas

(a) Oklahoma Department of Commerce or any other party, upon notice, may take depositions of witnesses in the same manner as provided for in civil proceedings before the district court. The depositions may be admitted into evidence in the same manner as other evidence. Costs of depositions shall be borne by the deposing party(s).
(b) Oklahoma Department of Commerce through the hearing examiner may issue subpoenas and subpoenas duces tecum for the production of witnesses and documents. The Oklahoma Department of Commerce and any other party, upon written motion, may request that subpoenas be issued. The party requesting the subpoena shall name the person, persons or material to be subpoenaed before issuance by the Department.
(c) In order to allow sufficient time, a request for subpoenas must be received by the Department of Commerce at least five (5) days prior to any hearing or deposition at which attendance of a witness is required.

Subpoenas may be served by a designee of the Executive Director at his or her discretion, or as subpoenas are served in civil actions. The party requesting the subpoena shall bear the costs of serving it and any fees.
(d) Obedience of any subpoena may be enforced by the Oklahoma Department of Commerce in the District Court.
(e) In the event conflicts arise regarding discovery procedures, the Oklahoma Discovery Code, 12 O.S., Sections 3201 et seq., shall apply.

[**Source:** Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-15-9. Procedural conflicts

In the event of conflicts about procedure before the Department are not satisfied by rules set out in the Administrative Procedures Act, 75 O.S., Section 309 et seq., or in the rules of this subchapter, the Department will rely on Rules for District Courts of Oklahoma, currently outstanding, adopted by the Supreme Court.

150:1-15-10. Evidence; privilege

(a) The rules of evidence and confidential privilege established in the Oklahoma Administrative Procedures Act, 75 O.S., Sections 309 through 326 shall govern all hearings. The hearing examiner may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs.

(1) The rules of privilege are to be given effect in individual proceedings and evidence excluded because of any privilege recognized by the courts of this State shall not be admitted into evidence.

(2) Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded by the hearing examiner.

(3) Unless otherwise provided by law, the burden of proof shall be upon the Department to show in what manner the proposed act or decision set forth in the notice to show cause is correct, proper and lawful.

(4) Upon a hearing, if the Department fails to show a prima facie case for lack of sufficient evidence, the hearing examiner may recommend dismissal of a petition forthwith to the Director, upon grounds of failure to prove sufficient facts which would warrant the sanction set out in the notice to show cause. The Director may dismiss a proposed sanction based upon the recommendation.

(b) Documentary evidence may be received in the form of copies or excerpts. Parties may challenge the authenticity of any copies. Any part of the evidence may be received in written form, when a hearing will be expedited and the interests of the parties will not be prejudiced.
(c) Objections to evidence may be made and shall be included in the record of the proceedings.
(d) All witnesses' testimony shall be made under oath or affirmation. A party may conduct cross-examination of witnesses called by other parties.
(e) The hearing examiner, upon notice to the parties, may take judicial notice of facts, including facts within the specialized knowledge of the

Oklahoma Department of Commerce.
(f) The hearing examiner may question witnesses and determine the order in which evidence shall be received and presented. Individual proceedings shall be recorded. They may be recorded by stenographic means or by audio tape. If a party requests a certified court reporter, necessary arrangements for the presence of the reporter at hearing, the cost thereof, and the cost of transcribing will be borne by the requesting party who must furnish the hearing examiner with a true copy of such transcript. The hearing examiner may continue a hearing from time to time and may allow the record to remain open for the receipt of further evidence or argument, or for the receipt of additional pleadings or orders.

150:1-15-11. Motions

Motions filed seven (7) days prior to the Show Cause hearing may be specially set for hearing. Such motions must be in writing. The hearing examiner may grant such a hearing. Unless such a hearing is set, it shall be presumed the motion shall be heard and considered at the time of the show cause hearing. Motions filed within seven (7) days of the show cause hearing shall be heard and considered at the time of the hearing. Motions entered upon the open record may be made orally or may be submitted in writing; motions entered at this time shall be orally argued before the Hearing Examiner who may take the ruling under advisement, or may rule from the bench on the matter. After the record is closed pursuant to the show cause hearing, all motions must be in writing.

150:1-15-12. Reports of hearing examiner; final order

(a) Pursuant to a show cause hearing, the hearing examiner shall timely prepare and file his report, containing findings of fact, conclusions of law and recommendations as to the disposition of the case with the Executive Director.

(1) If the report of the hearing examiner contains a recommendation adverse to a respondent, the final decision of the Executive Director may not be made until a proposed order is served on the respondent and an opportunity afforded for said respondent to file exceptions and briefs within ten (10) days to the Executive Director. The report shall be mailed to each party and their representatives. Within ten (10) days of the date the report is mailed, any party adversely affected by the proposed order who wishes a rehearing must submit such a motion, setting out reasons in briefs.

(2) If the hearing examiner has requested and received proposed orders, the recommended order shall also include a ruling on each proposed finding of facts and conclusions of law proffered in the proposed orders.

(3) The parties may waive compliance with this section by written stipulation.

(b) The Executive Director shall fully review the record and render a decision.

(1) A final order shall be issued in writing and shall include findings of fact and conclusions of law in accordance with the provisions of 75 O.S., Section 312.
(2) A copy of the final order shall be delivered by the marshal of the Department or his designee or by certified mail.

150:1-15-13. Rehearings

Upon receipt of an application for rehearing, the Executive Director or his designee may remand the proceeding to the original hearing examiner or to a newly appointed hearing officer at his discretion for further evidence or argument; the Director may reject the application; or the Director may grant the application in part or in its entirety.

150:1-15-14. Appeal of final orders; transcripts

(a) Any party aggrieved by a final order may appeal to the district court within thirty (30) days of the issuance of a final order or thirty (30) days from a final disposition of a properly filed application for rehearing.
(b) A transcript of oral testimony at the hearing shall be provided to the court by the Oklahoma Department of Commerce upon payment of the costs of preparation of the transcript by the appealing party. Requests for transcripts shall be made in writing and filed with the Department of Commerce. Costs shall be assessed as provided in Subchapter 9 of this chapter.

150:1-15-15. Transmittal of confidential materials

In the event the record must be transmitted to a District Court for review, those parts of the record containing confidential materials shall be segregated and the court shall be notified at the time of transmission of the confidential nature of the records; the Department shall move the court to issue a protective order so that the materials will not be available to the extent that disclosure of any of the information would harm any financial interests or become broadcast.

150:1-15-16. Stay of order

In the event a stay of any Department order or decision is requested by any party affected or prejudiced by the Order pending a Motion for Rehearing or a Petition for Judicial Review of the Order, the Department shall stay the order unless it is demonstrated or apparent from the record that the stay of the order will result in irreparable harm and unreasonable delay of any Department action or irreparable harm to any party or person.

150:1-15-17. Ex parte communications

No ex parte communications concerning individual proceedings shall be made to the Director or the hearing examiner during the pendency of the administrative proceedings or judicial review.

SUBCHAPTER 17. PROCEDURES APPLICABLE TO ADOPTION, AMENDMENT AND REPEAL OF RULES

150:1-17-1. Authority

The Department may promulgate, amend, or appeal a rule on its own initiative.

150:1-17-2. Petition

(a) Any interested person may petition the Department requesting the promulgation, amendment, or repeal of a rule in the following manner.

BEFORE THE

OKLAHOMA DEPARTMENT OF COMMERCE

IN RE (nature of proceeding, - - e.g. request for amending of rule)))) Case No._____ (to be completed by staff)

(b) All such petitions shall be in writing and shall be filed with the Department at its principal office.

(c) The petition shall state clearly and concisely, all matters pertaining to the requested action and the reasons for the request.

(d) The request must also state clearly and specifically whether there are any persons known to the petitioner who may be concerned with the subject of the request and who should be notified of the hearing.

150:1-17-3. Consideration of petitions

Petitions concerning rules will be considered by the Director and a written determination to petitioner shall be delivered within sixty (60) days; provided, if the Director in his discretion decides to conduct rulemaking hearings, the Director may select any Department employee to conduct such hearings.

150:1-17-4. Hearings; appearances; presentation of views

(a) Unless otherwise specified, and stated in the notice of hearings, all rulemaking hearings shall be conducted in the offices of the Department of Commerce.

(b) Any persons interested or affected by proposed actions may appear at rulemaking hearings. An appearance may be made individually, or by a representative.

(c) Persons wishing to argue or discuss rules orally at hearing may notify the Department in advance of the hearing and schedule a time not to exceed twenty (20) minutes to present oral information.

150:1-17-5. Opportunity to comment

(a) Prior to the adoption, amendment or repeal of a rule, the Department shall afford any interested person a reasonable opportunity to submit

data, views, and arguments, concerning such proposed action.
(b) If the rule under consideration is one which affects the substantive rights of any person, the Department shall grant any person or association a reasonable opportunity to participate in an oral hearing, when so requested in writing. Oral argument on any rule shall also be granted when requested by a subdivision or agency of government. If substantive rights of the person, association or governmental entity are affected by or are involved in the rule to be considered, the Department may, in its discretion refuse to hear oral argument and require matters to be submitted in writing. The Department shall, in the exercise of its sound discretion, determine whether the proposed action affects any substantive rights.
(c) The Department shall consider fully all written and oral submissions respecting the proposed rule.

150:1-17-6. Emergency rules

Should the Department find that the eminent peril of the public health, safety, or welfare requires immediate adoption of a rule, the Department may adopt emergency rule(s) without adherence to the above rules concerning notice and hearing. All emergency rules must be adopted pursuant to the Administrative Procedures Act and shall be effective in accordance with the Act.

SUBCHAPTER 19. ACTUAL AND NECESSARY TRAVEL REIMBURSEMENTS

150:1-19-1. Actual and necessary expenses

(a) Allowable and approved actual and necessary expenses incurred by the Director and other employees of the Oklahoma Department of Commerce and others, authorized by the Director for the purpose of business recruitment, shall be reimbursed to such employee in accordance with the rules of this subchapter adopted pursuant to 74 O.S.500.18(B)(5)(A).
(b) All requests for the use of actual and necessary expense reimbursement must be approved in advance by the Director.
(c) Prior to review by the Director, an employee's request to travel under actual and necessary reimbursement shall be reviewed and approved by the requesting employee's immediate supervisor and division director.
(d) Requests to travel under actual and necessary reimbursement shall be submitted on required Agency forms.
(e) The Director shall notify the requestor of approval by returning the signed travel request form to him.

[**Source:** Amended at 37 Ok Reg 1040, eff 9-11-20]

150:1-19-2. Criteria for approval

(a) Requests to travel under actual and necessary reimbursement shall be reviewed to determine if the travel is to further the Agency's

priorities, Objectives and Strategies for national and international recruitment or export assistance.
(b) Requests to travel under actual and necessary reimbursement which do not meet the requirements set forth in this section shall be denied.

[**Source:** Amended at 18 Ok Reg 3495, eff 9-14-01]

150:1-19-3. Review of expenses; criteria for reimbursement

(a) Expenses claimed for actual and necessary reimbursement shall be reviewed by the Director of the Oklahoma Department of Commerce and individually approved or disapproved.
(b) In reviewing expenses claimed for actual and necessary reimbursement, the following criteria shall be applicable:

(1) The purpose for which the travel was intended and requested was a qualified one as set out in 150:1-19-2.
(2) The expense shall be a reimbursable expense under the provisions of 74 O.S., 500.2 et seq. and the guidelines provided by the Office of Management and Enterprise Services regarding reimbursable expenses.
(3) Expenses for laundry and dry cleaning are reimbursable only if the employee is in travel status more than seven (7) nights.
(4) Expenses for others must be verified by receipt. The receipt shall designate date of expense, to whom expense was paid (name of business or entity), for whom the expense was made, a brief explanation of the expenditure (i.e. lunch and tip, lodging, transportation charges), the business purpose of the expenditure (what was the nature of the business involved), and the dollar amount of the expense.
(5) Expenses for meals for others shall be reimbursable if they are ordinary and necessary expenses incurred by economic developers. As provided in 26 U.S.C. 274(a)(1)(A), expenses must be directly related to or associated with, the active conduct of business. Expenditures must be on behalf of the company or individuals in whose name the travel claim has been submitted. Documentation as required in paragraph (4) of this section must reflect that the expense was incurred for more than a general expectation of some specific business benefit at some future time; and that business was engaged in during the meal and the main purpose of the combined business and meal was the active conduct of business.

(c) Employees, submitting requests for reimbursement under actual and necessary expenses, shall be required to provide all information necessary to enable the Financial Services Division of the Department to process the request.

[**Source:** Amended at 24 Ok Reg 1201, eff 5-25-07 ; Amended at 31 Ok Reg 882, eff 9-12-14 ; Amended at 37 Ok Reg 1040, eff 9-11-20]

150:1-19-4. Reimbursement at per-diem rate

Reimbursement for approved travel and subsistence not meeting the criteria for actual and necessary expenses will be reimbursed at the

per-diem rate as authorized by the State Travel Reimbursement Act, 74 O.S., 500.2 et seq.

150:1-19-5. Required report; contents

(a) The Oklahoma Department of Commerce shall submit a report regarding the actual expenses exempted from the per diem and lodging provisions of 74 O.S., 500.1 through 500.18 no later than the first day of September following the end of each fiscal year to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(b) The report will be completed by the Financial Services Division of the Department and shall contain the following information:

(1) Name of person incurring expense;
(2) Destination and name of hotel;
(3) Purpose and result of travel; and
(4) Amount of expenses reimbursed.

[**Source:** Amended at 31 Ok Reg 882, eff 9-12-14]

SUBCHAPTER 21. AUDITS

150:1-21-1. Purpose

The purpose of these rules is to establish the policy and procedures for the audit of state and federal funds administered by the Oklahoma Department of Commerce. A contractor that receives federal funds from sources other than the Department may face a stricter audit requirement, overall, than the Department's requirement. It is the responsibility of the contractor to be aware of any such requirements by other funding agencies.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92]

150:1-21-2. Definitions

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

"Act" means the Single Audit Act of 1984, as amended by the "Single Audit Act Amendments of 1996", both codified at 31 U.S.C. Sections 7501 et seq.

"Contractor" means a grantee or subrecipient.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. Section 5001, and any successor agencies thereto.

"Government Auditing Standards" means the publication titled "Government Auditing Standards" (commonly referred to as the "Yellowbook") issued by the Comptroller General of the United States, as may be revised from time to time.

"OMB" means the United States Office of Management and Budget.

"Professional service contractors" means those contractors that, because of special education, knowledge or skills, are contracted with by the Department to exercise such specialties in service on behalf of the Department.

"Program Audit" means an audit only on the Department's contracts.

"Single Entity Audit" means a single audit on the entire organization which includes all of the funds the organization receives and expends.

"Uniform Guidance for Federal Awards" means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards found in Title 2 of the Code of Federal Regulations.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 33 Ok Reg 1278, eff 9-11-16]

150:1-21-3. Applicability of various acts and rules; incorporation by reference

(a) The Department is subject to the Act. It is the policy of the Department to comply with the provisions of the Act and Uniform Guidance for Federal Awards.

(b) The applicability of the Act is as follows:

(1) The provisions of the Act apply to contractors of federal funds administered by the Department as subrecipients under the Act and Uniform Guidance for Federal Awards. Contractors defined as state and local governments and non-profit organizations by the Act are independently subject to:

(A) The Act;

(B) Uniform Guidance for Federal Awards;

(C) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (Text of the "Common Rules for Contracts" beginning October 1, 1988 published in the "Federal Register", March 11, 1988); and

(D) "Government Auditing Standards"; and

(2) The provisions of the Act, the federal rules and regulations and OMB publications cited herein are hereby incorporated by reference.

(c) Contractors are required as follows:

(1) Contractors that are not subject to the Act shall be subject to audit requirements which conform to the requirements of these rules:

(A) "Government Auditing Standards"; and

(B) Uniform Guidance for Federal Awards.

(2) The provisions of the Act, the federal rules and regulations, and OMB publications are hereby incorporated by reference.

(d) Federal documents cited in the rules of this subchapter are published by the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9325.

(e) Municipalities shall comply with applicable provisions of Oklahoma law, including specifically, without limitation, 11 O.S. Section 17-105.

(f) Counties shall comply with applicable provisions of Oklahoma law, including specifically, without limitation, 19 O.S. Sections 177.1 and 177.5.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 33 Ok Reg 1278, eff 9-11-16]

150:1-21-4. Audit requirements

(a) The Department's audit requirements shall apply to all contractors unless otherwise exempted.
(b) The following contractors shall be exempt from the provisions of this subchapter:

(1) Professional services contractors;
(2) Vendors of products; and
(3) Foreign office contractors.

(c) Audits shall be performed annually.
(d) Audits required by the Department shall be for both financial and program compliance. Program compliance shall be determined by reference to the Uniform Guidance for Federal Awards or such documents as OMB or its designee may issue to replace it. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.
(e) All "government entities", as such term is defined by applicable law, shall comply with the applicable provisions of 74 O.S. Section 212A.
(f) Any contractor not subject to the provisions of subsection (c) of this section or otherwise exempted from the provisions of this subchapter shall be subject to the following requirements:

(1) If a contractor receives less than twenty-five thousand dollars ($25,000.00) from the Department during the contractor's fiscal year, no audit is required;
(2) If the contractor is a municipality with an income of twenty-five thousand dollars ($25,000.00) or more during a fiscal year, it is required by 11 O.S. Section 17-105 to have an annual financial statement audit prepared; and the contractor shall either provide one original, complete, bound audit report to the Department or upload a copy to the online grants management system within thirty (30) days of the issuance of the report;
(3) If the contractor is a municipality with an income of twenty-five thousand dollars ($25,000.00) or more during a fiscal year and a population of less than two thousand five hundred (2,500) as of the most recent Federal Decennial Census, and an annual financial statement audit is not required by another law, regulation or contract, the body shall either have an annual financial statement audit prepared or an agreed-upon-procedures engagement as required by 11 O.S. Section 17-105(B); and the contractor shall either provide one original, complete, bound copy of the required report or upload a copy to the online grants management system within thirty (30) days of the issuance of the report;

(4) If the contractor is a county, an audit is required by 19 O.S. Sections 177.1 and 177.5; and the contractor shall either provide one original, complete, bound audit report to the Department or upload a copy to the online grant management system within thirty (30) days of the issuance of the report; and
(5) If a contractor expends funds that total seven hundred fifty thousand dollars ($750,000.00) or more of federal funds during the contractor's fiscal year, then an audit is required. The required audit shall be a Single Entity Audit.

(g) A Program Audit report is due within ninety (90) days of the end of the contract period.
(h) A Single Entity Audit report is due within thirty (30) days of the completion of the audit. This audit should be completed and the report submitted no later than nine (9) months after the end of the contractor's fiscal year, pursuant to Uniform Guidance for Federal Awards.
(i) The contractor shall submit one (1) original, complete bound audit report.
(j) If the Department does not require an audit, but the contractor has an audit performed that includes Department funds, the contractor shall provide one (1) original, complete, bound audit report to the Department within thirty (30) days of the issuance of the report.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 33 Ok Reg 1278, eff 9-11-16 ; Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-21-5. Content of audit

The contents of an audit shall include at minimum the following:
(1) The requirements of the "Government Auditing Standards" and/or Uniform Guidance for Federal Awards, whichever is applicable;
(2) A schedule of state awards, if state funds were received. This schedule shall include all state programs and shall be on such form(s) as may be prescribed by the Department;
(3) A schedule of federal awards, if applicable. This schedule shall include all federal programs and shall be on such form(s) as may be prescribed by the Department.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 33 Ok Reg 1278, eff 9-11-16]

150:1-21-6. Auditor requirements

The following requirements for auditors shall apply:
(1) If an audit includes federal funds, the auditor must be:
(A) a certified public accountant or firm; or
(B) a public accountant or firm licensed on or before December 31, 1970. The publication "Government Auditing Standards" states the qualification for the auditing staff assigned to the audit.
(2) If an audit covers only state funds, the auditor may be a public accountant licensed under the provisions of 59 O.S. Sections 15.1 through 15.9.

(3) Audit firms performing government entity audits must be in compliance with 74 O.S. Section 212A.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01]

150:1-21-7. Review of audits; appeals

(a) After receipt of an audit, the Department shall have six (6) months to review the audit. The Department is required to "ensure that appropriate corrective action is taken within six (6) months after receipt of the (contractor's) audit report in instances of noncompliance with Federal laws and regulations", as provided in Uniform Guidance for Federal Awards.
(b) After review, if it is determined that funds are owed to the Department, the Department may issue a management decision letter to the contractor listing the findings and questioned costs that will need to be addressed or refunded. If the parties cannot come to a resolution, or in lieu of the management decision letter, the Department shall issue a Notice to Show Cause pursuant to the provisions of Sections 150:1-15-1 et seq. of this chapter.
(c) Any party aggrieved by a final order of the Department may request an appeal pursuant to the provisions of Section 150:1-15-14 of this chapter.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 33 Ok Reg 1278, eff 9-11-16 ; Amended at 38 Ok Reg 1717, eff 9-11-21]

150:1-21-8. Charges for audits

(a) Contractors may charge audit fees in a reasonable proportional share unless in conflict with applicable federal requirements, when audits are conducted in accordance with the Act, Uniform Guidance for Federal Awards and the rule of this subchapter.
(b) Contractors shall not charge audit fees for Department contracts when audits are not conducted in accordance with the Act, Uniform Guidance for Federal Awards and the rules of this subchapter.
(c) Hospital contractors must conduct their audit in accordance with the rules of this subchapter and Uniform Guidance for Federal Awards in order to charge the audit fees to Department contracts.

[**Source:** Added at 9 Ok Reg 2709, eff 7-15-92 ; Amended at 18 Ok Reg 3495, eff 9-14-01 ; Amended at 33 Ok Reg 1278, eff 9-11-16]

SUBCHAPTER 23. [RESERVED]

SUBCHAPTER 25. LOCAL PROJECT FUNDING CONTRACTS

150:1-25-1. Definitions

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

"Financial assistance" means the act, process or program of the Department's participation in the matching, and/or contracting for, financial assistance funds for local project funding contracts.

"Local project funding contract" means an agreement between a state agency and either a local government or private entity, or both, in which the state agency agrees to provide funding to the local government or private entity which agrees to accomplish a public purpose. In addition, the direct benefits of such a contract accrue primarily to the local population rather than the state as a whole. If a state appropriation were to be made directly for the purpose of the contract and to the funding recipient, such appropriation would be a special law and conform to the requirements of Okla. Const. Art. V, 32 and 46. Local project funding contracts do not include contracts subject to state competitive bidding requirements. [Executive order 88-16]

150:1-25-2. Scope

Regardless of the funding source, whether federal or state appropriation or funds held and administered by the state in trust, if contracts are not subject to the Oklahoma Central Purchasing Act, the rules of this subchapter apply, except as set out in 150:1-25-11 herein.

150:1-25-3. Assistance

The instant rules and regulations of this title implementing and administering the powers, duties, funds and responsibilities of the Department, provide generally for departmentally approved financial assistance for certain works and programs and projects for the enhancement and utilization of human, community and economic development resources within and throughout the State of Oklahoma.

150:1-25-4. Applications; notices; requirements

(a) Contracts promoting the accomplishment of the mission of the Oklahoma Department of Commerce which is to promote and aid firms, farms and communities in their economic and community development efforts and create more and better jobs in Oklahoma shall be entered into pursuant to receipt of proper application and evaluation pursuant to applicable criteria. Applications shall be mailed pursuant to Notice of Availability of Funds published in the Oklahoma Register, a publication of the Oklahoma Department of Libraries. All eligible applicants must obtain the application and complete it and return it in a timely manner to be eligible for any funds listed in the Notice.

(b) Applications shall be mailed upon request to qualified organizations. "Qualified" organizations include the state, counties, cities, towns, school districts and non-profit and for- profit corporations, partnerships, joint ventures, community centers, Indian tribes and associations formed by and amongst or as a result of the foregoing, as designated and as may be limited by the Notice in the Oklahoma Register.

(c) Availability of application forms and any guidelines for filling it out and deadlines for receipt of applications shall be published in the Oklahoma Register.

(d) Each applicant must be an eligible entity as designated by the published Notice and must describe an eligible public purpose project within the powers of the Department to perform.
(e) Detailed requirements of each program will be set out in each application package and guidelines. Appeal procedures which an applicant may pursue will accompany each application package in the event an applicant is dissatisfied with the act or decision of the Department as it pertains to each individual application.

150:1-25-5. Notice to applicants

Applicants for the financing of a departmentally approved project, at the local level, as authorized and contemplated under the Oklahoma Department of Commerce Act and other applicable laws shall be notified by mail of one of the following after deadline for receipt of an application, within one hundred twenty (120) days:

(1) The application is recommended for funding and qualifications and limitations to obtain a contract will be outlined;
(2) If applicable, that the application is incomplete or incorrect and an explanation of the problem; time limitations for correcting the problem in order to remain a viable applicant shall be set out in the notice;
(3) The application is not recommended for funding; or
(4) Notification that the applicant or project purpose is ineligible under the program applied for.

150:1-25-6. Criteria

The evaluation and selection criteria for projects shall include:

(1) The project must fall within the parameters of lawful responsibilities of the Department;
(2) The benefit of a project to the area to be served by the project to a reasonable number of citizens in the locale or community;
(3) Extent of local participation, if any, in the project;
(4) Previously received financial assistance by and through the Department or any other state or governmental entity;
(5) Administrative capacity of applicant and/or historic administrative experience;
(6) Actual established need determined after review and investigation by departmental personnel;
(7) On site visits and/or documentation through notarized information request forms;
(8) Compliance with federal laws, rules or regulations;
(9) The eligibility of the user of the proceeds;
(10) The availability of other assistance and the ability of the applicant to acquire or obtain such assistance;
(11) The economic feasibility of the project in view of its economic viability and the adequacy and reliability of the information reflected by the application for funds;
(12) Statewide needs and local public interest in a given project;
(13) The availability of funds to the Department; and
(14) Employment of citizens.

150:1-25-7. Other criteria

Not all criteria listed in 150:1-25-6 shall be applicable to all projects; however, the identified need of an activity and the lawful responsibility of the Department shall be determining factors in funding of a particular project. Application packets for specific programs may specify additional or alternative criteria.

150:1-25-8. Contracts

Once it is established that applicable criteria have been met by an entity, a local project funding contract with applicant may be written, subject to funding availability. The contract will require that expenditures shall be documented as stated in the terms of the contract.

150:1-25-9. Expenditures of funds

Expenditures of funds may be on a reimbursement or advance basis as specified in a local project funding contract. The budget in the contract is the basis for validation of any request for funds.

150:1-25-10. Records

All books and records of an awarded local project funding contract applicant pertaining to expenses and budget shall be available for inspection by Department.

150:1-25-11. Supersession of rules

If federal funds or funds governed by or subject to federal oversight are the Departmental source for development of any contracts, the rules or requirements of any federal law or rules or requirement or any state law or, if necessary, rules adopted for the particular program, that conflict with any rule in this subchapter shall supersede the rules of this subchapter.

SUBCHAPTER 27. INTERPRETATION OF RULES

150:1-27-1. Purpose; scope

(a) The rules of this chapter are adopted for the purpose of simplifying procedure, avoiding unnecessary delay, saving expenses and facilitating the administration of the statutes and programs for which the Department of Commerce is responsible. To that end, the rules of this chapter shall be given fair and impartial construction. The rules of this chapter shall be cumulative to the Administrative Procedures Act, 75 O.S., Section 250 et seq.

(b) The rules of this chapter shall govern all formal proceedings of the Department.

150:1-27-2. Informal proceedings

Informal proceedings may be held by agreement between the Department or its agents and any party.

150:1-27-3. Cite

The rules in this chapter shall be known as the General Rules of Practice and Procedure of the Oklahoma Department of Commerce and may be cited as 150:1-1-1 et seq.

150:1-27-4. Forms

All forms referenced in these rules in this chapter may be obtained at the offices of the Department of Commerce.

150:1-27-5. Severability

The provisions contained in this chapter are severable. The repeal, amendment, or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining provisions.

150:1-27-6. Interpretation

The rules of this chapter must be read in conjunction with their enabling acts and shall be interpreted in the amended manner required pursuant to amendments of any enabling acts cited herein or other laws.

APPENDIX A. PETITION FOR HEARING

Figure 1

[**Source:** Added at 18 Ok Reg 3495, eff 9-14-01]

CHAPTER 10. CERTIFICATION OF INDUSTRIAL PARKS

[**Authority:** 62 O.S., § 88.2]
[**Source:** Codified 12-30-91]

150:10-1-1. Purpose; eligible applicants

(a) The purpose of the Industrial Park Program is to establish a method and set of standards by which industrial parks may become voluntarily certified. Such certification process will provide uniformity in the definition of "Industrial Park" so that prospective occupants can be assured of the minimal quality characteristics, services and amenities that an Oklahoma industrial park will provide. Additionally, the Certification of the Department of Commerce will qualify parks as an eligible participant in the Oklahoma Small Business Linked Deposit program created in the Act found at 62 O.S., Section 88.1 et seq.
(b) Eligible applicants are developers whose industrial parks meet the following minimum requirements:

(1) The application form requiring qualifying information and other general information regarding desirable features must be completed and submitted;
(2) The park site must be zoned for industrial use;
(3) Utilities including electrical, gas, telephone and water/sanitary service, must be reasonably accessible to park site;
(4) The community must have a governing board that oversees park development;
(5) A preliminary plat or equivalent, must be prepared and submitted for approval by the governing board;
(6) A minimum of five (5) acres for industrial usage must be set aside for park site; and
(7) A paved all-weather access road to site must be in place or a completed plan, including financing must be available.

150:10-1-2. Certifying Team

The purpose of the Industrial Park Certifying Team shall be to insure eligibility and compliance by industrial park developers with the Industrial Park Certification Program.

150:10-1-3. Application

(a) Application form. An industrial park developer shall obtain an application form from the Business Development Division of the Department of Commerce, or a successor or assignee.
(b) Endorsements.

(1) Upon completion of the application form, the developer shall present it to any two (2) of the following governmental or economic development organizations:
(A) Local chambers of commerce,
(B) Regional economic associations,
(C) Sub-state planning districts,
(D) Board of County Commissioners,
(E) Industrial trusts, or
(F) Municipal governing body

(2) Endorsement of the park site by two (2) entities willing to sponsor the park must be included with the application.

150:10-1-4. Certification

(a) An industrial park certifying team will consist of two (2) representatives from each of the two (2) sponsoring organizations (identified in 150:10-1-3(b)) and one or more Department of Commerce staff personnel.

(b) The team shall review the application form for completeness of information. The certifying team shall meet with the park developer and review the application and supporting documents to verify all information.

(c) The industrial park may be personally inspected by the certifying team.

(d) Upon meeting all minimum requirements of the certifying team pursuant to the rules of this chapter, the Industrial Park shall receive a Certification from the Oklahoma Department of Commerce.

(e) Any park not achieving certification shall be entitled to a 180-day grace period to accomplish meeting the criteria. The certifying team may aid in this effort. If the necessary improvements are not made within one-hundred and eighty (180) days, a new application must be submitted when the industrial park meets the certification criteria.

(f) A Certification shall be sent to the developer by the Department of Commerce within ten (10) days of certification approval by the Team.

150:10-1-5. Review of certification; relegation of certification

Each Certified Industrial Park shall be reviewed every three (3) years by the certifying team, or, if some members are unavailable, a team of similar composition appointed by the Executive Director of the Department of Commerce to determine that certification standards are still being met. In the event they are not, the Department shall issue a Relegation of Certification and deliver it to the Park developer and the Linked Deposit Board created at 62 O.S., Section 88.1 et seq. within thirty (30) days.

150:10-1-6. Information

Any industrial park developer may obtain information about the certification program from the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104-3234; or by calling 1-800-879-6552, or 405-815-5278.

[**Source:** Amended at 18 Ok Reg 3502, eff 9-14-01]

150:10-1-7. Appeals

Any protest of denial of certification of an industrial park may be pursued through Individual Proceedings before the Oklahoma Department of Commerce. See Rules of Practice of the Oklahoma Department of Commerce, 150:1-11-1 et seq.

150:10-1-8. Application; severability and interpretation

(a) The rules of this chapter shall govern all proceedings in regard to Certification of Industrial Parks for purposes of eligibility as a participant in the Oklahoma Linked Deposit Act, 62 O.S., 88.1 et seq. as amended from time to time.

(b) The provisions contained in this chapter are severable. The repeal, amendment, or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining portions.

(c) The rules of this chapter must be read in conjunction with state laws and rules regarding the Small Business Linked Deposit Act and Department of Commerce enabling acts and rules and shall be interpreted in any amended manner necessary as a result of amendments to those acts, rules, and any other laws or official opinions.

150:10-1-9. Informal and formal proceedings

(a) Informal proceedings regarding any part of the industrial park certification process may be held by agreement between the Department's designated agents and any applicant for certification.

(b) Formal proceedings regarding the industrial park certification process shall be in accordance with Rules of Practice of the Department of Commerce, 150:1-11-1 et seq.

150:10-1-10. Cite

The rules of this chapter shall be known as the rules for Certification of Industrial Parks by the Oklahoma Department of Commerce and may be cited as 150:10-1-1 et seq.

150:10-1-11. Recertification of industrial parks

When a previously certified industrial park seeks recertification from the Department of Commerce, the process for recertification is as follows:

(1) For those certified industrial parks where there is no change from the original application made to the Department of Commerce, a letter of endorsement is required from each of the two sponsoring organizations that sponsored the original application. Once the letters of endorsement are received, a recertification shall be issued by the Department of Commerce.

(2) For those certified industrial parks where there is a change from the original application made to the Department of Commerce, a representative of the Department of Commerce will make an on-site examination of the certified industrial park, and if the on-site examination is satisfactory, a letter of endorsement is required from each of the two sponsoring organizations that sponsored the original application. Once the letters of endorsement are received a recertification shall be issued by the Department of Commerce.

[**Source:** Added at 23 Ok Reg 1200, eff 5-25-06]

CHAPTER 15. SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

[**Authority:** 74 O.S., §§ 5003.6 and 5017; 42 U.S.C. 5301 et seq.]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. GENERAL

150:15-1-1. Purpose

(a) The intent of the Small Cities Community Development Block Grant Program is to provide financial assistance to eligible units of general local government (except entitlement governments as defined by 42 U.S.C., 5301 et seq. as amended and Indian Tribes) in order to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income.
(b) Limited discretionary authority is vested in the State by the program through the annual development of a State Plan or Final Statement for the utilization and allocation of federal funds appropriated by Congress to the U. S. Department of Housing and Urban Development (hereinafter HUD) for pass-through to the designated state agency, the Oklahoma Department of Commerce.

150:15-1-2. Authority

The legal authority for the Small Cities Community Development Block Grant Program is vested in the Oklahoma Department of Commerce pursuant to the Housing and Community Development Act of 1974, as amended, (hereinafter the Act) 42 U.S.C., 5301 et seq. as amended, and the subsequent designation of the Governor of Oklahoma or his designee dated September 30, 1981.

150:15-1-3. Scope

(a) During each program year, as administered by the State, financial assistance will be made available to qualified units of local government for purposes of implementing specific project proposals based on locally determined needs that further the stated intent of the Small Cities Community Development Block Grant Program.
(b) Eligible units of local government are incorporated towns/cities and counties that are not participants in the Community Development Block Grant Entitlement Program established in 42 U.S.C., 5301 et seq.; 24 CFR, Subpart V, 570.300-570.308.

150:15-1-4. Definitions

When used in this chapter, the following words or terms shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Housing and Community Development Act of 1974, as amended, 42 U.S.C., 5301 et seq. as amended.

"The Annual State Plan/Final Statement" means the federally required statement of state program objectives and method of program

funds (including program income and recaptured funds) distribution reviewed for approval annually by HUD. The Annual State Plan/Final Statement will be developed annually by the Department in accordance with 24 CFR, Part 570 Subpart I, 570.488 et seq. and 24 CFR, Part 85, Subpart B, 85.11 through consideration of verbal and written public input obtained during input sessions and a federally required public hearing. Public input taken regarding the State Plan/Final Statement obtained from either the input sessions or public hearing may affect the content of the Agency's program rules.

"Department" means the Oklahoma Department of Commerce.

"HUD" means the United States Department of Housing and Urban Development.

"Leverage Funds: Community Development" means dollar value equivalents/resources in an Applicant's possession that the Applicant is willing to contribute toward the overall completion of a project proposal. This includes, but is not limited to, resources such as force account labor, materials, equipment, other cash funds regardless of their source.

"Leverage Funds: Economic Development" means new money contributed to the company for the express purpose of implementing the proposed project. The source of the new money may be cash or other valuable consideration, bank loans, proceeds from the sale of stock or bonds, or loans from other public agencies.

"Low and Moderate Income Household" means a household whose income does not exceed eighty percent (80%) of the median family income for the area as determined by the U.S. Department of Housing and Urban Development with adjustments for smaller and larger families. The Oklahoma Department of Commerce has adopted the aforementioned U.S. Department of Housing and Urban Development's program income limits and employs those income limits in its annual program Application and Applications Guidelines Packet.

"Units of Local Government" means incorporated towns/cities and counties that are not Community Development Block Grant program Entitlement Program participants.

150:15-1-5. National standards incorporated by reference

(a) The national standards for development of the State Plan/Final Statement are hereby incorporated by reference into the rules of this chapter. The standards are described by Congress in 42 U.S.C., 5301 et seq.; and by the U.S. Department of Housing and Urban Development 24 CFR, Part 570, Subpart I, 570.488 et seq.; and in 24 CFR, Part 85, 85.1 et seq. Additionally, standards for administrative requirements for Community Development Block Grants are described in 24 CFR, Part 85, 85.1 et seq. and are hereby incorporated by reference.

(b) Copies of these federal laws or regulations more fully describing the Community Development Block Grant program may be obtained from the office of the Oklahoma Department of Commerce, Office of Community Development during regular business hours Monday through Friday 8:00 a.m. to 5:00 p.m., excepting legal holidays.

[**Source:** Amended at 18 Ok Reg 3502, eff 9-14-01]

150:15-1-6. National objectives

At a minimum, each project proposal for a small cities community development block grant will be evaluated by the Department to insure compliance with at least one of the National program objectives: benefit to low and moderate income persons; aid in the prevention or elimination of slums and blight; or urgent need.

150:15-1-7. Program Contractors Implementation Manual

Proposed Small Cities Community Development Block Grant projects receiving funding under each set-aside will result in a contractual agreement between the sponsoring unit of local government and the Department. As an extension of the contract, the grantee unit of local government shall be provided with a Program Contractor's Implementation Manual. Projects must comply with the Contractor's Implementation Manual corresponding with the program year in which the project proposal was submitted.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

150:15-1-8. Technical assistance

The Department shall make available designated staff members for the purpose of providing general program technical assistance regarding proposed project concepts and program implementation for Small Cities Community Development Block Grants. Applicants may obtain proper staff contact persons' names from the program application packets and/or by contacting the Division Director of the Office of Community Development within the Department.

[**Source:** Amended at 18 Ok Reg 3502, eff 9-14-01]

150:15-1-9. Cite

The rules of this chapter shall be known as the Small Cities Community Development Block Grant Rules 150:15-1-1 et seq.

SUBCHAPTER 3. FUNDS

150:15-3-1. Fund distribution

(a) The program funds allocated annually to the State will be awarded to units of local government through a request for proposal process that shall include submission of formal project proposals as described in an application guidelines packet developed annually by the Department.
(b) The application packet is developed in such a manner that it describes the threshold criteria for project selection as set out in the State Plan/Final Statement.

(c) The State Plan and/or application packets shall be made available to eligible applicants and interested parties on a request basis. Requests for the State Plan and/or application packets should be directed to the Department.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

150:15-3-2. Funding categories

(a) The annual allocation of program funds made available to the State will be divided into various categories as determined by the Executive Director.
(b) The amount of the annual allocation devoted to a funding category will be determined by the Executive Director of the Department after the federally required public hearing and will be set out in the annual State Plan.
(c) The State Plan and/or application packets shall be made available to eligible applicants and interested parties on a request basis. Requests for the State Plan and/or application packets should be directed to the Department.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

150:15-3-3. Geographic allocation of funds [REVOKED]

[**Source:** Revoked at 13 Ok Reg 703, eff 8-21-95 (emergency); Revoked at 13 Ok Reg 2347, eff 6-27-96]

150:15-3-4. Grant amounts

(a) Maximum grant amounts per project in various project categories will be established annually in the State Plan to insure maximum utilization of funds and the widest distribution of assistance within the limited allocation provided to the State.
(b) The maximum grant amounts set forth in the State Plan shall apply to all grant applications and awards made in the program year corresponding with the program year in which proposals are submitted.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

150:15-3-5. Partial funding

The State reserves the right within its discretionary authority to adjust Community Development Block Grant funding request amounts to amounts less than original application funding request amounts based on the most efficient and equitable utilization of the State's allocated funds and practicability.

150:15-3-6. Additional available funds

(a) Annually, funds for Small Cities community development Block grant programs may become available as the result of:

(1) Project cancellations;
(2) Projects completed under original cost estimates;
(3) Deobligated funds;

(4) Funds allocated but not utilized; or,
(5) Other circumstances.

(b) In keeping with the annual State Plan/Final Statement as approved by HUD, the Department shall allocate these funds, based on need:
(1) As to timing or expenditure;
(2) Amount of funds available for re-use; and,
(3) The most appropriate use of these funds.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

SUBCHAPTER 5. APPLICATION AND SELECTION

150:15-5-1. Application

For the purpose of selecting grantees, the State will require all units of local government interested in Small Cities Community Development Block Grants to submit an application in a form prescribed by departmental guidelines as provided in the program application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal as described in the current year's State Plan and application packet developed pursuant thereto.

(1) The Department will make available upon request application forms and application guidelines annually which shall comply with the current State Plan.
(2) The forms and guidelines will provide threshold criteria information that will assist applicants in their grant proposal preparation.
(3) The guidelines and forms set forth shall apply to all grant applications and awards made in the program year corresponding with the application and application guidelines packet.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

150:15-5-2. Threshold and selection criteria

For the purpose of selecting Small Cities Community Development Block Grant project proposals eligible for funding, the Department will subject all project proposals to set-aside specific minimum threshold requirements and selection factors which shall be set out annually in the State Plan/Final Statement prepared by the Department, and the application and application guidelines packets. Threshold consideration will at a minimum, determine whether project proposals as designed are likely to accomplish at least one of the National Program Objectives, and citizen participation requirements, and whether the project proposal provides in a comprehensive and intelligible manner information requested in the application according to application guidelines.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

SUBCHAPTER 7. PROGRAM ADMINISTRATION

150:15-7-1. Program income

(a) Program income, other than loan repayments on Economic Development and Community Development Projects, will remain with local recipients of Community Development Block Grant funds to the maximum extent feasible. Program income retained by local recipients must be utilized for Community Development Block Grant eligible activities and must be administered in accordance with federal program requirements and regulations and must be reported to the Oklahoma Department of Commerce.

(b) Program income received from Economic Development and Community Development Financing projects from Fiscal Years 1987 to the present shall be deposited in the State's Revolving Fund in accordance with the annually adopted and federally approved State Plan/Final Statement.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96 ; Amended at 18 Ok Reg 3502, eff 9-14-01]

150:15-7-2. Program violations

Under any of the following circumstances, the State shall consider a violation of Community Development Block Grant program policies and procedures to have occurred:

(1) Notice by the Oklahoma Department of Commerce that violations have resulted in substantial non-compliance or nonconformance with regard to unmet benefit to low and moderate income persons as set out in the project application and/or other failures to meet National Program objectives; or,

(2) Notice by the Oklahoma Department of Commerce that there has been the provision of false information in proposed project applications and/or project reports; or,

(3) Notice by the Oklahoma Department of Commerce that requirements of federal statute, federal regulations or the rules of the Department have not been met or have been violated; or,

(4) Notice by the Oklahoma Department of Commerce that there is a significant deviation from the grant agreement; or,

(5) Notice by the Oklahoma Department of Commerce that finding that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not or cannot be effected, in the judgment of Department staff within a reasonable time; or,

(6) Notice by the Oklahoma Department of Commerce that there has been a finding of fraud; waste or mismanagement of any current or prior State or federally funded project; or,

(7) Notice by the Oklahoma Department of Commerce that one or more of the project activities have not begun within six 6) months after a grant award unless significant justification for the delay exists is fully documented in a timely manner, and in such a form

and terms as requested by the Department.

150:15-7-3. Corrective and remedial actions

(a) Under any of the circumstances described as violations in 150:15-11-1 during the application stage or grant stage, the State may take the following actions:

(1) Condition grant contracts;

(2) Withhold funds;

(3) Reduce the total amount of a grant award;

(4) Require the return of unexpended funds; require repayment of expended funds;

(5) Cancel a grant agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation;

(6) Deny future program applications and participation for a period not to exceed two (2) program years; or

(7) Re-score an original project proposal upon which the grant award decision was based.

(b) Additionally, the State reserves the right under circumstances of possible program violations to request singularly, or in combination, information regarding:

(1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the causes of the program violation(s);

(2) Any activities undertaken that were not in conformance with the approved program or application process or that were in non-compliance with applicable laws or regulations;

(3) The recipient's or applicant's capacity to carry out the approved or proposed program in a timely manner; and,

(4) Progress schedules for completing approved or proposed activities.

(c) Prior to taking any corrective and/or remedial actions, a notice of show cause hearing shall be issued by the Department. The applicant/grantee shall have ten (10) working days to appear and show cause as to why the corrective and/or remedial actions should not be taken.

150:15-7-4. Grantee responsibilities

The grantee of a Small Cities Community Development Block Grant shall be responsible for the following:

(1) The Grantee shall be responsible for taking all action necessary to enforce the terms of the grant agreement against any private or public participant that fails to comply with applicable provisions of the grant agreement or any contract or documents resulting from it, and to recover on behalf of the State any liabilities that may arise as the result of the breach of the grant agreement by any participant. Nothing in this subsection shall restrict the State's rights to enforce independently the terms of any grant agreement or any contracts or documents resulting from it or to recover any sums that may become due as the result of a breach of such contract.

(2) The Grantee shall comply with Treasury Circular 1075 and the Oklahoma Department of Commerce requirements regarding cash management of federal funds as set out in the Department's Community Development Block Grant Contractors Policy and a Procedure Manual which is hereby incorporated.
(3) The Grantee shall comply with 24 CFR Part 85, Uniform Administrative Requirements for Grants and cooperative Agreements to State and Local Governments and OMB Circular A-87, Cost Principles for State and Local Governments, except as directed otherwise by the Oklahoma Department of Commerce, as they relate to the application, acceptance and use of federal funds, and with the Oklahoma Department of Commerce requirements pursuant thereto.
(4) The Grantee shall maintain records and accounts, including, but not limited to, property, personnel and financial records, that properly document and account for all project funds. Specific types and forms of records may be required by the Department. All such records and accounts shall be made available upon demand by the Department for purposes of inspection and use in carrying out its responsibilities for administration of the funds.
(5) The Grantee shall furnish the Department with narrative and financial reports related to the elements of a contract in the forms and at such times as may be required by the Department.
(6) The Grantee shall retain all books, documents, papers, records, and other materials involving all activities and transactions related to its contract for at least three (3) years from the date of submission of the final expenditure report or until any audit findings have been resolved, whichever is later. The Grantee shall, as often as deemed necessary by the Department, permit authorized representatives of the Department, the U.S. Department of Housing and Urban Development and the Comptroller General to have full access to and the right to fully examine all such materials.
(7) The Grantee shall promptly return to the Department any funds received under its contract that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received as of the final date of the period funded.
(8) The Grantee shall comply with the Department's audit policy including the single Audit Act of 1984 (P.L. 98-502, 31 U.S.C., 7501 et seq.), as applicable to governmental grantees.
(9) The Grantee shall provide the Department timely copies of reports on any audits that include funds received from the Department.

(A) Audits shall be performed by a certified public accountant or firm, or by a public accountant or public accounting firm licensed no later than December 31, 1970
(B) The audit shall be performed in accordance with Government Auditing Standards; Compliance Supplement for Single Audits or State and Local Governments; generally accepted auditing standards established by the

American Institute of Certified Public Accounts; and the Department's requirements.

(10) Grantee shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C., 2000d et seq.), prohibiting discrimination on the basis of race, color or national origin under any program receiving federal funds.

(11) Grantee shall comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284, 42 U.S.C., 3601 et seq.) regarding fair housing.

(12) The Grantee shall comply with Executive Order 11063 (1962) as amended by Executive Order 12259 regarding equal opportunity in housing.

(13) The Grantee shall comply with Section 109 of the Housing and Community Development Act of 1974, prohibiting discrimination on the basis of race, color, national origin or sex in connection with funds made available pursuant to the Act.

(14) The Grantee shall comply with Section 109 of the Housing and Community Development Act of 1974 prohibiting discrimination on the basis of age and handicap as provided in the Age Discrimination Act of 1975 (42 U.S.C., 6101 et seq.); and, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C., 794).

(15) The Grantee shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u) regarding opportunities for training and employment for low-income persons in project areas and awarding of contracts for program work to businesses in or owned in substantial part by residents of project areas.

(16) The Grantee shall comply with Executive Order 11246 (1965) prohibiting discrimination on the basis of race, color, religion, sex or national origin and requiring affirmative action in connection with federally assisted construction contracts.

(17) The Grantee shall comply with the Davis-Bacon Act (40 U.S.C., 276a-276a-5) regarding payment of prevailing wages to workers on construction contracts in excess of two thousand dollars ($2,000.00).

(18) The Grantee shall comply with the Copeland Act (18 U.S.C., 40 U.S.C., 176c) regarding prohibitions against kickbacks.

(19) The Grantee shall comply with the Contract Work House and Safety Standards Act (40 U.S.C., 327 et seq.) regarding overtime compensation.

(20) The Grantee shall comply with the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C., 4231 et seq.) and accepts jurisdiction of the state and federal courts for the purpose of enforcement responsibilities as such an official.

(21) The Grantee shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646)

(22) The Grantee shall comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C., 4831 et seq.) regarding the prohibition against the use of lead-based paint in residences receiving federal assistance.

150:15-7-5. Review and appeals process

(a) Applicants for Small Cities Community Development Block Grants may review their application and the funding decision made by the Department.

(b) Appeals shall not introduce new documentation that would change the basis on which a funding decision was made. Additionally, requests for appeal shall be made within thirty (30) days after the applicant has been notified that the application will not be funded.

(1) Citizen appeals of local government decisions must be made at the local level. An application which would have been funded but for a technical error in ranking will be funded as soon as sufficient Community Development Block Grant-Community Development funds become available, provided the proposed grant project remains viable and eligible.

(2) Appeals of departmental funding decisions regarding the economic development set-aside must be made by the sponsoring unit of local government. The Department will consider appeals of its economic development funding decisions only when the results of economic viability reviews are at issue. An application which would have been funded but for a technical error in the viability review will be funded as soon as sufficient Community Development Block Grant-Economic Development funds become available, provided the proposed project remains viable and eligible.

[**Source:** Amended at 13 Ok Reg 703, eff 8-21-95 (emergency); Amended at 13 Ok Reg 2347, eff 6-27-96]

SUBCHAPTER 9. CONSULTANT CERTIFICATION

150:15-9-1. Purpose

(a) The Oklahoma Department of Commerce recognizes that the effective use of limited Community Development Block Grant resources depends on the capacity of general-purpose units of local government to administer such funds. In cases where the government does not plan to administer such grants with its own staff, it is in the interest of the state and the local governments to ensure that those who contract to provide CDBG administrative services for a fee are thoroughly familiar with all relevant rules, regulations and policies of the program; therefore,

(b) All persons who administer CDBG grants for a fee, regardless of the source of pay, and who are not full-time employees of units of general purpose local government, shall be certified as CDBG grant administrators by the Department of Commerce before being hired for CDBG grant administration by CDBG grantees. Full-time employees of units of general-purpose local government do not have to be certified to administer CDBG grants, but their salaries or wages cannot be charged as an administrative expense unless they are certified. ODOC will maintain a list of certified CDBG grant administrators for review by interested grantees.

(c) The authority for such certification process is given to the State of Oklahoma pursuant to 42 U.S.C. §§ 5301, et seq.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99]

150:15-9-2. Requirements for certification

All applicants for certification must be citizens of the United States, attend a certification-training workshop and pass a certification examination. Applicants who fail to pass the required examination may apply to re-test after one year.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

150:15-9-3. Privileges of certification

Certified CDBG Administrators may administer projects on behalf of general-purpose local governments and may receive pay for their services. Each certified CDBG grant administrator will be included on a list maintained by ODOC. Certified status is conferred only on individuals, and not on firms or organizations. The certified head of a firm or organization is responsible for all work conducted under his/her name by employees who are not certified and he/she must sign off on all such work.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99]

150:15-9-4. Duration and recertification

Certification lasts for one (1) year. Each certified CDBG administrator is required to participate in at least one continuing education per year.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 18 Ok Reg 3502, eff 9-14-01 ; Amended at 31 Ok Reg 883, eff 9-12-14 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

150:15-9-5. Disciplinary action and complaint process

(a) In order to assure the highest level of performance by certified CDBG administrators, ODOC may take disciplinary action based on activities including, but not limited to, the following:

(1) Violation of Federal or State Statute, Regulation, or Rule, or the Small Cities Community Development Block Grant Program rules or program designs.

(2) Ethical violations as set forth herein.

(3) A certified CDBG administrator pleading guilty, nolo contendere, or being convicted of any felony.

(4) Failure to certify or recertify.

(5) Failure to properly supervise an interim CDBG administrator.

(b) Grievances or requests for investigation regarding certified CDBG administrators shall be confidential and shall be forwarded in writing to

the Director, Division of Community Development, of ODOC. All grievances and requests for investigation must be filed within six (6) months of the alleged activity, and all will be investigated and a report prepared on each. If the investigation warrants disciplinary action, the uniform hearing process of the Oklahoma Administrative Procedures Act shall be followed before such penalty may be imposed. If criminal activity is verified, the appropriate authorities will be notified.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

150:15-9-6. Penalties

(a) Depending on the nature of the proven violation, penalties to be imposed may include:

(1) Decertification
(2) Placing an administrator on probation
(3) Letter of admonishment
(4) Suspension of certified status
(5) Combination of the above

(b) Decertification will be automatic for failure to recertify, or attend a continuing education workshop, following notice with compliance date specified. All other violations will require a hearing.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

150:15-9-7. Process to impose penalties

(a) Upon Department of Commerce, the Division Director of the Division of Community Development, or his/her designees, are charged with investigating the grievance or request for investigation. The investigation will be undertaken within fifteen days of the receipt of the grievance or request for investigation.

(b) The Division Director makes a report of the findings of the investigation to the Administrator Responsibility Commission. The Administrator Responsibility Commission is a five-(5) person panel with representatives of one (1) representative from the Oklahoma Department of Commerce, two (2) representatives from the Council of Governments, and two (2) private Certified Grant Administrators. There shall be two (2) alternates, one (1) from the Council of Governments and one (1) from the private Certified Grant Administrators. The above representatives shall be selected by the executive director, president, or equivalent of the named organizations.

(c) On the basis of the investigative report and the grievance or request for investigation the Administrator Responsibility Commission shall determine if a formal disciplinary proceeding be commenced by the filing of a formal Grievance Form obtained from the Oklahoma Department of Commerce website (www.okcommerce.gov). The Administrator Responsibility Commission can also find that no formal action be taken, a letter of admonishment be written or direct the Division Director to take any other action permitted by the contract between the Oklahoma Department of Commerce and the general purpose local government.

(d) The complaint will be served on the Certified CDBG Administrator who shall have twenty (20) days to respond to the complaint.
(e) If a formal hearing in conducted, the hearing will be presided by the Administrator Responsibility Commission who shall be assisted by legal counsel to be retained by the Oklahoma Department of Commerce. The hearing shall be conducted pursuant to the provisions of the Oklahoma Administrative Procedures Act.
(f) At the conclusion of the disciplinary proceedings the Administrator Responsibility Commission shall present their proposed findings of fact and conclusions of law and recommendations to the Executive Director of the Oklahoma Department of Commerce.
(g) The Executive Director of the Oklahoma Department of Commerce shall issue final findings of fact and conclusions of law, impose discipline after considering the proposed findings of fact and conclusions of law and recommendations of the Administrator Responsibility Commission.
(h) Any person who is aggrieved by a decision regarding the imposition of a penalty shall be entitled to an administrative appeal pursuant to 75 O.S. 1991, 250 et seq. Oklahoma Administrative Procedures Act.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

150:15-9-8. Interim certification and use of mentor

(a) In the event an individual wishes to act as an administrator, and the individual has not previously been tested and failed, and individual can act as an interim CDBG administrator upon the completion of the following:

(1) The individual must provide written notice to the Oklahoma Department of Commerce of the interim CDBG administrator's name, address, telephone number; and the name of the certified CDBG administrator that has agreed to be the mentor and supervise the interim CDBG administrator. The Mentor form may be obtained from the Oklahoma Department of Commerce Website (www.okcommerce.gov).

(2) A statement that the interim CDBG administrator understands that he/she is subject to all of the same rules and standards as if they were a certified CDBG administrator, and is also subject to discipline.

(b) Interim certification is effective only until the next certification class and examination.
(c) The mentor must be a certified CDBG administrator in good standing and will cosign all forms, applications, and other documents with the interim CDBG administrator. In the event that a grievance or request for investigation is filed against the interim CDBG administrator, an automatic investigation will be instituted against the mentor to determine if the mentor properly supervised the interim CDBG administrator. The mentor may be subject to discipline for failure to properly supervise an interim CDBG administrator.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

150:15-9-9. Unethical conduct per se

The following practices are considered unethical conduct per se by the Oklahoma Department of Commerce.

(1) Certified CDBG Administrators shall not enter into contracts with an applicant offering to prepare an application to ODOC for CDBG funding assistance with the understanding that no fee for preparing the application will be charged if that administrator is selected to administer the project. Administrators shall enter into a separate contract for the preparation of the application if the Administrator wishes to be paid. The previous contract and/or fee shall have no impact on the fee negotiated between the Administrators and the city, town, or county the Administrator is negotiating with.

(2) All CDBG award recipients are to procure their CDBG Administrators from the list of certified CDBG Administrators, unless the recipient wishes to self-administer the project. Any attempt by a certified CDBG administrator to influence the selection of the certified CDBG administrator by the recipient of the CDBG award is unethical conduct.

[**Source:** Added at 15 Ok Reg 2937, eff 3-30-98 through 7-14-99 (emergency); Added at 16 Ok Reg 3387, eff 8-12-99 ; Amended at 33 Ok Reg 1281, eff 9-11-16]

CHAPTER 20. ECONOMIC DEVELOPMENT INNOVATION PROGRAM [REVOKED]

[**Authority:** 74 O.S., § 5003]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. GENERAL [REVOKED]

150:20-1-1. Purpose [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-1-2. Scope [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-1-3. Definitions [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-1-4. Purpose [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-5. Definitions [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-6. Eligible organizations [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-7. Evaluation criteria [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-8. Contributions on behalf of another party [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-9. Request for proposal [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-10. Reimbursement [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-11. Payments [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

150:20-1-12. Availability of funds [REVOKED]

[**Source:** Added at 9 Ok Reg 3291, eff 7-27-92 ; Revoked at 11 Ok Reg 3667, eff 7-15-94]

SUBCHAPTER 3. PUBLIC/PRIVATE PARTNERSHIP [REVOKED]

PART 1. APPLICATION REQUIREMENTS AND CRITERIA [REVOKED]

150:20-3-1. Applicants; minimum qualifications [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-2. Criteria; rating; allocation of funds [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-3. Schedule of awards [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

PART 3. REIMBURSEMENT AND FUNDING [REVOKED]

150:20-3-10. Reimbursement [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-11. Payments [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-12. Performance review [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-13. Availability of funds [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

PART 5. DOCUMENTATION [REVOKED]

150:20-3-25. Documentation of service area [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-26. Documentation of public/private sponsorship [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-27. Documentation of jobs development plan [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-28. Documentation of monetary support [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-29. Documentation of budget [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-3-30. Documentation standards [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

SUBCHAPTER 5. JOB DEVELOPMENT INCENTIVE PROGRAM [REVOKED]

PART 1. APPLICATION REQUIREMENTS AND CRITERIA [REVOKED]

150:20-5-1. Applicants; minimum qualifications [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-2. Criteria; rating; allocation of funds [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-3. Schedule of awards [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

PART 3. PAYMENTS [REVOKED]

150:20-5-20. Payments [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-21. Amounts [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-22. Availability of funds [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-23. Performance review [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

PART 5. DOCUMENTATION [REVOKED]

150:20-5-30. Documentation of sponsorship [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-31. Work plan [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-32. Business plan [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-33. Baseline number of jobs [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-34. Number of added jobs [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-35. Placement of financing [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

150:20-5-36. Documentation standards [REVOKED]

[**Source:** Revoked at 9 Ok Reg 3291, eff 7-27-92]

CHAPTER 25. MINORITY BUSINESS DEVELOPMENT FUND

[**Authority:** Laws 1990, c. 266, §§ 28 and 29]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. GENERAL

150:25-1-1. Purpose; administration; cite

(a) The purpose of the Minority Business Development Fund is to create and enhance jobs for minorities, to develop and expand minority-owned businesses, and to promote an environment that encourages utilization of existing resources, development of new resources and foster a cooperative state-wide effort to achieve these goals.
(b) The Oklahoma Department of Commerce shall administer the Minority Business Development Fund which is established pursuant to Sections 28 and 29 of Chapter 266, O.S.L., 1990.
(c) The rules shall be known as the Minority Business Development Fund Rules and may be cited as 150:25-1-1 et seq.

150:25-1-2. Eligible entities; requests for proposals; notices

(a) The Oklahoma Department of Commerce may contract with organizations, which support minority businesses, in order to further the purposes of the Minority Business Development Fund program. Such organizations shall be either non-profit organizations or non-profit organizations operating in conjunction with for-profit organizations.
(b) Financial assistance through funding contracts will be made available to such organizations through a request for proposal (RFP) process.
(c) Requests for proposal shall be distributed at such times as determined by the Department. Such RFPs shall include an information and instruction packet and a sample contract. Specific funding terms will be defined for each proposal.
(d) Notification of availability of funds, solicitations of proposals and deadlines for the receipt of proposals shall be through publication in the Oklahoma Register.

150:25-1-3. Returned proposals

(a) Any proposal received after the proposal deadline shall be returned without consideration.
(b) Incomplete or incorrectly completed proposals may be returned without review.

150:25-1-4. Contract period

Contracts shall be for a period of one (1) year and may be affirmatively renewed twice; subject to availability of funds and fulfillment of the terms of the contract.

150:25-1-5. Revolving fund

All expenditures of funds for the Minority Business Development Fund shall be made from the Minority Business Development Revolving Fund, less the administration casts allowable by law.

SUBCHAPTER 3. APPLICANT QUALIFICATIONS AND SELECTION PROCESS

150:25-3-1. Qualifications

Applicants must meet specific criteria in order to qualify for funding under the Minority Business Development Fund. Applicants must have:

(1) Demonstrated their capability to offer management tools and technical assistance to minority owned businesses; and
(2) Demonstrated their financial capacity and responsibility to manage a program(s) to aid minority owned businesses; and
(3) Submitted a business plan in a form approved by the Department. The business plan shall require:
  (A) a statement of the program's overall goals and objectives,
  (B) information concerning the management personnel including background and experiential information,
  (C) a detailed budget outlining the costs associated with the program including source and use statements,
  (D) a statement of the program's expected measurable impact, including the number of jobs created or retained, the number of businesses started, the amount of financing secured and new or expanded procurement efforts, and
  (E) other information as required by the request for proposal.
(4) Evidence of support either in the form of a resolution of support or of financial support from an appropriate local governmental entity and other private entity; and
(5) A program(s) that target job creation and enhancement or business creation and expansion for African-Americans; and
(6) Evidence of approval from the panel of peer reviewers; and
(7) Complied with and fully responded to all requests for bids, application guidelines and application form questions; and
(8) Demonstrated ability to access existing programs aimed at economic or business development.

150:25-3-2. Selection process

(a) Proposals accepted for consideration shall be reviewed by a panel of peer reviewers. Recommendation for approval by the peer reviewers is required before the Department of Commerce may contract with any organization.
(b) Peer reviewers shall be selected by the Director of the Department. The Director shall select three (3) individuals to act as peer reviewers.

(c) Individuals selected as peer reviewers shall possess the following qualifications:

(1) A minimum of three (3) years experience in the evaluation of business or job creation programs; and

(2) Demonstrated commitment to minority business development concerns; and

(3) Affiliation with a public or private institution that has responsibility for economic development; and

(4) A degree from an institution of higher learning.

(d) Peer reviewers shall make recommendations on each proposal based on factors which may include:

(1) Financial feasibility;

(2) Management expertise;

(3) Ability to leverage other resources;

(4) Innovative nature of proposal;

(5) Probability of success;

(6) Marketing capability; and

(7) Public benefit.

150:25-3-3. Denial of application

(a) Applicants may examine the results of the Department of Commerce's proposal review process only after all applications and proposals have been reviewed and funding determinations have been made by the Department.

(b) An unsuccessful applicant may request a hearing before the Department.

(c) Hearings shall be conducted in accordance with the rules of this chapter and the General Rules of Practice and Procedure. (Chapter 1 of this Title) Provided, appellants shall not introduce new documentation that conflicts with the basis on which a funding decision was made.

SUBCHAPTER 5. PROGRAM VIOLATIONS; RESPONSIBILITIES

150:25-5-1. Violations

The following shall constitute a violation of the Minority Business Development Fund program and procedures:

(1) Provision of false information in the request for proposal process or in projects reports; or

(2) Failure to comply with federal or state statutes or the Department of Commerce's rules and regulations; or

(3) significant deviation from the grant contract; or

(4) Expenditure of funds in an unlawful manner or contractually prohibited manner; or

(5) Fraud, waste or mismanagement of any current or prior state or federally funded contract; or

(6) Substantial non-compliance or non-conformance with the terms of the contract.

150:25-5-2. Corrective actions

The Department of Commerce may take any or all of the following action where there has been found to be a program violation as provided in 150:25-5-1:

(1) Withhold funds;
(2) Reduce the total amount of the contract;
(3) Require return of unexpended funds;
(4) Require repayment of expended funds;
(5) Add conditions to the contract;
(6) Cancel the contract and recover all funds expended in an ineligible manner prior to said cancellation;
(7) Deny future funding applications and program funding for a period not to exceed two (2) years; or
(8) Disallow expenditures.

150:25-5-3. General responsibilities

(a) A contractor receiving state appropriated funds shall be responsible for taking all action necessary to meet the terms of its contract for such funds and to enforce the terms of the contract against any private or public participant that fails to comply with applicable provisions of the agreement or any contract or documents resulting from it, and to recover on behalf of the Department of Commerce any liabilities that may arise as the result of the breach of the contract by any participant.
(b) Nothing in this section shall restrict the Department's rights to enforce independently the terms of contracts or documents resulting there from or to recover any sums that may become due as the result of a breach of such contract.

150:25-5-4. Records

(a) The contractor shall maintain records and accounts, that properly document and account for all project funds; including, but not limited to:

(1) Property,
(2) Personnel, and
(3) Financial records.

(b) Specific types and forms of records may be required by the Department.
(c) All such records and accounts shall be made available upon demand by the Department for purposes of inspection and use in carrying out its responsibilities for administration of the funds.

150:25-5-5. Required reports

Contractors shall submit quarterly reports of activities and expenditures. Such reports shall be on forms prescribed by the Department. Other types of reports such as statistical or narrative types of reports may be required by the Department.

150:25-5-6. Audit required

Contractors shall submit an annual audit as required by the Department. Such audit may be paid for from allocated, appropriated

funds.

150:25-5-7. Maintenance and examination of records

(a) The contractor shall retain all books, documents, papers, records and other materials involving all activities and transactions related to its contract for at least five (5) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later, or as otherwise required by law.

(b) The contractor funded under this program shall permit authorized representatives of the Department or the State of Oklahoma to have full access to and the right to fully examine all such materials.

150:25-5-8. Obligated funds

The contractor shall not be eligible to expend any funds that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received or have become a written legal obligation as of the final date of the period funded.

CHAPTER 30. OFFICE OF FEDERAL ASSISTANCE MANAGEMENT [REVOKED]

[**Authority:** 74 O.S., §§ 5021 and 5022 (repealed)]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. ADMINISTRATION [REVOKED]

150:30-1-1. Purpose [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-1-2. Definitions [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-1-3. Responsibilities [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-1-4. Cite [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

SUBCHAPTER 3. OKLAHOMA INTERGOVERNMENTAL REVIEW SYSTEM [REVOKED]

150:30-3-1. General [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-3-2. Notification requirements [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-3-3. Exclusions [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-3-4. Comments by reviewers [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-3-5. Conflict of interest [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-3-6. Review of conflicts [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

150:30-3-7. Review appeals; resolutions [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2351, eff 6-27-96]

CHAPTER 35. ENTERPRISE ZONES

[**Authority:** 62 O.S., §§ 690.2 and 690.3; 74 O.S., § 5003.6]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. GENERAL

150:35-1-1. Purpose

The purpose of these rules is to establish policies and procedures for the designation of enterprise zones within the state.

[**Source:** Amended at 19 Ok Reg 2634, eff 7-11-02]

150:35-1-2. Authority

The Oklahoma Department of Commerce has the authority to designate enterprise zones within the state based upon the requirements of 62 O.S., Sections 690.2(5) and 690.3 and to promulgate rules regarding application procedures and requirements for enterprise zones pursuant to 62 O.S., Section 690.3(B).

150:35-1-3. Cite

These rules shall be known as the Enterprise Zone Rules and may be cited as 150:35-1-1, et seq.

SUBCHAPTER 3. COUNTY ENTERPRISE ZONES

150:35-3-1. Qualification for designation

Counties which qualify as enterprise zones under the provisions of 62 O.S., Sections 690.2(5) (a) (c) and 690.3(A) shall be designated as such by the Department on July 1st of each year.

150:35-3-2. Notification

On or before August 1st of each year, the Department shall provide a list of counties designated by the Department as enterprise zones. This list will be published on the Department's web site and annual tax guide.

[**Source:** Amended at 19 Ok Reg 2634, eff 7-11-02]

SUBCHAPTER 5. CENSUS TRACT ENTERPRISE ZONES

150:35-5-1. Qualifications for designation

Census Tracts which qualify as enterprise zones under the provisions of 62 O.S., Sections 690.2(5)(a)(c) and 690.3(A) shall be designated as such by the Department within 3 months of the release of Summary File 3 from the U.S. Census Bureau.

[**Source:** Amended at 19 Ok Reg 2634, eff 7-11-02]

150:35-5-2. Criteria [REVOKED]

[**Source:** Amended at 10 Ok Reg 4049, eff 7-26-93 ; Revoked at 19 Ok Reg 2634, eff 7-11-02]

150:35-5-3. Notification

On or before December of the year Summary File 3 is released, the Department shall provide a list of census tracts designated by the Department as enterprise zones. Such list shall serve as notification of designation as an enterprise zone. This list will be published on the Department's web site and annual tax guide.

[**Source:** Added at 19 Ok Reg 2634, eff 7-11-02]

SUBCHAPTER 7. PRE-EXISTING ENTERPRISE ZONES

150:35-7-1. Qualifications for designations

Enterprise zones established prior to July 1, 2000, pursuant to 62 O.S., Section 690.18(A), shall be designated as grandfathered enterprise zones.

[**Source:** Amended at 19 Ok Reg 2634, eff 7-11-02]

150:35-7-2. Criteria [REVOKED]

[**Source:** Revoked at 19 Ok Reg 2634, eff 7-11-02]

150:35-7-3. Applications [REVOKED]

[**Source:** Revoked at 19 Ok Reg 2634, eff 7-11-02]

150:35-7-4. Continuation of status [REVOKED]

[**Source:** Revoked at 19 Ok Reg 2634, eff 7-11-02]

150:35-7-5. Notification

Grandfathered enterprise zones will be listed on the Department's web site and annual tax guide. Maps of all partial city enterprise zones are on file with the Department.

[**Source:** Added at 19 Ok Reg 2634, eff 7-11-02]

SUBCHAPTER 9. INCENTIVES

150:35-9-1. General incentives

The incentives provided in 62 O.S., Section 690.4 are available to all qualified enterprises within an enterprise zone.

150:35-9-2. Priority enterprise zone incentives

(a) An Enterprise Zone, as defined by 62 O.S. §690.2, is eligible for designation as a Priority Enterprise Zone, as defined by 62 O.S. §690.2, if it is located within a Federal Opportunity Zone.
(b) The Department shall use the following criteria for selection of Priority Enterprise Zones:

(1) The degree of need;
(2) Likelihood of success in attracting new economic growth;
(3) Evidence of local commitment; and
(4) Any other criteria the Director deems appropriate.

(c) The Priority Enterprise Zone status shall stay in effect as long as the Federal Opportunity Zone is in effect.

[**Source:** Revoked at 19 Ok Reg 2634, eff 7-11-02 ; Added at 36 Ok Reg 463, eff 5-3-19 (emergency); Added at 37 Ok Reg 1041, eff 9-11-20]

SUBCHAPTER 11. REQUIRED REPORTS [REVOKED]

150:35-11-1. Annual reports [REVOKED]

[**Source:** Amended at 19 Ok Reg 2634, eff 7-11-02]

CHAPTER 40. MULTIPURPOSE SENIOR CENTERS GRANT PROGRAM [REVOKED]

[**Authority:** Laws 1992, c. 337, § 15]
[**Source:** Codified 7-15-93]

150:40-1-1. Purpose [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-2. Definitions [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-3. Grant requests [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-4. Eligible activities, prohibited activity [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-5. Building standards [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-6. Contractor responsibilities [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-7. Return proposals [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

150:40-1-8. Selection [REVOKED]

[**Source:** Added at 10 Ok Reg 737, eff 1-6-93 (emergency); Added at 10 Ok Reg 3557, eff 7-15-93 ; Revoked at 38 Ok Reg 1723, eff 9-11-21]

CHAPTER 45. STATE APPROPRIATED FUNDS-SUBSTATE PLANNING DISTRICTS' PROGRAM

[**Authority:** 74 O.S., §§ 5001 and 5003.6]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. GENERAL

150:45-1-1. Purpose

The purpose of the State Appropriated Funds-Substate Planning Districts' Program, as set forth in this chapter is to foster effective intergovernmental service delivery through multi-county interlocal organizations created for the provision of services to local governments in each of the substate planning districts.

150:45-1-2. Legal authority

The legal authority for disbursement of state appropriated funds by the Oklahoma Department of Commerce to substate planning districts is found in the Oklahoma Department of Commerce pursuant to 74 O.S., Sections 5001 and 5003.6 and in the Department's annual appropriation bill.

150:45-1-3. Scope

(a) During each program year, as administered by the State, financial assistance will be made available to recognized substate planning districts that have an approved annual work program that may include but is not limited to any or all of the functions and responsibilities delineated by the Oklahoma Department of Commerce in its annual "State Appropriated Funds-Substate Planning District Program Request for Qualifications."
(b) Only substate planning districts funded annually through appropriation to the Department of Commerce are eligible to apply for funding under the SAF-Substate Planning Districts' Program. Of those eligible, only those that are approved by the Oklahoma Department of Commerce in accordance with the rules of this chapter will be funded.

150:45-1-4. Definitions

The following words or terms shall have the following meanings when used in this chapter:

"Department" means the Oklahoma Department of Commerce.

"State Appropriated Funds-Substate Planning Districts' Program" means the state funded and Department approved plan of substate planning district functions designed to foster effective intergovernmental service delivery through multi-county interlocal organizations.

"Substate planning district" means a council of government serving a geographic area composed of multiple counties and the interlocal government organization operating a program, the primary purpose of which is to foster effective multi-county intergovernmental

service delivery and that is recognized annually by the state legislature through the Department's appropriation bill.

"State Appropriated Funds-Substate Planning Districts' Request for Qualifications and Guidelines" means the document provided by the Department which is required to be completed by a substate planning district and approved by the Department before funds are released.

"Annual-work programs" means the annual plan of functions and responsibilities described by each substate planning district that are designed to foster multi-county regional planning functions. Such functions may include:

(A) Demonstration of fostering citizen participation in the identification, planning and implementation of goals, objectives and programs for community and economic development;

(B) Assisting in the improvement of communications between citizens, and local, state and federal governments;

(C) Assisting in the improvement of governmental responsiveness to local needs;

(D) Undertaking programs and activities to make governmental delivery of services more effective;

(E) Providing information about district issues and their possible impact on local governments;

(F) Serving as a coordination point for processing federal grant applications for local units of government within the district;

(G) Serving as Regional Clearinghouses in accordance with 74 O.S., Section 5021 Subsection C and authorized as such by the Department upon fulfilling the necessary departmental requirements;

(H) Serving as a focal point for dissemination of technical information available from State and federal agencies;

(I) Serving as a mechanism for local units of government to obtain State and federal assistance in technical, administrative and financial areas;

(J) Coordinating the integration of comprehensive planning efforts into a district plan and assisting the Department in integrating those plans into the State planning function;

(K) Coordinating planning efforts in law enforcement, health planning, community development, economic development, manpower planning and other specific areas as directed by the Department and

(L) Other activities designed to aid in an orderly, productive and coordinated development of the State

"In-kind contributions" means asset resources other than cash that are provided by a substate planning district and committed to the implementation of a substate planning district's annual work program.

"Cash Match" means an asset resource provided by a substate planning district and funded by cash contributions through local member

communities' dues and other cash sources.

[**Source:** Amended at 11 Ok Reg 1971, eff 7-1-94]

150:45-1-5. Eligibility certification; allocation of funds

(a) The requirements for eligibility certification consist of:

(1) The annual submission of organic documents such as Articles of Association, Incorporation or Trust documents;

(2) The resolution passed by the Board of Directors of the organization accepting some or all of the responsibilities and functions described at 150:45-1-4 under "Annual Work Programs";

(3) An approved one (1) year work program in the form prescribed by the Department; and,

(4) Board certified documentation demonstrating that at least two-thirds (2/3) of the voting membership of the substate planning district board is composed of elected officials of conservation districts, incorporated towns, cities, or counties within the planning jurisdiction, or the designees of said officials.

(b) Eligibility certification shall be considered fulfilled upon submission and approval to and by the Department of:

(1) All materials required in 150:45-1-5(a), and

(2) Certification that the substate planning district will not solicit business that is provided by private management consultant professionals.

(c) The Oklahoma State Legislature shall set the allocation of funds to all substate planning districts in the Department's annual appropriation bill.

150:45-1-6. Technical assistance

The Department shall designate staff members who will provide general program technical assistance regarding the application and qualification requirements and documentation. Applicants may obtain these staff persons' names from the program request for qualifications packets or by contacting the Director of the Office of Community Development within the Department.

[**Source:** Amended at 18 Ok Reg 3503, eff 9-14-01]

150:45-1-7. Cite

These rules in this chapter shall be known as the State Appropriated Funds-Substate Planning Districts' Program Rules and may be cited as 150:45-1-1 et seq.

SUBCHAPTER 3. APPLICATION PROCESS

150:45-3-1. Applications

All applicants will be required to provide the information requested annually by the Department in its State Appropriated Funds-Substate Planning Request for Qualifications.

150:45-3-2. Forms and guidelines

The Department shall forward annually the necessary application forms and guidance required for eligibility certification to all substate planning districts identified by the Legislature as listed in the Department's appropriation.

150:45-3-3. Deadlines

The Department will establish annually a deadline for the submission of applications through the publication of a Notice of Local Project Funding in the Oklahoma Register.

SUBCHAPTER 5. RESPONSIBILITIES, VIOLATIONS AND CORRECTIVE ACTIONS

150:45-5-1. Substate planning districts' responsibilities

(a) Substate planning districts receiving state appropriated funds shall be responsible for taking all action necessary to meet the terms of its contract for such funds and to enforce the terms of the contract against any private or public participant that fails to comply with applicable provisions of the agreement or any contract or documents resulting from it, and to recover on behalf of the Department any liabilities that may arise as the result of the breach of the contract by any participant. Nothing in this subsection shall restrict the Department's rights to enforce independently the terms of contracts or any contracts or documents resulting there from or to recover any sums that may become due as the result of a breach of such contract.

(b) The substate planning district shall maintain records and accounts, including, but not limited to, property, personnel and financial records that properly document and account for all project funds. Specific types and forms of records may be required by the Department. All such records and accounts shall be made available upon demand by the Department for purposes of inspection and use in carrying out its responsibilities for administration of the funds.

(c) The substate planning district shall document and report, in a manner prescribed by the Department, all other funds and in-kind activities used as "match" in conjunction with funds provided by the Department.

(d) The substate planning district shall furnish the Department narrative reports, statistical reports and financial reports related to this program at such times as may be required by the Department in accordance with contracts or the rules of this chapter.

(e) The substate planning district shall retain all books, documents, papers, records and other materials involving all activities and transactions related to its substate planning district contract for at least five (5) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later, or as otherwise required by law. The substate planning districts funded under this program shall permit authorized representatives of the Department and the State of Oklahoma to have full access to and the right to fully

examine all such materials.
(f) The substate planning district shall not be eligible to expend any funds that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received or have become a written legal obligation as of the final date of the period funded.

150:45-5-2. Program violations

Any of the following circumstances indicates a violation of program procedures and policies:

(1) Notice by the Department that violations have resulted in substantial non-compliance or non-conformance with regard to the funded contract of a substate planning district; or
(2) Knowingly providing false information in the request for qualification process or in project reports; or
(3) Failure to comply with federal or state statutes or the rules of the department; or
(4) Significant deviation from the grant contract; or
(5) Expenditure of State Appropriated Funds project funds in a contractually prohibited or unlawful manner.

[**Source:** Amended at 11 Ok Reg 1971, eff 7-1-94]

150:45-5-3. Corrective and remedial actions

The Department may take any or all of the following actions with regard to a substate planning district when there has been a substantiated program violation as delineated in 150:45-5-2 of these rules:

(1) Add conditions to contracts;
(2) Withhold funds;
(3) Reduce the total amount of a grant award;
(4) Require the return of unexpended funds;
(5) Require repayment of expended funds;
(6) Cancel an allocation agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation, or
(7) Deny future program applications and proposals and program participation for a period not to exceed two (2) program years.

CHAPTER 50. CIRCUIT RIDER MUNICIPAL MANAGEMENT ASSISTANCE PROGRAM [REVOKED]

[**Authority:** 74 O.S., § 5003.1]
[**Source:** Codified 12-30-91]

SUBCHAPTER 1. GENERAL [REVOKED]

150:50-1-1. Purpose [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-1-2. Authority [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-1-3. Assistance [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-1-4. Eligible entities [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-1-5. Definitions [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-1-6. Cite [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

SUBCHAPTER 3. APPLICATIONS [REVOKED]

150:50-3-1. Application required [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-3-2. Availability of applications [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-3-3. Application threshold requirements [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-3-4. Fulfillment of threshold requirements [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-3-5. Deadlines [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-3-6. Technical assistance [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-3-7. Denial of application [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

SUBCHAPTER 5. SELECTION CRITERIA [REVOKED]

150:50-5-1. Selection criteria [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-5-2. Fulfillment of selection criteria [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

SUBCHAPTER 7. VIOLATIONS AND CORRECTIVE ACTIONS [REVOKED]

150:50-7-1. Violations [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-7-2. Corrective actions [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

SUBCHAPTER 9. RESPONSIBILITIES [REVOKED]

150:50-9-1. Responsibilities [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-9-2. Record keeping [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-9-3. Match funds [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-9-4. Reports [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-9-5. Retention of documents [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

150:50-9-6. Unobligated funds [REVOKED]

[**Source:** Revoked at 13 Ok Reg 2355, eff 6-27-96]

CHAPTER 55. OKLAHOMA MAIN STREET PROGRAM

[**Authority:** 74 O.S., §§ 5003.6 and 5017]
[**Source:** Codified 7-15-92]

SUBCHAPTER 1. GENERAL

150:55-1-1. Purpose

The purpose of these rules is to establish policies and procedures for the selection of municipalities to participate in the Oklahoma Main Street Program. The Oklahoma Main Street Program operates in conjunction with the National Main Street Center to provide training, resources and technical assistance for municipal revitalization.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-1-2. Program participants

(a) The Oklahoma Main Street Program shall annually designate municipalities to participate in the program. There are three (3) categories of participants:

(1) Main Street Small Town program participants shall be selected from eligible municipalities with populations of less than five thousand (5,000) persons according to the latest federal decennial census;

(2) Main Street program participants shall be selected from eligible municipalities with populations of between five thousand (5,000) and fifty thousand (50,000) persons according to the latest federal decennial census;

(3) Main Street Urban program participants shall be selected from eligible municipalities with populations of more than fifty thousand (50,000) persons according to the latest federal decennial census.

(b) Applications for the Main Street Small Town program and the Main Street program may be submitted by a non-profit organization, or an economic development organization. Main Street Urban program applications must be submitted by the municipality.

(c) The number of participants is subject to funding limitations and the quality of applications received.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-1-4. Advisory committee

(a) The Executive Director of the Oklahoma Department of Commerce shall select an Oklahoma Main Street Advisory Committee. The Committee shall include members of the public and private sectors who have experience in municipal revitalization and historic preservation.
(b) The Committee shall review the applications for participation in the Oklahoma Main Street program and shall make recommendations to the Executive Director who shall make the final decisions.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-1-5. Continuation of status

(a) Program participants selected under the provisions of this chapter may retain their status for three (3) years. An agreement may be signed to review the status following the year-end assessment visit. Failure to continue funding, maintain an organization, a program manager or submit required reports may result in loss of status.
(b) At the end of three (3) years, if the municipality continues to meet the criteria, the municipality may continue in the Oklahoma Main street program as a graduate town.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-1-6. Services

The services provided by the Department are available to all program participants. Such services may include:

(1) training;
(2) technical assistance, and
(3) resources such as educational materials.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-1-7. Reports

(a) Every participant in Oklahoma Main Street program shall submit monthly and annual reports.

(1) On a monthly basis each participant shall submit a private sector reinvestment summary which shall include:
    (A) the number of facade renovations;
    (B) the number of other rehabilitation projects and new construction projects;
    (C) the number of buildings sold;
    (D) the number of total business openings, relocations and expansions; and
    (E) the net gain in jobs created.
(2) On an annual basis, each participant shall submit:
    (A) a year-end community evaluation;
    (B) an Oklahoma Main Street Agreement with workplan; and
    (C) an evaluation of the Oklahoma Main Street program.

(b) Failure to submit the required monthly reports may result in suspension of services until the reports are brought current. Failure to submit yearly reports may result in loss of designation.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-1-8. Hearings; show cause; appeals

(a) Any program applicant who believes that it has been aggrieved by a denial of participation by the Oklahoma Department of Commerce may request an administrative hearing pursuant to the provisions of 150:1-11-1 et seq. of this title.
(b) Prior to taking any remedial or corrective actions A Notice to Show Cause shall be issued by the Department pursuant to the provisions of 150:1-15-1 et seq. of this title.
(c) Any program participant aggrieved by a final order of the Department may request an appeal pursuant to the provisions of 150:1-15-14 of this title.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

SUBCHAPTER 3. SMALL TOWN PROGRAM

150:55-3-1. Eligibility

In order to meet the minimum qualifications for participation as a Main Street Small Town, a municipality must have:

(1) A population of less than five thousand (5,000) persons according to the latest federal decennial census;
(2) Two (2) representatives attend the annual application workshop conducted by the Oklahoma Department of Commerce;
(3) Have filed a non-binding letter of intent to apply;
(4) Submitted a properly completed application;
(5) An existing downtown organization or commit to establish such an organization which will be responsible for the Main Street Small Town Project;
(6) Verification of first-year funding with evidence of a three-year funding commitment. Documentation verifying first- year funding shall be in the following forms:

(A) for public sector funding, a copy of the city or county resolution authorizing Main Street funding,
(B) for private sector funding, a notarized certification from the authorized representatives of the Main Street managing organization indicating the amount of funding in-kind and allocated exclusively to the program and the full amount of funding needed. Each pledge must be documented by a letter stating the amount of the pledge and signed by the pledger.
(C) for donated or pledged in-kind contributions, a letter from the individual or duly authorized representative of the organization donating the contribution. The letter

must state what is being donated, how long the donation will continue and the current fair market value of the donation.

(7) Committed to hire one (1) person who would be required to work twenty (20) hours per week to direct the project.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92 ; Amended at 10 Ok Reg 4051, eff 7-26-93]

150:55-3-2. Application requirements

(a) The application for participation in the Oklahoma Main Street Small Town program shall be made available during an annual application workshop conducted by the Oklahoma Department of Commerce in September of each year.

(b) The application shall require the following information:

(1) The name of the municipality making application;

(2) A copy of the resolution passed by the municipal governing body showing support for the Main Street program;

(3) The name, title, address and phone number of the contact person;

(4) A set of twenty-five (25) color slides of the proposed Main Street Program area with a description sheet;

(5) A list of all city council/commissioners, including their phone numbers and mailing addresses;

(6) Letters or resolutions of support for the Main Street program from merchants, property owners, organizations, institutions and citizens;

(7) A notarized certification of full first-year funding with evidence of a three (3) year funding commitment;

(8) A list of pledges of first-year funding for private support which shall include the name, address, phone number and the amount of contribution for each pledger;

(9) Articles of incorporation for applicant organization or agency;

(10) A completed itemized budget for the first year;

(11) A map showing the project area;

(12) An existing land use map of the central business district; and

(13) Any other information as may be required.

(c) The applicant shall submit the original signed application and ten (10) complete copies to the Department prior to the deadline established in the application.

(d) Incomplete or improperly completed applications or applications received after the application deadline will be returned to the applicant without further consideration.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-3-3. Selection criteria

Selection for participation in the Small Town Main Street program shall be based on the following criteria:

(1) Evidence of local public and private sector financial support of the Main Street program for a three-year period;

(2) Evidence of strong commitment from the public and private sector in the community as demonstrated by support letters;
(3) A commitment to hire a part-time program director to work in the project as provided in 150:55-3-1;
(4) Capacity for economic growth as a result of the Main Street program as determined by the Advisory Committee;
(5) A clearly defined central business district;
(6) Evidence of need which will be balanced with the ability of the project area to respond to the three-year program of services offered by the Department as determined by the Advisory Committee; and
(7) Sufficient historic or architecturally significant buildings in the project areas which help establish a unified design image. Sufficient shall be defined as fifty percent (50%) or greater.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

SUBCHAPTER 5. MAIN STREET PROGRAM

150:55-5-1. Eligibility

In order to meet the minimum qualifications for participation in the Main Street program, a municipality must have:

(1) A population of more than five thousand (5,000) persons but less than fifty thousand (50,000) persons according to the latest federal decennial census;
(2) Two (2) representatives attend the annual application workshop conducted by the Oklahoma Department of Commerce;
(3) Have filed a non-binding letter of intent to apply;
(4) Submit a properly completed application;
(5) An existing downtown organization or commit to establish such an organization which will be responsible solely for the Main Street project;
(6) Commit to hire one (1) person who would be required to work forty (40) hours per week to direct the project;
(7) Verification of first-year funding with evidence of a three-year funding commitment. Documentation verifying first- year funding should be in the following forms:

(A) for public sector funding, a copy of the city or county resolution authorizing Main Street funding;
(B) for private sector funding, a notarized certification from the authorized representative of the Main Street managing organization, indicating the amount of funding in-kind and allocated exclusively to the progress and the full amount of funding pledged. Each pledge must be documented by a letter stating the amount of pledge and signed by the pledger.
(C) for donated or pledged in-kind contributions, a letter from the individual or duly authorized representative of the organization donating the contributions. The letter

must state what is being donated, how long the donation will continue and the current fair market value of the donation.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92 ; Amended at 10 Ok Reg 4051, eff 7-26-93]

150:55-5-2. Application requirements

(a) The application for participation in the Oklahoma Main Street program shall be made available during an annual application workshop conducted by the Oklahoma Department of Commerce in September of each year.

(b) The application shall require the following information:

(1) The name of the municipality making application;

(2) A copy of the resolution passed by the municipal governing body showing support for the Main Street program;

(3) The name, title, address and phone number of the contact person;

(4) A set of twenty-five (25) color slides of the proposed Main Street program area with a description sheet;

(5) A list of all city council/commissioners, including their phone numbers and mailing addresses;

(6) Letters or resolutions of support for the Main Street program from merchants, property owners, organizations, institutions and citizens;

(7) A notarized certification of full first-year funding with evidence of a three (3) year funding commitment;

(8) A list of pledges of first-year funding for private support which shall include the name, address, phone number and the amount of contribution for each pledge;

(9) Articles of incorporation for applicant organization or agency;

(10) A completed itemized budget for the first year;

(11) A map showing the project area;

(12) An existing land use map of the central business district;

(13) Any existing plans or studies which support the need for revitalization of the central business district;

(14) A map(s) of the locality showing the boundaries of the central business district and the location of nearby commercial centers or malls or other major developments including tourist attractions, impacting the downtown; and

(15) Any other information as may be required.

(c) The applicant shall submit the original signed application and ten (10) complete copies to the Department prior to the deadline established in the application.

(d) Incomplete or improperly completed applications or applications received after the application deadline will be returned to the applicant without further consideration.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-5-3. Selection criteria

Selection for participation in the Main Street program shall be based on the following criteria:

(1) Evidence of local public and private sector financial support of the Main Street program for a three-year period;
(2) Evidence of strong commitment from the public and private sector in the community as demonstrated by support letters;
(3) A commitment to hire a full-time program director to work in the project as provided in 150:55-5-1;
(4) Capacity for economic growth as a result of the Main Street program as determined by the Advisory Committee;
(5) A clearly defined central business district;
(6) Evidence of need which will be balanced with the ability of the project area to respond to the three-year program of services offered by the Department as determined by the Advisory Committee; and
(7) Sufficient historic or architecturally significant buildings in the project areas which help establish a unified design image. Sufficient shall be defined as fifty percent (50%) or greater.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

SUBCHAPTER 7. URBAN MAIN STREET PROGRAM

150:55-7-1. Eligibility

In order to meet the minimum eligibility qualifications for participation in the Urban Main Street program, a municipality must:

(1) Have a population of more than fifty thousand (50,000) persons according to the latest federal decennial census;
  (A) if the municipality has a population of more than fifty thousand (50,000) persons but less than two hundred thousand (200,000) persons, the eligible area is the central business district;
  (B) if the municipality has a population of two hundred thousand (200,000) persons or more, the eligible area may only be a neighborhood business district;
(2) Have had two (2) representatives attend the annual application workshop conducted by the Oklahoma Department of Commerce;
(3) Have filed a non-binding letter of intent to apply;
(4) Submit a properly completed application;
(5) Commit to hire a minimum of two (2) staff, one professional and one support personnel, each to work forty (40) hours per week to direct the project;
(6) Commit to assign a representative from the city staff or council to serve as liaison between the city and the program staff;
(7) Commit to have a private, non-profit partner to develop policy and implement the program;
(8) Have a resolution of support for the program from the private, non-profit partner;

(9) Have verification of first-year funding with evidence of a three-year funding commitment. Documentation verifying first-year funding shall be in the following form:

(A) for public sector funding, a copy of the city resolution authorizing Main Street funding;

(B) for private sector funding, a notarized certification indicating the dollar amount of committed funds or the dollar value of committed in-kind services. Funding sources must be prepared to supply financial statements upon request.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92 ; Amended at 10 Ok Reg 4051, eff 7-26-92]

150:55-7-2. Application requirements

(a) The application for participation in the Urban Main Street program shall be made available during an annual application workshop conducted by the Oklahoma Department of Commerce in September of each year.

(b) The application shall include the following information:

(1) The name of the municipality making application;

(2) A copy of the resolution passed by the municipal governing body showing support for the Urban Main Street program;

(3) A copy of the resolution passed by the board of directors of the designated non-profit partner;

(4) The name, title, address and phone number of the contact person;

(5) A set of no more than thirty-six (36) color slides of the project area;

(6) A list of all city council/commissioners including their phone numbers and mailing addresses;

(7) Letters of financial commitment from all funding sources with dollar amounts indicated for a period of time of at least one year and preferably three years;

(8) A completed itemized budget for the first year;

(9) A map showing the project area;

(10) A map designating all current zoning within and adjacent to the project area;

(11) An existing land use map of the central business district; and

(12) Letters of support for the project from businesses, associations, citizens and institutions.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

150:55-7-3. Selection criteria

(a) Selection for the Urban Main Street program shall be based on the merit of the project and the goals of the Oklahoma Department of Commerce for the project. Criteria to determine project merit shall be based on capacity to respond and the need for services and shall include:

(1) Size and manageability of project area;

(2) Evidence of local public and private sector financial support of the project;
(3) Evidence of strong commitment from public and private sector;
(4) Evidence of sensitivity to local design of the project area;
(5) Municipal development and planning policies pertinent to project area;
(6) Municipal housing needs pertinent to the project area;
(7) Public relations, image and promotional activities;
(8) Economic health of project area;
(9) Demonstration of impact of cultural and sociological issues;
(10) Need for outside assistance.

(b) Criteria to determine whether the project meets the goals of the Department shall be based on the opportunity to explore any or all of the following urban issues through the local program:
(1) Organizational change in order to address urban issues;
(2) Design;
(3) Promotion of project;
(4) Economic restructuring.

[**Source:** Added at 9 Ok Reg 2713, eff 7-15-92]

CHAPTER 60. WOMEN-OWNED BUSINESS CERTIFICATION PROGRAM

[**Authority:** 74 O.S., § 5010.5]
[**Source:** Codified 6-1-92]

150:60-1-1. Purpose

The purpose of these rules is to establish procedures to certify women-owned businesses in order to facilitate contracting capabilities of women-owned businesses with public and private entities. [74:5010.5]

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-2. Definitions

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

"Department" means the Oklahoma Department of Commerce.

"Person" means an individual, sole proprietorship, partnership, association or corporation.

"Women-owned business" means a small business concern as defined in 15 U.S.C., Section 632,

(A) which is at least fifty-one percent (51%) owned by one or more women or in the case of a publicly owned business, at least fifty-one percent (51%) of all classes or types of the stock is owned by one or more women, and

(B) whose management and daily business operations are controlled by one or more women.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-3. Eligible entities

Any business meeting the definition of a women-owned business as provided in 150:60-1-2, and doing business in the State of Oklahoma is eligible to apply for certification under the provisions of the rules of this chapter.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-4. Applications; contents

(a) Any person seeking certification as a women-owned business enterprise must submit an application to the Oklahoma Department of Commerce. Applications shall be available upon request from the Department.

(b) The application shall require the following information:

(1) A complete business history of the enterprise including copies of organizational documents such as the minutes of the first organizational meeting, partnership agreements, articles of incorporation, stock certificates and corporate bylaws.

(2) A listing of all principals and the percentages of ownerships and resumes of all principals, key managers and key personnel.

(3) Current financial statements of the business, latest business income tax returns, proof of investment by principals, bank resolution on all company accounts, loan agreements, lease/rental agreements and other information as may be required to verify control or ownership.
(4) Any additional information reasonable and necessary for the Department to determine whether the applicant qualifies for certification under the rules of this chapter.

(c) Applicants must submit a completed application form, any required data and a signed, notarized affidavit stating that the applicant is a women-owned business to be eligible.
(d) Incomplete or improperly completed applications will be returned to the applicant without further consideration.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-5. Actions

(a) The Oklahoma Department of Commerce shall within ninety (90) days of receipt of an application for certification either approve the application, deny the application or notify the applicant of any delays in making a determination.
(b) An applicant that submits a properly documented application shall be presumed to be a women-owned business for the purposes of this program and shall be certified as such, unless:
(1) Contradictory information is contained in the required documentation submitted with the application; or
(2) Information has been received challenging the validity of the application; or
(3) The applicant's primary business is providing products or services within a transportation related industry and is eligible for certification through the Oklahoma Department of Transportation; or
(4) The applicant does not meet the definition of a small business as provided in 15 U.S.C., Section 632.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-6. Length of certification; grounds for revocation

(a) The Oklahoma Department of Commerce shall certify a business which meets the eligibility requirements of this chapter as a women-owned business. Such certification shall remain in effect for five (5) years unless one of the following conditions should occur:
(1) There is a change in ownership or daily management to persons other than those upon whom certification was based; or
(2) The business exceeds "small business" size standards for their industry as defined by 15 U.S.C., Section 632; or
(3) The business ceases to exist as an independent operation; or
(4) There is any change which if it had occurred before certification would have prevented the applicant from being certified by the Department.

(b) Any person that has been certified as a women-owned business by the Department may apply for recertification prior to the expiration of its current certification.
(c) Any person that has "its" certification revoked pursuant to the provisions of this section may reapply for certification at such time as the person again becomes eligible for a certification.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-7. Administrative hearings

(a) Any applicant who believes that it has been aggrieved by a denial of a request for certification by the Oklahoma Department of Commerce may request an administrative hearing pursuant to the provisions regarding individual proceedings, 150:1-11-1 et seq. of the Department's General Rules of Practice and Procedure.
(b) Any person that loses certification through revocation shall be notified and presented an opportunity for hearing pursuant to the provisions of 150:1-15-1 et seq. of the Department's General Rules of Practice and Procedure.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-8. Additional information; on-site inspections

(a) The Oklahoma Department of Commerce may request additional information from program applicants or participants. Failure to provide such information may be grounds for denial of certification or revocation of certification.
(b) The Department shall have the authority to conduct on-site evaluations as deemed necessary.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

150:60-1-9. List of certified entities

The Oklahoma Department of Commerce shall compile and maintain a list of all entities certified through the women-owned business program. A copy of such list will be made available upon request from the Department.

[**Source:** Added at 9 Ok Reg 1803, eff 6-1-92]

CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM

[**Authority:** 68 O.S., §§ 2357.42 and 3601 et seq.; 74 O.S., §§ 5001 et seq.]
[**Source:** Codified 7-15-94]

SUBCHAPTER 1. QUALITY JOBS PROGRAM

150:65-1-1. Purpose

The purpose of this chapter is to implement the provisions of the Oklahoma Quality Jobs Program Act, 68 O.S. Supp. 1993, Section 3601, et seq., which provides appropriate incentives to support the establishment of basic industries in this state.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94]

150:65-1-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"Application date" means the date on which the establishment's application is first received and stamped by a Quality Jobs representative at the Oklahoma Department of Commerce.

"Approval date" means the date on which the Executive Director of the Oklahoma Department of Commerce issues the offer to an establishment to receive incentive benefits pursuant to the Oklahoma Quality Jobs Program.

"Baseline employment" means an establishment's total number of jobs, which existed in this state prior to the application date of the establishment to the Oklahoma Department of Commerce. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at anytime within six (6) months prior to such approval. Upon approval of an application if it is more than six months later than the application date, the Department may determine an establishment's baseline employment to be its then current employment or its average employment over the last four quarters and may adjust the average wage requirement to meet the most current average wage requirement.

"Change in control event" *means the transfer to one or more unrelated establishments or unrelated persons, of either:*

(A) *beneficial ownership of more than fifty percent (50%) in value and more than fifty percent (50%) in voting power of the outstanding equity securities of the transferred establishment, or*

(B) *more than fifty percent (50%) in value of the assets of an establishment. A transferor shall be treated as related to a transferee if more than fifty percent (50%) of the voting interests of the transferor and transferee are owned, directly or indirectly, by the other or are owned, directly or indirectly, by the same person or persons, unless such transferred establishment has an outstanding class of equity securities registered under Sections 12(b)*

or 15(d) of the Securities Exchange Act of 1934, as amended, in which event the transferor and transferee will be treated as unrelated; provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a result of a change of control event is required to apply within one hundred eighty (180) days of the change in control event to qualify for consideration. An establishment entering the Oklahoma Quality Jobs Program Act as the result of a change of control event shall be required to maintain a level of new direct jobs as agreed to in its contract with the Department of Commerce and to pay new direct jobs an average annualized wage which equals or exceeds one hundred twenty-five percent (125%) of the average county wage as that percentage is determined by the Oklahoma State Data Center based upon the most recent U.S. Department of Commerce data for the county in which the new jobs are located. For purposes of this paragraph, healthcare premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage. Such establishment entering the Quality Jobs Program Act as the result of a change of control event shall be required to retain the contracted average annualized wage and maintain the contracted maintenance level of new direct jobs numbers as certified by the Oklahoma Tax Commission. If the required average annualized wage or the required new direct jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. An establishment described in this paragraph shall be required to repay all incentive payments received under the Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed. [68 O.S. § 3603 (A)(2)].

"Combination" means an establishment, provided it meets the requirements of 68 O.S. Section 3601 et seq. and the requirements set out in 150:65-1-13 of this chapter.

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102, and any successor agencies thereto.

"Cost-benefit analysis" means the analysis the Oklahoma Department of Commerce is required to perform to determine the estimated direct state benefits and estimated direct state costs.

"Date of determination" means the date assigned by the Department on the Incentive Offer on which a subunit and the entity of which the subunit is a part, must demonstrate a net increase in total employment in accordance with 150:65-1-12 (b) and (c) of this chapter.

"Employment of the remainder of the entity of which the subunit is a part" means the total number of jobs of an entity of which the subunit is a part which existed in this state prior to the application date of the subunit as to the Oklahoma Department of Commerce. Such jobs shall be deemed to exist in this state prior to approval of a subunit's application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to approval. Upon approval of an application of a subunit as an establishment, if it is more than six (6) months later than the application date, the Department may determine the employment of the remainder of the entity of which the subunit is a part to be its then current employment or its average employment over the last four quarters, and may adjust the average wage requirement to meet the then current average wage.

"Entity of which the subunit is a part" means the business or governmental entity of which a subunit is a separate part as described in 68 O.S., Section 3603(8)(a) and 150:65-1-12 of this chapter.

"Estimated direct state benefits" *means the tax revenues projected...to accrue to the state as a result of new direct jobs.* [68:3603(A)(4)] Such revenues shall include:

(A) State income tax receipts from employees holding new direct jobs. The Oklahoma Department of Commerce will determine the estimated direct state benefit from personal income tax receipts by reviewing:

(i) historical data on similar or existing projects;

(ii) information provided by the establishment;

(iii) data from federal agencies such United States Bureau of the Census and the United States Department of Labor;

(iv) the most recent historical data from the Oklahoma Tax Commission on average personal tax rates by income class; and,

(v) private sector financial reports; and

(B) State sales and use tax receipts, excise tax receipts, gasoline tax receipts and other anticipated tax receipts resulting from purchases by employees holding new direct jobs. The Department will determine the estimated direct state benefit from such taxes by reviewing:

(i) information supplied by the establishment;

(ii) data from federal agencies such as the United States Department of Labor;

(iii) Oklahoma Tax Commission sales and use tax reports; and,

(iv) private sector financial reports.

"Estimated direct state costs" means the costs projected to accrue to the state as a result of new direct jobs employing new state residents and/or new state service beneficiaries. Such costs shall include:

(A) The costs of educating new state resident children. The Oklahoma Department of Commerce will determine the estimated direct state costs of such educations by using:

(i) information supplied by the establishment;

(ii) the most recent average student allocation per pupil formula provided by the Oklahoma Department of Education; and,

(iii) United States Department of Labor statistics;

(B) The costs of government services such as public health, public safety and transportation provided to new residents and/or state service beneficiaries. The Department will determine the estimated direct state costs for such government costs by examining the state's per capita cost of providing non-common education services and estimating the amount of the state's excess capacity; and

(C) The costs of any industrial access road paid for with state funds and provided by the Oklahoma Department of Transportation; provided, the road is clearly from the facility to the thoroughfare and is clearly and primarily utilized by the establishment.

"Estimated net direct state benefits" *means the estimated direct state benefits less the estimated direct state costs.* [68:3603(A)(5)]

"Extraordinary adverse business circumstance" is an unforeseen event or series of events that adversely impact a business' ability to participate in the Oklahoma Quality Jobs Program. Such events shall not include market, economic, or business factors, but be limited to Acts of God, acts of terrorism, and civil unrest.

"Full-time equivalent employment" means employment which has a minimum six-month duration during any twelve-month time period, regardless whether the same employee holds the employment for said time.

"Line of business" means the NAICS code that is reflected by the end product or services of a given project resulting in new direct jobs.

"Negative economic event" means (1) a man-made disaster or natural disaster as defined in 63 O.S. § 683.3, resulting in the loss of a significant number of jobs within a particular county of this state, or (2) an economic circumstance in which a significant number of jobs within a particular county of this state have been lost due to an establishment changing its structure, consolidating with another establishment, closing or moving all or part of its operations out of this state.

"Net benefit rate" is set forth at 68 O.S. § 3603(A)(7) as determined by the Oklahoma Department of Commerce.

"New direct job":

(A) *means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of Section 3601 et seq. of this title* [68 O.S. § 3601]*which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this title* [68 O.S. § 3604]*; provided, that if an application of an establishment is approved by the Department of Commerce after a change in control event and the Director of the Department of Commerce determines that*

the jobs located at such establishment are likely to leave the state, "new direct job" shall include employment that existed in this state prior to the date of application which is retained in this state by the new establishment following a change in control event, if such job otherwise qualifies as a new direct job, and

(B) *shall include full-time-equivalent employment in this state of employees who are employed by an employment agency or similar entity other than the establishment which has qualified to receive an incentive payment and who are leased or otherwise provided under contract to the qualified establishment, if such job did not exist in this state prior to the date of approval by the Department of the application of the establishment or the job otherwise qualifies as a new direct job following a change in control event. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to such approval. With respect to establishments defined in division (10) of subparagraph a of paragraph 1 of this subsection,* [NAICS 2111]*new direct jobs shall be limited to those jobs directly comprising the corporate headquarters of or directly relating to administrative, financial, engineering, surveying, geological or geophysical services performed by the establishment. Under no circumstances shall employment relating to drilling or field services be considered new direct jobs. [68 O.S. § 3603(3)]* But does not include jobs which constitute an establishment's baseline employment as determined by the Oklahoma Department of Commerce pursuant to the definitions of this section. An establishment must maintain a total number of jobs equal to its baseline employment number before any job of the establishment shall be considered a new direct job.

"Quality jobs representative" means an Oklahoma Department of Commerce professional or economic development professional, trained in the Oklahoma Quality Jobs Program, who is so designated by the Executive Director, and whose responsibilities in the program include direct contact with applicants and clients, analysis of data, initiation of project proposals, preparation of project profiles and preparation of incentive offers.

"Significant number of jobs" means full-time-equivalent employment in a county equal to or in excess of three percent (3%) of the total amount of full-time-equivalent employment in that county for the calendar year, or most recent twelve-month period in which employment is measured, preceding the event.

"Subunit" means an establishment, provided it meets all requirements of 68 O.S. Section 3601 et seq. and the requirements set out in 150:65-1-12 of this chapter.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 11 Ok Reg 767, eff 12-3-94 (emergency); Amended at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 21 Ok Reg 543, eff 8-7-03 (emergency); Amended at 21 Ok Reg 2965, eff 7-25-04 ; Amended at 22 Ok Reg 1049, eff 5-26-05 ; Amended at 23 Ok Reg 1200, eff 5-25-06 ; Amended at 24 Ok Reg 1202, eff 5-25-07 ; Amended at 25 Ok Reg 1537, eff 6-12-08 ; Amended at 31 Ok Reg 883, eff 9-12-14]

150:65-1-3. Eligible entities

Eligible entities which may apply for the Oklahoma Quality Jobs Program are establishments that:

(1) Meet the definition of a "basic industry" as set forth in Section 3603 of Title 68 of the Oklahoma Statutes;

(2) Offer medical benefits to the holders of new direct jobs through a health benefits plan meeting the requirements of the Oklahoma Quality Jobs Program Act and this chapter;

(3) Have an annual gross payroll for new direct jobs projected to equal or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) within three (3) years of the date of the first incentive payment. Provided, that for establishments applying under NAICS 551114 only payroll from those jobs associated with the corporate headquarters function shall be allowed; and

(4) Have a number of full-time employees working an average of thirty (30) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs. Provided, full-time employees provided through lease or contract by a third party employer may be included if they meet the definition of new direct jobs of the applicant.

(5) Industry Group Numbers 3111 through 3119 of the NAICS Manual shall be required to meet the requirements set forth at 68 O.S. § 3604(D).

(6) An establishment which locates its principal business activity on a site containing at least ten (10) acres which, that meets the requirements set forth in 68 O.S. § 3604(E)(1) shall be required to meet the requirements set forth in 68 O.S, § 3604(E)(2) through 68 O.S. § 3604(E)(4).

(7) New direct jobs must be paid an annualized wage which equals or exceeds the thresholds set forth in 68 O.S. § 3604(F)(1) and (2), except for those otherwise qualified establishments that locate in an opportunity zone as set forth in 68 O.S. § 3604(G).

(8) An establishment which meets the requirements set forth at 68 O.S. § 3603(A)(6)(e) may apply under those provisions.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 12 Ok Reg 19, eff 9-29-94 (emergency); Amended at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 22 Ok Reg 1727, eff 6-25-05 ; Amended at 23 Ok Reg 1200, eff 5-25-06 ; Amended at 24 Ok Reg 1202, eff 5-25-07 ; Amended at 25 Ok Reg 1537, eff 6-12-08]

150:65-1-4. Application

(a) A project profile shall be prepared for establishments that meet the requirements of 150:65-1-3. In order to prepare a project profile the establishment shall be required to provide the following information:

(1) The calendar year and quarter in which the project first starts,

(2) The employment resulting from the project over five (5) years,
(3) The first and third year average salary of the new workers hired in the new direct jobs,
(4) A description of the establishment's operations and the lines of business and operations of the project for which an application is being submitted, and
(5) Such other information as may be required by the Department.

(b) A preliminary analysis and the estimate of the net benefit rate and the total possible incentive available to the establishment, will be sent to the eligible establishment for review.
(c) The establishment shall also provide a copy of its basic health benefits plan offered to employees or a description of the plan that will be offered within one hundred and eighty (180) days of the date of employment.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 12 Ok Reg 19, eff 9-29-94 (emergency); Amended at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 22 Ok Reg 1727, eff 6-25-05 ; Amended at 24 Ok Reg 1202, eff 5-25-07 ; Amended at 25 Ok Reg 1537, eff 6-12-08]

150:65-1-5. Detailed cost-benefit analysis; review of information

(a) In addition to the initial cost-benefit analysis included in the project profile, the Department may conduct a more detailed cost-benefit analysis before an incentive offer is made. The Department will determine if a more detailed cost-benefit analysis is necessary based on a review of the reasonableness of the projected average wage rates, the forecast of in-migration rates and other factors. Additional information may be required from an establishment. An establishment may request that the Department conduct a more detailed cost-benefit analysis.
(b) A copy of the detailed cost-benefit analysis will be sent to the establishment for review and approval.
(c) Before an incentive contract is sent to an establishment, the Department shall review the establishment's project profile, health benefits plan, baseline employment, average annual wage projections, the net benefit rate and the maximum benefits allowable. After such review is completed, the Department may recommend the development of an incentive contract.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 22 Ok Reg 1727, eff 6-25-05]

150:65-1-6. Incentive contract

(a) After an incentive contract is recommended by the Department, the office of General Counsel shall prepare an incentive contract for the Director's review and signature. The signed incentive contract shall then be forwarded to the establishment. An incentive contract may be accepted by the establishment within sixty (60) days of the date of signing by the Director. The sixty (60) day period can be extended by the Director upon the request of the establishment, at the Director's discretion.

(b) The incentive contract shall be on a form prescribed by the Department which shall include the following information:

(1) The net benefit rate which will be multiplied by verified gross quarterly payroll to determine the amount of quarterly payments;
(2) The estimated direct state benefits which is the maximum amount of benefit payments available;
(3) The project start date;
(4) The baseline employment;
(5) The projected number of new jobs;
(6) The average annual wage; and
(7) Any other information the Department deems necessary.

(c) Upon execution of the incentive contract, the establishment shall return the incentive contract to the Department. The original incentive contract, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested or by personal delivery or by other means acceptable to the Department.
(d) For all purposes of the Oklahoma Quality Jobs Program Act, the effective date of approval of the incentive contract will be the date the signed and accepted incentive contract is received by the Department. Provided, however, the approved project may have a start date which is prior to a later date than the effective date of approval.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 12 Ok Reg 19, eff 9-29-94 (emergency); Amended at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 22 Ok Reg 1727, eff 6-25-05 ; Amended at 23 Ok Reg 1200, eff 5-25-06 ; Amended at 31 Ok Reg 883, eff 9-12-14]

150:65-1-7. Transmittal of information

The Department shall notify the Commission of each approved incentive offer. The Department shall provide the Commission with a copy of each approved incentive offer, project profile and the results of the cost-benefit analysis.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 22 Ok Reg 1727, eff 6-25-05]

150:65-1-8. Origination fees

The Department shall charge an origination fee of One Thousand Dollars $1,000.00) for each approved incentive contract. The fee shall be deducted from its first incentive payment payable by the Commission.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 22 Ok Reg 1727, eff 6-25-05]

150:65-1-9. Required information

(a) The Department may require establishments to provide any of the following information in order to determine eligibility under the provisions of the Oklahoma Quality Jobs Program Act, 68 O.S. Supp. 1993, Section 3601, et seq:

(1) NAICS code number;
(2) Business plans;

(3) Feasibility studies;
(4) Financing proposals;
(5) OESC Form 3 or its electronic equivalent;
(6) OTC Income Tax Withholding form;
(7) Financial statements or sales contracts;
(8) Marketing plans;
(9) Registration with the Oklahoma Secretary of State;
(10) Registration with OESC;
(11) Registration with the Commission; and
(12) Application for a Manufacturing Sales Tax Exemption, if applicable.

(b) Additional information that the Department may consider in evaluating eligibility may include, but shall not be limited to:

(1) Industry trends;
(2) Service Contracts in place or anticipated of establishments and of both the subunit establishment and the entity of which it is a part, if applicable. In considering this factor, the Department may require information such as length of contracts, likelihood of extension, track record or historical data regarding receipt of contracts and retention of them if subject to renewal;
(3) Historical data on management in place;
(4) Organization structure of the establishment and any related business or governmental entities and the nature of the relationships; particularly, the Department may inquire whether any establishment files a joint tax return with any of its related entities;
(5) Likelihood of job shifting or utilization of employees of the entity of which the subunit is a part or within a combination or amongst other related entities of an establishment and the percentage of employees affected;
(6) Expansion of existing markets;
(7) Extension of existing product line;
(8) labor market; and
(9) other relevant information.

(c) All materials described in (a) and (b) of this section may be kept confidential by the Department pursuant to the terms of its exemptions contain in the Oklahoma Open Records Act.

(d) The Department may require establishments approved to receive incentive payments to provide any information necessary in order to administer the program and prepare program reports.

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 12 Ok Reg 19, eff 9-29-94 (emergency); Amended at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 22 Ok Reg 1727, eff 6-25-05 ; Amended at 31 Ok Reg 883, eff 9-12-14]

150:65-1-10. Incentive payments; Expansions

(a) An establishment that has qualified under the Oklahoma Quality Jobs Program may receive incentive payments only in accordance with the provisions under which it initially applied and was approved. [68:3606] Provided however with the Department's written approval the incentive contract may be assigned to another eligible entity upon the existing

terms and conditions.
(b) The Department, in order to decide if any expansion project qualifies for incentive payments, shall determine the baseline employment for the establishment.
(c) An establishment must meet the time requirements for filing its initial claim that are set out in 68 O.S. § 3606(A).

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 22 Ok Reg 1727, eff 6-25-05 ; Amended at 26 Ok Reg 1013, eff 5-12-09]

150:65-1-11. Additional incentive payments

(a) *An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects until twelve (12) quarters after receipt of the first incentive payment, or until the establishment's actual verified gross payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional incentive payments based upon the gross payroll anticipated from an expansion only.* 68 O.S. § 3606(F).
(b) *An establishment described in this subsection shall be required to repay all incentive payments received under the Oklahoma Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.* 68 O.S. § 3604(J).
(c) *If an establishment fails to achieve the required gross payroll within three (3) years of the start date, the establishment shall not make a new or renewal application for incentive payments authorized pursuant to the Oklahoma Quality Jobs Program Act for a period of twelve (12) months from the last day of the last month of the three-year period during which the required gross payroll amount was not achieved.*68 O.S. § 3606(B).

[**Source:** Added at 10 Ok Reg 4723, eff 9-17-93 (emergency); Added at 11 Ok Reg 3671, eff 7-15-94 ; Amended at 15 Ok Reg 2475, eff 10-8-97 through 7-14-98 (emergency)[1]; Amended at 22 Ok Reg 1727, eff 6-25-05 ; Amended at 31 Ok Reg 883, eff 9-12-14]

Editor's Note: [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-98 (after the 7-14-98 expiration of the emergency action), the text of Section 150:65-1-11 reverted back to the permanent text that became effective 7-15-94, as was last published in the 1996 Edition of the OAC, and remained as such until amended by permanent action on 6-25-05.*

150:65-1-12. Subunit

(a) In order to determine the presence or to project the likelihood in a timely manner, of all the conditions that the Oklahoma Department of Commerce must require a subunit to meet in order to be determined to

be an establishment under the terms of the Quality Jobs Program Act as set forth in 68 O.S. Supp. 1994, Section 3603(8)(a), the Department may consider the following:

(1) All information and conditions to determine if an entity is qualified to be an establishment pursuant to 68 O.S. Supp. 1994, Sections 3601 et seq. and 150:65-1-3 through 150:65-1-9 of this chapter;
(2) Unique or new product line within the state;
(3) New business ventures;
(4) Technologies involved and state of the art;
(5) Distribution channels;
(6) Licenses held;
(7) Financing and tax structure;
(8) Local control of operations decisions;
(9) Autonomous administrative control over capital, expenditures and hiring;
(10) Other data of management practices or of a background or financial nature requested by the Department.

(b) *The Department shall establish criteria for determining the period of time within which* [job] *gain must be demonstrated.* [68:3603(8)(b)].

(1) The Department shall assign the date of determination on which an individual subunit and the entity of which it is a part must demonstrate net gain in total employment.
(2) In order for the subunit to continue to receive incentive payments beyond the date of determination, net gain in total employment must be realized at the date of determination. If no net gain exists, the subunit is disqualified as an establishment and incentive payments cease and shall not be resumed.
(3) If net gain exists at the date of determination, incentive payments shall be paid upon claim presentment as long as conditions for payments are met. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.
(4) The Department shall set out the date of determination on the approval transmitted to the Oklahoma Tax Commission.
(5) Additionally, the Department shall identify the entity of which the subunit is a part by name and nature of establishment, whatever legal form and include any necessary description of the structure of the entity of which the subunit is a part.
(6) In determining the date of determination to be assigned to an individual subunit, the Department may require a plan to be submitted by the subunit and by the remainder of the entity of which the subunit is a part which includes information consisting of:

(A) employment forecasts for the ten years it is anticipated the subunit will receive incentive payments, for both the subunit and the remainder of the entity of which it is a part;
(B) baseline of subunit;
(C) employment of the remainder of the entity of which the subunit is a part;

(D) business decisions of the entity of which the subunit is a part such as merger, downsizing, relocation of working units, etc., and explanations or analyses of trends or strategies of the entity reflected by the decisions;
(E) effect on Oklahoma operations of such trends and strategies and discussion of less than positive net gain in employment, if applicable;
(F) recommendation of a date of determination;
(G) and, such other similar information as the Department determines is necessary to set a date of determination.

(7) Provided, the date of determination shall not extend beyond five years from the date of approval or date of project start-up, whichever is later;

(8) The plan submitted and all information considered by the Department in determining whether a subunit is an establishment shall be the criteria to set the date of determination.

(c) *The Department of Commerce shall promulgate rules to determine whether a subunit of an entity [*and the remainder of the entity of which it is a part*] achieve a net gain in total employment...and a method for determining net gain in total employment. [68:3303(8)(b)].* The method to determine whether or not a subunit, and the remainder of the entity of which the subunit is a part, achieve net gain in total employment follows:

(1) Add the baseline of the subunit and the employment of the remainder of the entity of which the subunit is a part.

(2) Add the employment numbers as reflected by the quarterly or monthly report to the Oklahoma Tax Commission for the period immediately preceding the date of determination of the subunit and the remainder of the entity of which it is a part.

(3) The sum of the latter, (paragraph (2) of this subsection) must exceed the sum of the former, (paragraph) (1) of this subsection, by at least one, for a net gain in total employment to exist.

(d) Signatories for the incentive offer shall be officers of the entity of which the subunit is a part and the local chief operating officer or employee of the subunit.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 21 Ok Reg 543, eff 8-7-03 (emergency); Amended at 21 Ok Reg 2965, eff 7-25-04 ; Amended at 22 Ok Reg 1049, eff 5-26-05]

150:65-1-13. Combination

(a) *Combination means combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion. [68:3603(A) (8) (a)]*. Such combinations shall include:

(1) Subsidiary controlled group. One or more chains of corporations connected through stock ownership by a common corporation if:

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the

common corporation, is owned by one or more of the other corporations; and

(B) The common corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group. Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts owns stock possessing:

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group. Three or more corporations each of which is a member of a group of corporations described in (1) and (2) of this subsection and one of which:

(A) Is a common corporation included in a group of corporations described in (1) of this subsection and also

(B) Is included in a group of corporations described in (2) of this subsection.

(b) The corporations may combine payrolls to reach the payroll threshold for new direct jobs necessary to qualify as an establishment. All corporations in the combination must qualify as a basic industry, individually unless the ad valorem division of the Commission has determined a group or combination of corporations is a vertically integrated or "closed loop" of manufacturers or processors together with all operations used in or necessarily incident to the conduct of the manufacturing activity (See O.A.C. 710:10-7-8 and OTC Order 91-04-26-005). In that event, the Department shall recognize all such corporations as eligible to be in the combination.

(c) A corporation that is part of any combination presently a participant in the Quality Jobs Program may not be a member of any other combination except that a corporation may reapply in combination only with one or more of the corporations it is presently joined with as a participant in the Quality Jobs Program. An individual corporation in a combination may reapply in accordance with rule 150:65-1-11.

(d) The Department may qualify other combinations based on control and ownership factors on a case-by-case basis that are similar to and in keeping with this section.

(e) If the nature of the establishment's description of way of doing business, description of internal policies or practices, or other such

factors so indicate, and in order to avoid job-shifting, likelihood of failure to meet threshold payroll requirements timely, or other similar concerns, the Department may require an applicant to apply in combination if it could so qualify under this section.
(f) The Department may require deletion or addition of entities regarding each combination depending upon lines of business and relationships and status as a basic industry.
(g) Signatories for the incentive contract for a combination shall be officers of the common corporation or at least three owners of stock as required in (2) of subsection (a) of this section or both, if applicable.
(h) When dealing with qualifying a combination, the entire corporation shall be included. No subunits or auxiliaries may be excluded.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 22 Ok Reg 1049, eff 5-26-05]

SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM [REVOKED]

PART 1. PREMIUM PAYMENT PROGRAM [REVOKED]

150:65-3-1. Eligibility for premium payment [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-2. Additional required information [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-3. Premium payment offer [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-4. Transmittal of information [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

PART 3. HIGH IMPACT PROJECTS [REVOKED]

150:65-3-10. High impact project eligibility [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-11. High impact project profile [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-12. Review of information [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-13. High impact project incentive offer [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-14. Required information [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-15. Transmittal of information [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

150:65-3-16. Origination fees [REVOKED]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Revoked at 39 Ok Reg 861, eff 9-11-22]

SUBCHAPTER 5. FORMER MILITARY FACILITIES

150:65-5-1. Eligibility

(a) Eligible entities which may apply for the Former Military Facility Development Program are establishments that meet the qualifications of 68 O.S. Supp. 1994, Section 3601 et seq. and 150:65-1-1 through 150:65-1-13 except that the establishment:

(1) Has an annual gross payroll for new direct jobs projected to equal at least One Million Five Hundred Thousand Dollars ($1,500,000.00) but less than Two Million Five Hundred Thousand Dollars ($2,500,000.00) within three (3) years of the anticipated date of receipt of the first incentive payment; and

(2) Locates its principal business activity at a former military facility used primarily for a "military purpose." Provided, however, that the restrictions of 68 O.S. Supp. 1994, Section 3802 (H) shall apply.

(b) For purposes of this chapter "military purpose" shall not include the storage of prisoners or ammunition and "military facility" shall only include those facilities operated by the United States Army, Navy or Air

Force.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95]

150:65-5-2. Project profile

(a) A quality jobs representative shall prepare a project profile for establishments that meet the requirements of 150:65-5-1. In order to prepare a profile the establishment shall be required to provide the following information:

(1) The calendar year and quarter in which the project first starts;
(2) The employment resulting from the project over ten (10) years;
(3) The third year average salary of the new workers hired in the new direct jobs;
(4) The former military facility at which the establishment plans to locate; and evidence that the facility meets the requirements of this subchapter;
(5) An estimate of the percentage of non-Oklahoma workers likely to be hired. If an estimate is not provided, the Department shall use an average percentage determined by the Department based upon research conducted by the Department;
(6) A description of the establishment's operations and the operations of the project for which an application is being submitted; and
(7) Such other information as may be required by the quality jobs representative.

(b) The project profile, which includes the preliminary analysis and the estimate of the net benefit rate and the total possible incentive available to the establishment, will be sent to the eligible establishment for approval.
(c) Upon approval of the project profile, the establishment shall return the signed project profile to the quality jobs representative. The establishment shall also provide a copy of its basic health benefits plan offered to employees or a description of the plan that will be offered within one hundred and eighty (180) days of the date of application.
(d) A project profile that has been approved, signed and returned to the Department by an establishment will serve as the application for the Former Military Facilities Development Program.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 24 Ok Reg 1202, eff 5-25-07]

150:65-5-3. Detailed cost-benefit analysis; review of information

(a) In addition to the initial cost-benefit analysis included in the former military facilities development project profile, the Oklahoma Department of Commerce may conduct a more detailed cost-benefit analysis if necessary based on a review of the reasonableness of the projected average wage rates, the forecast of in-migration rates and other factors. Additional information may be required from an establishment. An establishment may request that the Department conduct a more detailed cost-benefit analysis.

(b) A copy of the detailed cost-benefit analysis will be sent to the establishment for review and approval.
(c) Before an incentive offer is made to an establishment, the Department shall review the establishment's project profile, health benefits plan, baseline employment, the net benefit rate and the maximum benefits allowable. After such review is completed, the Department may authorize the development of an incentive offer.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95]

150:65-5-4. Project incentive offer

(a) After a former military facilities development project incentive offer is authorized by the Oklahoma Department of Commerce, a quality jobs representative shall prepare an incentive offer for the Executive Director's review and signature. The signed incentive offer shall then be forwarded to the establishment. An incentive offer may be accepted by the establishment within sixty (60) days of the date of signing by the Executive Director.
(b) The project incentive offer shall be on a form prescribed by the Department which shall include the following information:

(1) The net benefit rate which will be multiplied by verified gross quarterly payroll to determine the amount of quarterly payments;
(2) The estimated net direct state benefits which is the maximum amount of benefits payments available;
(3) The approval date of the incentive offer;
(4) The baseline employment if applicable; and
(5) Any other information the Department deems necessary.

(c) Upon acceptance and certification of the incentive offer, the establishment shall return the incentive offer to the Department. The incentive offer, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested, by personal delivery or other means approved by the Department.
(d) For all purposes of the Former Military Facility Development Act, the effective date of approval of the incentive offer will be the date signed, accepted and certified incentive offer is received by the Department. Provided, however, the approved project may have a start date which is different than the effective date of approval.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95]

150:65-5-5. Required information

(a) The Oklahoma Department of Commerce may require establishments to provide any of the following information in order to determine eligibility under the provisions of the Former Military Facility Development Act, 68 O.S. Supp. 1994, Section 3801, et seq:

(1) NAICS code number;
(2) County in which the establishment plans to locate;
(3) Business plans;
(4) Feasibility studies;

(5) Financing proposals;
(6) OESC Form 3 or its electronic equivalent;
(7) OTC Income Tax Withholding form;
(8) Evidence that the property meets the requirements of 68 O.S. Supp. 1994, Section 3801 et seq. and this subchapter;
(9) Industry trends;
(10) Service contracts in place or anticipated;
(11) Historical data on management in place;
(12) Organization structure of the establishment and any related business or governmental entities and the nature of the relationships;
(13) Likelihood of job shifting;
(14) Expansion of existing markets;
(15) Extension of existing product line;
(16) Labor market;
(17) Evidence that there is negotiation being conducted on property meeting the requirements of this subchapter;
(18) Financial statements or sales contracts;
(19) Marketing plans; and
(20) Other relevant information.

(b) All such materials described in this section may be kept confidential by the Department pursuant to the Open Records Act.

(c) The Department may require establishments approved to receive incentive payments to provide any information necessary in order to administer the program and prepare program reports.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95 ; Amended at 24 Ok Reg 1202, eff 5-25-07]

150:65-5-6. Transmittal of information

The Oklahoma Department of Commerce shall notify the Oklahoma Tax Commission of each approved former military facility development project incentive offer. The Department shall provide the Commission with a copy of each approved incentive offer, project profile and the results of the cost-benefit analysis.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95]

150:65-5-7. Origination fee

The Oklahoma Department of Commerce shall charge an origination fee of Five Hundred ($500.00) for each approved former military facilities development project incentive offer. The fee shall be due at the time an establishment receives its first incentive payment from the Oklahoma Tax Commission. Upon receipt of the first incentive payment, the establishment shall remit the fee to the Department. [74:5012.1]

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95]

SUBCHAPTER 6. SMALL EMPLOYER QUALITY JOBS PROGRAM

150:65-6-1. Purpose

The purpose of these rules is to implement the provisions of the Small Employers Quality Jobs Incentive Act, 68 O.S. Sections 3901 through 3910, which provides appropriate incentives to employers having ninety (90) full-time employees or less who are engaged in basic industries to locate or expand existing businesses within the State of Oklahoma.

[**Source:** Added at 18 Ok Reg 3504, eff 9-14-01]

150:65-6-2. Definitions

In addition to those terms defined in the Small Employer Quality Jobs Incentive Act, and those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102, and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. Section 5001, and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department, or during any period of time that the position of Director is vacant, such term shall refer to the person serving as the acting Director.

"Qualified Establishment" means an establishment which has been approved for participation in the Small Employer Incentives Program.

"Small Employer Incentives Act" means the Small Employer Quality Jobs Incentives Act, codified at 68 O.S. Sections 3901 through 3910 as may be amended from time to time.

"Small Employer Incentives Program" means the incentives payment program described in the Small Employer Incentives Act.

"Start date" means the date on which the establishment may begin accruing benefits for new direct jobs that were created in accordance with such establishment's application.

[**Source:** Added at 18 Ok Reg 3504, eff 9-14-01]

150:65-6-3. Applications

Eligible entities may obtain applications for acceptance into the Small Employer Incentives Program from the Director of the Department. Upon completion of all information required by such application, the Director will determine whether an applicant is qualified to receive incentives payments under the Small Employer Incentives Program.

[**Source:** Added at 18 Ok Reg 3504, eff 9-14-01 ; Amended at 23 Ok Reg 1200, eff 5-25-06]

150:65-6-4. Approval of Application

(a) After an incentive contract is recommended by the Department, the office of General Counsel shall prepare an incentive contract for the Director's review and signature. The signed incentive contract shall then be forwarded to the establishment. An incentive contract may be accepted by the establishment within sixty (60) days of the date of signing by the Director.

(b) The incentive contract shall be in a form prescribed by the Department which shall include the following information:

(1) The net benefit rate which will be multiplied by verified gross quality payroll to determine the amount of quarterly payments provided the establishment has met the requirements for the average annual wage and creation and maintenance of the threshold of new direct jobs as specified in the incentive contract;

(2) The project start date;

(3) The baseline employment;

(4) The number of new direct jobs threshold and the date by which such jobs must be in place;

(5) The date as specified in the application on which the automatic payments will begin provided all other requirements of the Small Employer Incentives Act have been met; and

(6) Any other information the Department deems necessary.

(c) Upon execution of the incentive contract, the establishment shall return the incentive contract to the Department. The original incentive contract, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested or by personal delivery or by other means acceptable to the Department.

(d) For all purposes of the Small Employer Incentives Act, the effective date of approval of the incentive offer will be the date the signed and accepted incentive is received by the Department; provided, however, the approved project may have a start date which is prior to the effective date of approval.

[**Source:** Added at 18 Ok Reg 3504, eff 9-14-01 ; Amended at 23 Ok Reg 1200, eff 5-25-06 ; Amended at 23 Ok Reg 3123, eff 8-25-06 ; Amended at 24 Ok Reg 1202, eff 5-25-07]

150:65-6-5. Transmittal of Notice of Acceptance

The Department shall notify the Commission of each approved incentive offer. The Department shall provide the Commission with a copy of the application and the incentive offer.

[**Source:** Added at 18 Ok Reg 3504, eff 9-14-01]

150:65-6-6. Additional Information

(a) To determine an applicant's qualification, the Department may request and consider other information in addition to that information listed in the application, including, without limitation, the following:

(1) NAICS Code Numbers relating to all activities of an applicant;

(2) Business plans;

(3) Feasibility studies;
(4) Financing proposals;
(5) OESC Form 3 or its electronic equivalent;
(6) Income tax withholding forms;
(7) Marketing plans;
(8) Financial statements or sales contracts;
(9) Registration with the Oklahoma Secretary of State;
(10) Registration with OESC;
(11) Registration with the Commission; and
(12) Application for a Manufacturing Sales Tax Exemption, if applicable.

(b) Additional information that the Department may consider in evaluating eligibility may include, without limitation, the following:
(1) Industry trends;
(2) Service contracts in place or anticipated;
(3) Historical data on management in place;
(4) Organization structure of the establishment and any related business and the nature of the relationships, including whether such entities file income tax returns on a consolidated basis;
(5) Likelihood of job shifting between qualifying and non-qualifying activities;
(6) Expansion of existing markets;
(7) Extension of existing product line;
(8) Labor market; and
(9) Other relevant information.

(c) All materials described in subsections (a) and (b) hereof may be kept confidential by the Department, if permitted by the Oklahoma Open Records Act, 51 O.S. Sections 24A.1 through 24A.26.

(d) The Department may also require Qualified Establishments to provide any information necessary in order to administer the program and prepare program reports.

[**Source:** Added at 18 Ok Reg 3504, eff 9-14-01 ; Amended at 23 Ok Reg 1200, eff 5-25-06 ; Amended at 31 Ok Reg 883, eff 9-12-14]

SUBCHAPTER 7. ADMINISTRATION OF BENEFITS

150:65-7-1. Applications; approval of applications

(a) Applications submitted to the Oklahoma Department of Commerce pursuant to the Saving Quality Jobs Act 68 O.S. Supp. 1994, Section 3701 et seq. or the Former Military Development Act 68 O.S. Supp. 1994, Section 3801 et seq. must be submitted in writing on forms or in a form approved by the Oklahoma Department of Commerce and must be executed by an authorized officer or designated representative of the applicant, approved by the Department.

(b) Applications shall be date and time stamped by the Department upon receipt at its offices in Oklahoma City or Tulsa or by field representatives, in the order in which they are received. Applications received in the same delivery of mail shall be stamped in the order in

which they are opened.
(c) Applications shall be considered for approval in the order in which they are received as indicated by their date and time stamp. Provided, if sufficient benefits remain available in all fiscal years included in all pending applications, such that no pending application need be rejected for lack of available benefits, then applications may be considered in any order.
(d) If approval of an application would result in aggregate projected benefits, pursuant to the Saving Quality Jobs Act, 68 O.S. Supp. 1994, Section 3601 et seq., in excess of Two Million Five Hundred Thousand Dollars ($2,500,000.00) in any fiscal year included in the application then said application shall not be considered for approval.
(e) If approval of an application would result in aggregate projected benefits, pursuant to the Former Military Facility Development Act, in excess of Two Million Five Hundred Thousand Dollars ($2,500,000.00) in any fiscal year included in the application then said application shall not be considered for approval.
(f) Establishments which have been approved for benefits pursuant to the Saving Quality Jobs Act, or the Military Facility Development Act may not claim benefits in any fiscal year which would exceed the maximum projected benefits upon which their application was considered and approved by the Department.
(g) If an application must be rejected because its approval would result in aggregate projected benefits in excess of the maximum set out in subsections (d) and (e) of this section but there is some amount of benefit left available in each of the fiscal years included in the application then the applicant may voluntarily reduce the amount of projected benefits in each fiscal year, so the maximum limits of subsections (d) and (e) shall not be exceeded and the application may then be considered.
(h) If an establishment shall cease to exist as an operating entity, or shall permanently lose its eligibility pursuant to the Saving Quality Jobs Act or the Former Military Facility Development Act then its projected benefits shall be subtracted from the aggregate amount for each affected fiscal year.

[**Source:** Added at 12 Ok Reg 19, eff 9-29-94 (emergency); Added at 12 Ok Reg 1339, eff 5-25-95]

SUBCHAPTER 9. QUALIFIED SPACE TRANSPORTATION PROVIDER [EXPIRED]

150:65-9-1. Purpose and scope [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: [1] *This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective.*

Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:65-9-1 (as superseded by 150:95-1-1) was no longer effective.

150:65-9-2. Definitions [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:65-9-2 (as superseded by 150:95-1-2) was no longer effective.*

150:65-9-3. Applications for tax credits [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:65-9-3 (as superseded by 150:95-1-3) was no longer effective.*

150:65-9-4. Approval of application [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:65-9-4 (as superseded by 150:95-1-4) was no longer effective.*

150:65-9-5. Transmittal of Notice of approval: Notice to applicant [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency*

action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:65-9-5 (as superseded by 150:95-1-5) was no longer effective.

SUBCHAPTER 11. 21ST CENTURY QUALITY JOBS INCENTIVE ACT

150:65-11-1. Purpose

The purpose of this chapter is to implement the provisions of the 21st Century Quality Jobs Incentive Act, 68 O.S. Section 3911, et seq., which provides appropriate incentives to support the establishment of growth industries in this state.

[**Source:** Added at 27 Ok Reg 283, eff 11-2-09 (emergency); Added at 27 Ok Reg 1121, eff 6-1-10]

150:65-11-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"21st Century Contract" means the contract between the applicant and the Oklahoma Department of Commerce that establishes the incentive benefit amount under the 21st Century Quality Jobs Incentive Act.

"21st Century Contract Incentive" means the amount of the incentive calculated by the Oklahoma Department of Commerce and included in the 21st Century Contract between the applicant and the Oklahoma Department of Commerce.

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102 and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting or interim director.

[**Source:** Added at 27 Ok Reg 283, eff 11-2-09 (emergency); Added at 27 Ok Reg 1121, eff 6-1-10]

150:65-11-3. Application

For the purpose of evaluating the applications to the 21st Century Quality Jobs Incentive Act, the Department will require all applicants 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 application.

[**Source:** Added at 27 Ok Reg 283, eff 11-2-09 (emergency); Added at 27 Ok Reg 1121, eff 6-1-10]

150:65-11-4. Origination fees

The Department shall charge an origination fee for each approved 21st Century Contract. The fee shall be deducted from the first incentive payment payable by the Commission. The fee shall be $2,500 per contract where the 21st Century Contract Incentive is less than $10,000,000; $5,000 per contract where the 21st Century Contract Incentive is at least $10,000,000 and no more than $50,000,000; and $7,500 per contract where the 21st Century Contract Incentive is more than $50,000,000.

[**Source:** Added at 27 Ok Reg 283, eff 11-2-09 (emergency); Added at 27 Ok Reg 1121, eff 6-1-10]

SUBCHAPTER 13. OKLAHOMA REMOTE QUALITY JOBS INCENTIVE ACT

150:65-13-1. Purpose

The purpose of these rules is to implement the Oklahoma Remote Quality Jobs Incentive Act established in 68 O.S. §4501 et. seq.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

150:65-13-2. Definitions

For purposes of this subchapter, the following words and terms have the following meaning unless the context clearly indicates otherwise:

"Application date" means the date on which the proxy establishment's application is first received and stamped by a Remote Quality Jobs representative at the Oklahoma Department of Commerce.

"Approval date" means the date on which the Executive Director of the Department of Commerce issues the offer to a proxy establishment to receive benefits pursuant to the Oklahoma Remote Quality Jobs program. If the Director issues an offer to a proxy establishment, the Application Date as defined in these rules will be considered the Approval Date for purposes of the act.

"Commission" means the Oklahoma Tax Commission and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce and any successor agencies thereto.

"Director" means the Executive Director of the Oklahoma Department of Commerce.

"Effective date" means the date that the signed and accepted incentive contract is received by the Department. An approved project may have an Effective Date which is different than the Start Date.

"Qualifying basic health benefits plan" means a health benefits plan providing coverage for basic hospital care, physician care, mental health care, substance abuse treatment, prescription drugs and prenatal care where not more than fifty percent (50%) of the cost of the premium is paid by the remote worker. Services provided by an Employee

Assistance Plan (EAP) are not sufficient to meet this definition.

"Remote Quality Jobs Program" or **"Act"** means the Oklahoma Remote Quality Jobs Incentive Act.

"Remote quality jobs representative" means the Department professional, trained in the Remote Quality Jobs Program, who is so designated by the Executive Director, and whose responsibilities include direct contact with applicants and clients, analysis of data, initiation of project proposals, preparation of project profiles and preparation of incentive offers.

"Remote worker" means as defined in 68 O.S. §4503. The twelve (12) month period referred to in the statutory definition refers to the twelve (12) month period immediately preceding the application date for participation in the program.

"Start date" means the date on which a proxy establishment may begin accruing benefits for the creation of new direct jobs. This date is set by agreement and is not more than twenty-four (24) months from the Application Date.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

150:65-13-3. Eligible entities

(a) A proxy establishment may receive quarterly payments for a ten-quarter period if they facilitate the attraction of remote workers to the State of Oklahoma.

(b) A proxy establishment may be deemed to "facilitate the attraction of remote workers to the State of Oklahoma" only if they participate in all of the following activities:

(1) Engage in marketing designed to attract qualifying remote workers to relocate to a location within the State of Oklahoma;

(2) Facilitate visits and tours, either virtually or in person, for prospective qualifying remote workers to become familiar with the benefits of relocating to the State of Oklahoma; and

(3) Provide a monetary incentive to a qualifying remote worker or his/her assignee to relocate to a location within the State of Oklahoma payable in full or in part upon and/or within a year of their relocation to Oklahoma.

(c) A proxy establishment will not be permitted to claim a Remote Worker whose employer is participating in any of the programs set forth in Section 4507 of Title 68 of the Oklahoma Statutes.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

150:65-13-4. Application

(a) An eligible proxy establishment may obtain an application for acceptance into the Remote Quality Jobs program from the Department. Upon completion of all information submitted as part of the application, the Director will determine whether an applicant is qualified to receive incentive payments under the Program.

(b) To apply, a qualified proxy establishment may submit an application for participation in the Remote Quality Jobs program to the Department.

(c) As part of the Application, the proxy establishment is responsible for supplying all of the following information:

(1) The proposed Start Date of the contract.

(2) The number of new direct jobs to be included as part of the contract.

(3) The yearly average salary of the Remote Workers hired in the new direct jobs.

(4) An insurance summary document indicating proof of a Qualifying Basic Health Benefits Plan for each Remote Worker to be covered by the contract.

(5) The name of each Remote Worker to be included in the contract.

(6) The name of the current employer of each Remote Worker to be covered by the contract.

(7) The amount of the direct monetary incentive to be paid out by the proxy establishment to each Remote Worker the proxy establishment intends to claim under the contract.

(8) Any other information or documentation deemed relevant by the Department to ensure the project meets statutory criteria.

(d) A proxy establishment may submit the information set forth above at any time between the Application Date until sixty (60) days prior to the Start Date of the contract.

(e) A proxy establishment that is receiving incentive payments pursuant to the Remote Quality Jobs Program cannot apply for additional incentive payments for any new projects unless and until either:

(1) the establishment's actual verified annual gross payroll for new direct jobs under the establishments existing contracts has met the statutory criteria as set out in Section 4504 of Title 68 of the Oklahoma Statutes for one (1) calendar quarter or

(2) The annual projected payroll for each of the proxy establishment's existing contracts under the act exceeds the mandatory annual gross payroll set forth in 68 O.S. §4504(B) and no less than nine (9) months have passed since the Application Date for the proxy establishment's most recent existing contract.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

150:65-13-5. Cost/benefit analysis; limitation of benefit

In conducting the cost/benefit analysis to determine the net benefit rate, the Department will consider the following factors:

(1) The estimated direct state benefits including, but not limited to, the anticipated level of new tax revenues to the state.

(2) The estimated direct state costs including, but not limited to, the added cost to the state of providing services.

(3) The payments to be made by the proxy establishment to Remote Workers covered by the contract within a year of relocation to Oklahoma.

(4) Any other factor deemed relevant by the Department.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

150:65-13-6. Incentive contract

(a) After an incentive contract is recommended by the Department, the contract will be prepared for the Director's review and signature. The signed document will then be forwarded to the proxy establishment. The tendered contract may be accepted by the proxy establishment within sixty (60) days of the date of signing by the Director, unless the Director extends this period at the establishment's request.

(b) The incentive contract will be on a form prescribed by the Department which includes all of the following information:

(1) The net benefit rate which will be multiplied by verified gross quarterly payroll of the Remote Workers to determine the amount of quarterly payments;

(2) The maximum amount of benefit payments available, which is the lesser amount of the cumulative payments to be made by the proxy establishment to Remote Workers or the estimated net direct state benefits under the contract;

(3) The project's Approval Date;

(4) The project's Start Date;

(5) The projected number of new direct jobs;

(6) The average annual wage of new direct jobs;

(7) Any other information the Department deems necessary to carry out the provisions of the statute.

(c) The original incentive contract, signed by the chief executive officer or authorized representative, may be returned to the Department by any means acceptable to the Department.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

150:65-13-7. Transmittal of information

(a) The Department will notify the Commission of each approved incentive offer.

(b) The Department will provide the Commission with all of the following documentation for each approved incentive offer:

(1) A copy of the executed incentive contract.

(2) The results of the cost-benefit analysis.

(3) Any other information deemed by both the Department and the Commission to be reasonably necessary for administration of the program.

[**Source:** Added at 38 Ok Reg 849, eff 7-19-21 (emergency); Added at 39 Ok Reg 864, eff 9-11-22]

CHAPTER 70. JOBS DEVELOPMENT INCENTIVE PROGRAM [REVOKED]

[**Authority:** 74 O.S., §5017]
[**Source:** Codified 7-15-94]

150:70-1-1. Purpose [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

150:70-1-2. Definitions [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Amended at 13 Ok Reg 2359, eff 6-27-96 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

150:70-1-3. Eligible organization; minimum qualifications [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

150:70-1-4. Request for proposal [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

150:70-1-5. Program participant certification; program funding [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

150:70-1-6. Incentive payments; bonus incentive [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

150:70-1-7. Program documentation [REVOKED]

[**Source:** Added at 11 Ok Reg 459, eff 11-10-93 (emergency); Added at 11 Ok Reg 3131, eff 7-15-94 ; Amended at 13 Ok Reg 2359, eff 6-27-96 ; Revoked at 16 Ok Reg 3389, eff 8-12-99]

CHAPTER 75. BUSINESS INCUBATORS INCENTIVE PROGRAM

[**Authority:** 74 O.S., § 5003.6]
[**Source:** Codified 8-12-99]

150:75-1-1. Purpose

The purpose of these rules is to establish procedures and guidelines for the certification of small business incubators in order to provide sponsors of such incubators, as well as the small business tenants thereof, opportunities to qualify for state tax incentives through the Oklahoma Tax Commission. These incentives have been established under the provisions of the Small Business Incubators Incentives Act, 74 O.S. Sections 5071 through 5079 to encourage and advance economic prosperity and employment for small business owners and incubator tenants throughout the State of Oklahoma.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-2. Definitions

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

"Act" means the Small Business Incubators Incentive Act, 74 O.S. Sections 5071 through 5079.

"Department" means the Oklahoma Department of Commerce, established pursuant to 74 O.S. Section 5001, and any successor agencies thereto.

"Incubator" shall have the meaning ascribed to such term in the Act.

"Sponsor" shall have the meaning ascribed to such term in the Act.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-3. Application contents

(a) Any company or association seeking to be a sponsor of an incubator and to obtain certification thereof shall submit an application to the Department on such form(s) as the Department may prescribe.

(b) The application shall require submission of the following information:

(1) Incubator Organization - This section shall include the complete and official name of the organization seeking incubator sponsorship; legal structure of the organization; location of proposed incubator site; mission statement and objectives of the organization; long-term objectives of the incubator; affiliations with other organizations; proposed incubator service area (including a map); and

(2) Management Team - This section shall include a summary of management team training, experience, and skills list of the members of the organization's Board of Directors; and a list of incubator staff positions with a resume for each staff person with areas of discipline indicated for each (i.e., management, finance,

marketing, etc.); and
(3) Marketing Plan - This section shall include an overall marketing strategy for the incubator expected occupancy rate; market/service area to be covered; and
(4) Facilities and Operations - This section shall include information regarding ownership of the building, description of the facility, including square footage, layout and design, furnishings, equipment available to tenants, conference room, tenant, visitor, and employee parking, etc., facility maintenance, evidence of adequate incubator facility insurance coverage, and hours of operation. The applicant shall also provide in this section a copy of land and building title or lease agreement, or other assurances of long-term availability of the facility to incubator tenants; legal description of the property, sample contract for incubator tenant lease agreement; drawing of the layout of the facility, and a copy of certificate of insurance; and
(5) Fees and Rates - This section shall include a schedule of rental rates for leased space; fees for any services being provided by the sponsor; and the basis on which expense reimbursements will be calculated.
(6) Financial - This section shall contain a discussion of the sources of funding for the incubator and three year pro-forma income and cash flow statements, with assumptions. The first year pro-forma financial statement shall be by month. The remaining two years may be cumulative.
(7) Support - This section shall demonstrate how the sponsor will encourage the sharing of ideas between tenants, aid the incubator and set policy for terminating occupancy of tenants in order to maximize the opportunity to succeed for the greatest number of tenants.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-4. Length of certification

(a) Certification of an incubator shall be valid for ten (10) years unless one of the following events occur:
(1) There is a change in ownership other than those upon whom certification was based; or
(2) Tenants occupying incubator space exceed "small business" size standards for their industry as defined by the U. S. Small Business Administration's Code of Federal Regulations, Title 13, Part 121; or
(3) Oklahoma Tax Commission deems sponsor ineligible for tax incentives under this program resulting in a request for incubator de-certification.
(b) Certification decisions made by the Department are final.
(c) Re-certification is required prior to the expiration date of each ten-year period by filing a new certification application.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-5. Continued certification

Once an incubator is certified, the Department may perform periodic reviews to ensure that the facility maintains compliance according to the rules and regulations contained in this chapter. Failure to maintain compliance may result in revocation of certification after service of notice of revocation and an opportunity to show cause why certification should not be revoked.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-6. Reporting

(a) Incubator sponsors shall file annual reports with the Department not later than December 15 of each calendar year.

(1) Each report must contain the following information:

(A) Number of *new* incubator tenants by industry for current reporting period;

(B) Total cumulative number of incubator tenants by industry;

(C) Total number of new jobs created by tenants for current reporting period;

(D) Total cumulative number of jobs created by tenants;

(E) Total financial value of initial investment by tenants for current reporting period;

(F) Total financial value of cumulative investment by tenants; and

(G) Number of firms still operating in Oklahoma after ending their tenancy in the incubator, and the number of jobs provided by these firms for the current reporting period; and

(2) Failure to submit annual reports as requested herein may result in decertification of the incubator facility.

(b) The Department, on or before December 31 of each year, shall provide a report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate containing the following information:

(1) The number of applications for incubators submitted;

(2) The number of applications approved;

(3) The number of incubators created under this act;

(4) The number of tenants occupying each incubator;

(5) The number of jobs provided by each incubator and tenants of each incubator; and

(6) The number of firms still operating in the State after ending their tenancy in incubators, and the number of jobs they have provided.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-7. Administrative hearings

(a) Any organization that believes it has been aggrieved by a denial or revocation of incubator certification and designation as a sponsor thereof

by the Department may request, in writing, an administrative hearing pursuant to the provisions regarding individual proceedings, 150:1 -11 -1 et. seq. of the Department's General Rules of Practice and Procedure.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-8. Additional information and on-site inspections

(a) The Department may request additional information from organizations seeking incubator certification, incubator tenants, directors, staff, or other program participants. Failure to provide such information may be grounds for denial of certification.
(b) The Department shall have the right to conduct on-site evaluations as deemed necessary.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

150:75-1-9. List of certified entities

The Department shall compile and maintain a list of all entities certified as sponsors pursuant to the Act.

[**Source:** Added at 16 Ok Reg 3392, eff 8-12-99 ; Amended at 18 Ok Reg 3506, eff 9-14-01]

CHAPTER 80. OKLAHOMA ENERGY PROGRAM

[**Authority:** 74 O.S., §§ 5003.6, 5017, 5017.1, and 5032]
[**Source:** Codified 7-27-95]

SUBCHAPTER 1. INSTITUTIONAL CONSERVATION PROGRAMS [REVOKED]

150:80-1-1. Purpose [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-2. Authority [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-3. Scope [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-4. Definitions [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-5. Fund distribution [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-6. Application process [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-7. Selection [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-8. Review and appeals process [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-9. Grantee responsibilities [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-10. Program violations [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-1-11. Corrective and remedial action [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

SUBCHAPTER 3. STATE ENERGY CONSERVATION PROGRAMS [REVOKED]

150:80-3-1. Purpose [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-2. Authority [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-3. Scope [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-4. Definitions [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-5. Incorporated by reference [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-6. Funds distribution [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-7. Application process [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-8. Selection [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-9. Review and appeals process [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-10. Grantee responsibilities [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-11. Program violations [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

150:80-3-12. Corrective and remedial action [REVOKED]

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95 ; Revoked at 40 Ok Reg 874, eff 8-11-23]

SUBCHAPTER 5. WEATHERIZATION ASSISTANCE PROGRAM

150:80-5-1. Purpose

The purpose of this program is to increase energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditure, and improve their health and safety, especially low-income persons who are particularly vulnerable such as elderly, handicapped, and children.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-2. Authority

(a) This program is authorized under Energy Conservation in Existing Buildings Act, 42 U.S.C. Sections 6861 et seq., and 42 U.S.C. Sections 7101 et seq., and 10 C.F.R., Part 440.
(b) The legal authority to implement this program is vested in the Oklahoma Department of Commerce pursuant to 74 O.S. Sections 5003.6, 5017, 5017.1 and 5032.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-3. Scope

The program is to provide financial and technical assistance to Community Action Agencies that have an approved management plan of service activities designed to further the intent of the program.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-4. Definitions

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

"Act" means the Energy Conservation In Existing Buildings Act of 1976, as amended, 42 U.S.C. Sections 6861 et seq and 42 U.S.C. Sections 7101 et seq.

"Board of Directors" means the governing or administering body of a community action agency in accordance with 74 O.S. 1991, Section 5037.

"Community Action Agency or CAA" means a nonprofit agency, designated by the Department, pursuant to 74 O.S. 1991, Section 5037.

"Contractor" means Community Action Agencies or other eligible organizations who are recipients of Weatherization Assistance Program funds.

"Department" means the Oklahoma Department of Commerce.

"DOE" means the U.S. Department of Energy.

"Division of Community Affairs and Development or DCAD" means the Division of the Oklahoma Department of Commerce that administers the Weatherization Assistance Program.

"Eligible Entity" means a community action agency as defined by 74 O.S. Sections 5036, 5037, and 5038.

"Eligible Organization" means a viable organization recognized by the Department.

"EAC" means the Energy Advisory Council, a state policy advisory council.

"Management Plan" means the plan of service activities designed by a community action agency or eligible entity to address the weatherization needs in each county of their respective service area.

"Poverty" means the official poverty line defined by the U.S. Office of Management and Budget for the target audience of this program.

"Request for Qualifications or RFQ" means the documents provided by the Department to eligible entities or eligible organizations to determine eligibility for funding under this program.

"Weatherization Assistance for Low-Income Persons State Plan or State Plan" means the annual application required by the ACT and which must be approved by DOE.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-5. Incorporated by reference

National standards for development of the Weatherization Assistance Program for Low-Income Persons are hereby incorporated by reference into these rules. These standards are described in Energy Conservation In Existing Buildings Act of 1976, as amended, 42 U.S.C. Sections 6861 et seq. and 42 U.S.C. Sections 7101 et seq.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-6. Funds distribution

(a) Program funds will be disbursed in accordance with the Weatherization Assistance Program State Plan. Funds distribution formula shall be in accordance with federal and state requirements. Contractors will be awarded funds on the basis of (1) population below the poverty line (2) population of elderly below the poverty line (3) substandard housing, and (4) square miles of service area.

(b) The State Plan will identify specific funding categories according to federal program requirements and state discretionary authority.

(c) The Department will establish awards based on an annual allocation of funds received from DOE. The maximum grant amount will be stated

in the State Plan.
(d) The Department reserves the right within its discretionary authority to adjust funding levels to contractors based on changes, additions, or modifications to funds allocation by the DOE.
(e) The Department occasionally receives Petroleum Violation Escrow (PVE) funds to supplement the Weatherization Assistance Program. These funds are to be treated as federal appropriated dollars unless otherwise stated in the State Plan or stated in a supplemental announcement to contractors.
(f) The purpose of this program is to provide technical assistance and financial assistance to Community Action Agencies to provide a variety of services to increase the energy efficiency of dwellings owned or occupied by low-income persons that reduce their total energy costs and improves health and safety conditions. Each contractor is to have an approved management plan on file with the Department. The management plan is to indicate services and activities the contractor will provide to eligible participants.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-7. Application process
(a) For purposes of selecting contractors, the Department will submit a request for qualifications statement to eligible entities. The request for qualifications will identify minimum qualification requirements and other selection factors that will be used to review and evaluate potential contractors.
(b) The Department will forward forms and guidelines to eligible applicants by direct mailing upon notices of availability of funds from DOE. The guidelines will include all criteria, specific data requirements, and other pertinent instructions for the applicant to prepare a complete application for financial assistance.
(c) The Department shall establish annually a deadline for application submittal for financial assistance under this part in accordance with the State Plan.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-8. Selection
(a) For purposes of selecting contractors, the Department will subject all qualifications statements to conform to all requirements of the Act, subsequent amendments, and requirements of the Department.
(b) Eligible entities shall meet the general requirements for a Community Action Agency set out in 74 O.S. 1991, Sections 5035 and 5036.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-9. Program violations
The Department will consider a violation of program policies and procedures to have occurred, under any of the following circumstances.

(1) When there is noncompliance or substantial noncompliance with provisions stated in terms and conditions of grant agreement.
(2) When there has been provision of false information in proposed project application or project reports.
(3) When program requirements have not been met or have been considered to have been violated by the Department.
(4) When there is significant deviation from the grant agreement based upon a monitoring visit by the Department.
(5) When significant corrective actions are necessary to protect the integrity of the projects funds, and those corrective actions are not or cannot be effected by the applicant or grantee, in the judgment of the Department within a reasonable time.
(6) When a finding of fraud, waste or mismanagement of any current or prior State or Federally funded project.
(7) When one or more of the project activities have not begun within six months after grant award unless justification for the delay or delays is fully documented in terms requested by the Department.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

150:80-5-10. Corrective and remedial action

(a) The Department reserves the right under circumstances of possible program violations to request information from the grantee regarding administration, planning, budgeting, management and evaluation functions; any activities undertaken that were not in conformance with the approved program or that were in non-compliance with terms and conditions of the funding agreement. In the event corrective or remedial action is necessary the Department may take the following courses of action.

(1) Condition the grant.
(2) Reduce the total amount of the grant award.
(3) Withhold funds.
(4) Require a return of any unexpended funds; require repayment of funds expended.
(5) Cancel a funding agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation.
(6) Deny future program applications and participation for a period not to exceed two program cycles.

(b) Prior to taking any corrective and/or remedial actions, a notice of show cause hearing shall be issued by the Department to the grantee. Grantee shall have ten (10) working days to appear and show cause as to why corrective or remedial action should not be taken.

[**Source:** Added at 12 Ok Reg 3005, eff 7-27-95]

CHAPTER 85. EMERGENCY SHELTER GRANT PROGRAM

[**Authority:** 74 O.S., § 5003.6; P.L. 100-77, Stewart B. McKinney Homeless Assistance Act, Title IV, Subtitle B]
[**Source:** Codified 7-11-02]

150:85-1-1. Purpose

The purpose of the Emergency Shelter Grant Program is to help improve the quality of existing emergency shelters and transitional housing for the homeless; to make available additional emergency shelters; to help meet the costs of operating emergency shelters; and to provide certain essential social services to homeless individuals and families.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-2. Authority

This program is authorized by Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), approved July 1, 1987, and the subsequent designation by the Governor or his designee.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-3. Scope

(a) During each program year, as administered by the State, financial assistance will be made available to qualified units of local government and Community Action Agencies for purposes of implementing emergency shelter grant project proposals based on locally determined needs.
(b) Eligible applicants are units of local government (incorporated towns, cities and counties) and Community Action Agencies, located in and serving non-formula areas.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-4. Definitions

Definitions of terms that are applicable to the annual Emergency Shelter Grant Program Guidance and Application shall be set forth in each Emergency Shelter Grant Program Guidance and Application.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-5. Incorporated by reference

(a) The national standards for development of the State Plan/Final Statement are hereby incorporated by reference into the rules of this chapter. The standards are described by Congress in 42 U.S.C., 5301 et seq.; and by the U.S. Department of Housing and Urban Development 24 CPR, Part 570, Subpart **I,** 570.488 et seq.; and in 24 CPR, Part 85, 85.1 et seq. Stewart B. McKinney Homeless Assistance Amendments Act of

1988, Public Law 100-n, Title IV Housing Assistance, Subtitle B-Emergency Shelter Grant Program; and Federal Register, November 7, 198924 CPR Part 576 Emergency Shelter Grant Program and October 2, 199624 CPR Part 576 Streamlining the Emergency Shelter Grants Program, Department of Housing and Urban Development, Rules and Regulations, Final Rule; and Cranston-Gonzales National Affordable Housing Act of 1990, Public Law 101-625, Section 832; and Housing and Community Development Act of 1992, Public Law 102-550, Section 1404(e) and 1402(b).
(b) Copies of these federal laws or regulations more fully describing the Emergency Shelter Grant Program may be obtained from the office of the Oklahoma Department of Commerce, Office of Community Development during regular business hours Monday through Friday 8:00 a.m. to 5:00 p.m., excepting legal holidays.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-6. Eligible
(a) Eligible applicants for the Emergency Shelter Grant Program are Units of General Local Government of the State or Community Action Agencies. Shelter operators must seek sponsorship from either a Unit of General Local Government or the Community Action Agencies operating in that jurisdiction, in order to submit an application. Units of General Local Government or Community Action Agencies may retain prevention or administrative funds to carry out these activities. All funds not used by the Unit of General Local Government or Community Action Agency for prevention or administrative activities must be used by the shelter. Emergency Shelters that are owned and/or operated by a unit of local government or a Community Action Agency must submit their request for funding through their owner.
(b) Oklahoma Department of Commerce funds only those Emergency Shelter Grant applicants located in and serving non-formula areas.
(c) Distribution of funding to Community Action Agencies is permitted only when the Unit of General Local Government, in which the assisted project is to be located, certifies that it approves the proposed project. If the Community Action Agency intends to provide homeless assistance in a number of jurisdictions, a certification of approval must be submitted by each of the Units of General Local Government in which the project(s) are to be located.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02 ; Amended at 21 Ok Reg 995, eff 5-13-04]

150:85-1-7. Eligible activities
Emergency Shelter Grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless, including transitional housing. The Emergency Shelter Grant Program Guidance and Application issued each fiscal year shall set forth the specific activity guidelines.

(1) Renovation, major rehabilitation or conversion of buildings for use as emergency shelters, including transitional housing, for the

homeless.
(2) Payment of operation, rent, food for feeding the homeless, security, fuels, insurance, and utilities.
(3) Payment of equipment and furnishings, including but not limited to beds or cots; blankets, towels and like items; and office equipment.
(4) Provision of essential services including, but not limited to: services concerned with employment, medical and mental health treatment, substance abuse, education, or nutrition, and assistance in obtaining permanent housing.
(5) Development and implementation of homeless prevention activities.
(6) The provision of transitional housing, in coordination with the necessary supportive services.
(7) Costs of administration to Units of General Local Government and Community Action Agencies.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02 ; Amended at 21 Ok Reg 995, eff 5-13-04]

150:85-1-8. Threshold and selection criteria

For the purpose of selecting Emergency Shelter Grant project proposals eligible for funding, the Oklahoma Department of Commerce will subject all applications to specific application requirements and selection factors. Both the application requirements and selection factors shall be set out annually in the Program Guidance and Application prepared by the Oklahoma Department of Commerce.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02 ; Amended at 21 Ok Reg 995, eff 5-13-04]

150:85-1-9. Unit of General Local Government or Community Action Agency Responsibilities

(a) The Unit of General Local Government or Community Action Agency of an Emergency Shelter Grant shall be responsible for the following:

(1) The Unit of General Local Government or Community Action Agency shall be responsible for taking all action necessary to enforce the terms of the grant agreement against any private or public participant that fails to comply with applicable provisions of the grant agreement or any contract or documents resulting from it, and to recover on behalf of the State any liabilities that may arise as the result of the breach of the grant agreement by any participant. Nothing in this subsection shall restrict the State's rights to enforce independently the terms of any grant agreement or any contracts or documents resulting from it or to recover any sums that may become due as the result of a breach of such contract.
(2) The Unit of General Local Government or Community Action Agency shall comply with Treasury Circular 1075 and the Oklahoma Department of Commerce requirements regarding cash management of federal funds as set out in the Department's Emergency Shelter Grant Contractors Policy and a Procedure

Manual.
(3) The Unit of General Local Government or Community Action Agency shall comply with 24 CPR Part 85, Uniform Administrative Requirements for Grants and cooperative Agreements to State and Local Governments, OMB Circular A-87, Cost Principles for State and Local Governments, and OMB A-122 Cost Principles for Non-Profit Organizations, OMB A-I02 Grants and Cooperative Agreements with State and Local Governments except as directed otherwise by the Oklahoma Department of Commerce, as they relate to the application, acceptance and use of federal funds, and with the Oklahoma Department of Commerce requirements pursuant thereto.
(4) The Unit of General Local Government or Community Action Agency shall maintain records and accounts, including, but not limited to, property, personnel and financial records, that properly document and account for all project funds. The Department may require specific types and forms of records. All such records and accounts shall be made available upon demand by the Department for purposes of inspection and use in carrying out its responsibilities for administration of the funds.
(5) The Unit of General Local Government or Community Action Agency shall furnish the Department with narrative and financial reports related to the elements of a contract in the forms and at such times as may be required by the Department.
(6) The Unit of General Local Government or Community Action Agency shall retain all books, documents, papers, records, and other materials involving all activities and transactions related to its contract for at least three (3) years from the date of submission of the final expenditure report or until any audit findings have been resolved, whichever is later. The Grantee shall, as often as deemed necessary by the Department, permit authorized representatives of the Department, the U.S. Department of Housing and Urban Development and the Comptroller General to have full access to and the right to fully examine all such materials.
(7) The Unit of General Local Government or Community Action Agency shall promptly return to the Department any funds received under its contract that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received as of the final date of the period funded.
(8) The Unit of General Local Government or Community Action Agency shall comply with the Department's audit policy including the single Audit Act of 1984 (P.L. 98-502,31 U.S.C., 7501 et seq.), as applicable to governmental grantees.
(9) The Unit of General Local Government or Community Action Agency shall provide the Department timely copies of reports on any audits that include funds received from the Department.

(A) Audits shall be performed by a certified public accountant or firm or by a public accountant or public accounting firm licensed no later than December 31, 1970

(B) The audit shall be performed in accordance with Government Auditing Standards; Compliance Supplement for Single Audits or State and Local Governments; generally accepted auditing standards established by the American Institute of Certified Public Accounts; and the Department's requirements.

(10) Unit of General Local Government or Community Action Agency shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C., 2000d et seq.), prohibiting discrimination on the basis of race, color or national origin under any program receiving federal funds.

(11) Unit of General Local Government or Community Action Agency shall comply with Title VIll of the Civil Rights Act of 1968 (P.L. 90-284, 42 U.S.C., 3601 et seq.) regarding fair housing.

(12) The Unit of General Local Government or Community Action Agency shall comply with Executive Order 11063 (1962) as amended by Executive Order 12259 regarding equal opportunity in housing.

(13) The Unit of General Local Government or Community Action Agency shall comply with Section 109 of the Housing and Community Development Act of 1974, prohibiting discrimination on the basis of race, color, national origin or sex in connection with funds made available pursuant to the Act.

(14) The Unit of General Local Government or Community Action Agency shall comply with Section 109 of the Housing and Community Development Act of 1974 prohibiting discrimination on the basis of age and handicap as provided in the Age Discrimination Act of 1975 (42 U.S.C., 6101 et seq.); and, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C., 794).

(15) The Unit of General Local Government or Community Action Agency shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u) regarding opportunities for training and employment for low-income persons in project areas and awarding of contracts for program work to businesses in or owned in substantial part by residents of project areas.

(16) The Unit of General Local Government or Community Action Agency shall comply with Executive Order 11246 (1965) prohibiting discrimination on the basis of race, color, religion, sex or national origin and requiring affirmative action in connection with federally assisted construction contracts.

(17) The Unit of General Local Government or Community Action Agency shall comply with the Copeland Act (18 U.S.C., 40 U.S.C., 176c) regarding prohibitions against kickbacks.

(18) The Unit of General Local Government or Community Action Agency shall comply with the Contract Work House and Safety Standards Act (40 U.S.C., 327 et seq.) regarding overtime compensation.

(19) The Unit of General Local Government or Community Action Agency shall comply with the National Environmental Policy Act of 1969 (P.L. 91- 190, 42 U.S.C., 4231 et seq.) and accepts

jurisdiction of the state and federal courts for the purpose of enforcement responsibilities as such an official.
(20) The Unit of General Local Government or Community Action Agency shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646).
(21) The Unit of General Local Government or Community Action Agency shall comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C., 4831 et seq.) regarding the prohibition against the use of lead-based paint in residences receiving federal assistance.

(b) Additional Unit of General Local Government or Community Action Agency requirements may be set forth in the annual Emergency Shelter Grant Program Guidance and Application

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02 ; Amended at 21 Ok Reg 995, eff 5-13-04]

150:85-1-10. Partial funding

The State reserves the right within its discretionary authority to adjust Emergency Shelter Grant funding request amounts to less than original application funding request based on the most efficient and equitable utilization of the State's allocated funds and practicability.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02 ; Amended at 21 Ok Reg 995, eff 5-13-04]

150:85-1-11. Additional available funds

(a) Annually, funds for emergency shelter grant projects may become available as the result of:

(1) Project cancellations;
(2) Projects completed under original cost estimates;
(3) Deobligated funds;
(4) Funds allocated but not utilized; or,
(5) Other circumstances.

(b) In keeping with the annual Emergency Shelter Grant Program Guidance and Application as approved by HUD, the Department shall allocate these funds, based on need

(1) As to timing of expenditure;
(2) Amount of funds available for re-use; and,
(3) The most appropriate use of these funds.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-12. Program violations

Under any of the following circumstances, the State shall consider a violation of Emergency Shelter Grant Program policies and procedures to have occurred:

(1) Notice by the Oklahoma Department of Commerce that violations have resulted in substantial non-compliance or non-conformance with regard to unmet benefit to low and moderate income persons as set out in the project application and/or other failures to meet National Program objectives; or,

(2) Notice by the Oklahoma Department of Commerce that there has been the provision of false information in proposed project applications and/or project reports; or,
(3) Notice by the Oklahoma Department of Commerce that requirements of federal statute, federal regulations or the rules of the Department have not been met or have been violated; or,
(4) Notice by the Oklahoma Department of Commerce that there is a significant deviation from the grant agreement; or,
(5) Notice by the Oklahoma Department of Commerce finding that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not or cannot be effected, in the judgment of Department staff within a reasonable time; or,
(6) Notice by the Oklahoma Department of Commerce that there has been a finding of fraud; waste or mismanagement of any current or prior State or federally funded project; or,
(7) Notice by the Oklahoma Department of Commerce that one or more of the project activities have not begun within six (6) months after a grant award unless significant justification for the delay exists is fully documented in a timely manner, and in such a form and terms as requested by the Department.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02 ; Amended at 21 Ok Reg 995, eff 5-13-04]

150:85-1-13. Corrective and remedial actions

(a) Under any of the circumstances described as violations in 150:85-1-12 during the application stage or grant stage, the State may take the following actions
(1) Condition grant contracts,
(2) Withhold funds;
(3) Reduce the total amount of a grant award
(4) Require the return of unexpended funds;
(5) Require repayment of expended funds;
(6) Cancel a grant agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation;
(7) Deny future program applications and participation for a period not to exceed two (2) program years; or
(8) Re-score an original project proposal upon which the grant award decision was based.
(b) Additionally, the State reserves the right under circumstances of possible program violations to request singularly, or in combination, information regarding:
(1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the causes of the program violation(s);
(2) Any activities undertaken that were not in conformance with the approved program or application process or that were in non-compliance with applicable laws or regulations;
(3) The recipient's or applicant's capacity to carry out the approved or proposed program in a timely manner; and,

(4) Progress schedules for completing approved or proposed activities.

(c) Prior to taking any corrective and/or remedial actions, a notice of show cause hearing shall be issued by the Department. The applicant/grantee shall have ten (10) working days to appear and show cause as to why the corrective and/or remedial actions should not be taken.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

150:85-1-14. Review and appeals process

(a) Applicants for Emergency Shelter Grants may review their application and program scores at any time after ratings and rankings have been released by the Department.

(b) Appeals shall not introduce new documentation that would change the basis on which a funding decision was made. Additionally, requests for appeal shall be made within thirty (30) days after the applicant has been notified that the application will not be funded.

[**Source:** Added at 19 Ok Reg 2637, eff 7-11-02]

CHAPTER 90. COMMUNITY SERVICES BLOCK GRANT PROGRAM

[**Authority:** 74 O.S., §§ 5003.6, 5003.10, 5017, 5017.1, 5035, 5036, 5037, 5038, 5039, and 5040]
[**Source:** Codified 7-27-95]

SUBCHAPTER 1. COMMUNITY SERVICES BLOCK GRANT PROGRAM

150:90-1-1. Purpose

The purpose of the Community Service Block Grant Program is to promote activities that reduce the causes of poverty and promote self-sufficiency in communities within the State while lessening its effects on low-income people through delivery of direct social, health, housing, economic development, and related support services.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95]

150:90-1-2. Authority

This program is authorized under the Community Services Block Grant Act, 42 U.S.C. Sections 9901 et seq. The legal authority to implement the program is vested in the Oklahoma Department of Commerce pursuant to 74 O.S. Sections 5003.6, 5017, 5017.1, 5035, 5036, 5037, 5038, 5039, and 5040.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95]

150:90-1-3. Scope

The program provides financial assistance and technical assistance to eligible entities to provide a range of services and activities having a measurable and potential major impact on causes of poverty in communities or those areas of a community where poverty is an acute problem. Basic services considered are employment, education, nutrition, health, housing, income management, emergency services, linkages and self-sufficiency.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 24 Ok Reg 1207, eff 5-25-07]

150:90-1-4. Definitions

The following definitions shall be applicable to the program when used in context of this part unless otherwise indicated.

"Act" means Subtitle B of Title VI of the Omnibus Budget Reconciliation Act of 1981, Community Services Block Grant Act, as amended.

"Community Action Agency" ("CAA") means a non-profit agency, designated by the Department, pursuant to 74 O.S. Section 5037.

"Contract" means the agreement entered into between the Oklahoma Department of Commerce and an eligible entity which authorizes the expenditure of funds consistent with the intent of the

program.

"Contract Period" means October 1 through September 30 of the succeeding year, or as specified by the contract document.

"Contractor" means an eligible entity who is a recipient of funds authorized under this program.

"Department" means the Oklahoma Department of Commerce.

"Director" means the Executive Director of the Oklahoma Department of Commerce or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

"Eligible Activities" means those activities that are designed to carry out the intent of the program.

"Eligible Entity" means any nonprofit agency designated by the Department pursuant to 74 O.S. Sections 5036 and 5038.

"Low Income" means income related to family size that is at or below 100 percent of the income level established by the U.S. Office of Management and Budget.

"Poverty" means the official poverty line defined by the U.S. Office of Management and Budget.

"Request for Applications" means the document that is to be completed by an eligible entity and accepted by the Department before financial assistance can be provided.

"State Plan" means the annual plan written by the Department and approved by the U.S. Department of Health and Human Services.

"Work Program" means the management plan of activities designed by an entity to address poverty related conditions or situations of low income persons.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 24 Ok Reg 1207, eff 5-25-07]

150:90-1-5. Incorporated by reference

(a) National standards for development of the State Plan are hereby incorporated by reference into these rules. Standards are described in Subtitle B of Title VI of the Omnibus Reconciliation Act of 1981, as amended.

(b) Copies of applicable federal laws and regulations may be obtained from the Oklahoma Department of Commerce, Office of Community Development, during business hours of 8:00AM to 5:00PM, Monday through Friday, except on legal holidays or authorized office closures.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 18 Ok Reg 3508, eff 9-14-01]

150:90-1-6. Fund distribution

(a) Program funds will be distributed to eligible applicants in accordance with the State Plan. The funds distribution formula expressed in the State Plan will be in accordance with Federal program guidelines and appropriate State program requirements. The program funds shall be awarded to applicants through an application process developed annually by the Department. Each applicant will have an opportunity to submit an application statement in support of their request for financial assistance.

(b) Eligible entities selected as contractors will be awarded a base amount for program activities in each of the counties comprising their respective service area. The base amount will be contingent upon the state allocation from the U.S. Department of Health and Human Services. The amount of funds remaining after subtraction of the base amount will be allocated to contractors on the basis of (1) population below the poverty level (2) population of elderly persons below the poverty level, and (3) square miles of the service area.
(c) Eligible entities selected as contractors shall have on file with the Department a work plan of activities.

(1) The work plan shall describe how the contractor is to provide a range of services and activities to assist low-income persons

(A) secure and retain meaningful employment
(B) attain an adequate education
(C) make better use of available income
(D) obtain and maintain adequate housing and a suitable living environment
(E) remove obstacles and solve problems which block the achievement of self-sufficiency
(F) achieve greater participation in affairs of the community
(G) make effective use of other programs related to the purpose of the act.

(2) Further, work activities may include on an emergency basis the provision of nutritious foodstuffs, supplies and services as may be necessary to counteract conditions of starvation and malnutrition among the poor; coordination and linkages between government and social service programs to assure effective delivery of such services; and, to encourage the use of entities in the private sector to provide assistance in addressing the conditions of poverty in their community.

(d) Funds may become available as a result of project cancellations, deobligation of funds, funds allocated but not utilized, or other circumstances that might arise that may cause funds to remain uncommitted. The Department reserves the right within its discretionary authority to redistribute such funds based on the most efficient and equitable utilization of such funds.
(e) Funds provided under this part shall be used in accordance with applicable state laws and regulations with regard to procurement of property and services, travel, political activity, and nondiscrimination and other terms specified in the funding agreement.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 24 Ok Reg 1207, eff 5-25-07]

150:90-1-7. Application process

(a) For purposes of selecting contractors, the Department will submit a request for application statement to eligible entities. The request for applications will identify minimum requirements and other selection factors that will be used to review and evaluate potential contractors.

(b) The Department will forward request for applications forms and guidelines to eligible entities by direct mailing upon notice of availability of funds from the U. S. Department of Health and Human Services. The guidelines will include all criteria, specific data requirements, and other pertinent instructions for the applicant to prepare a complete application for financial assistance.
(c) The Department shall establish annually a deadline for application for financial assistance under this part.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 21 Ok Reg 998, eff 5-13-04 ; Amended at 24 Ok Reg 1207, eff 5-25-07]

150:90-1-8. Selection process

(a) For purposes of selection of contractors, the Department will subject all application statements to conform to requirements of the Act, subsequent amendments, and general requirements stated in the State Plan.
(b) Eligible entities shall have on file with the Department an approved and accepted application statement.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 24 Ok Reg 1207, eff 5-25-07]

150:90-1-9. Grantee responsibilities

(a) Grantee shall be responsible for taking actions necessary to enforce the terms and conditions of funding agreement against any private or public participant that fails to comply with the provisions of the funding agreement or any contract or document resulting from it, and to recover on behalf of the Department any liabilities that may arise from a breach of the funding agreement.
(b) Grantee shall comply with all laws, rules, and guidelines, federal and state, and general program guidance provided in the Contractors Implementation Manual which is hereby incorporated.
(c) Grantee shall develop procedures for processing complaints from citizens who feel they have been denied participation in program services or activities described in the grantees work plan. Citizens who feel their complaint cannot be resolved through contractor's procedures may appeal the contractor's determination to the Department. Appeals to the Department shall be in accordance with General Rules of Practice and Procedures for the Department.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95 ; Amended at 21 Ok Reg 998, eff 5-13-04]

150:90-1-10. Program violations

The Department will consider a violation of program policies and procedures to have occurred under any of the following circumstances:

(1) When there is noncompliance or substantial noncompliance with provisions stated in terms and conditions of funding agreement.
(2) When there has been provision of false information in proposed application for financial assistance or project reports.

(3) When program requirements have not been met or have been considered to have been violated by the Department.
(4) When there is significant deviation from the funding agreement based upon findings resulting from a monitoring visit by the Department.
(5) When significant corrective actions are necessary to protect the integrity of project funds, and corrective actions are not or cannot be effected by the applicant or grantee, in the judgment of the Department within a reasonable time.
(6) When a finding of fraud, waste or mismanagement of any current or prior state or federally funded project.
(7) When one or more of the project activities have not begun within six months after award unless justification for the delay or delays is fully documented in terms requested by the Department.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95]

150:90-1-11. Corrective and remedial action

(a) The Department reserves the right under circumstances of possible program violations to request information from the grantee, regarding administration, planning, budgeting, management and evaluation functions; any activities undertaken that were not in conformance with the approved program or that were not in compliance with terms and conditions of the funding agreement. In the event corrective action or remedial action is necessary, the Department may take one or more of the following courses of action.

(1) Condition the funding agreement.
(2) Reduce total amount of grant award.
(3) Withhold funds.
(4) Require a return of unexpended funds; require repayment of funds expended.
(5) Cancel a funding agreement and recover all funds expended in an ineligible manner prior to date of notice of cancellation.
(6) Deny future program applications for financial assistance and participation in the program for a period not to exceed two program cycles.

(b) Prior to taking any corrective and remedial action, a notice of show cause hearing shall be issued by the Department to the grantee. Grantee shall have ten working days to appear and show cause as to why corrective or remedial action should be taken.

[**Source:** Added at 12 Ok Reg 3017, eff 7-27-95]

CHAPTER 95. QUALIFIED SPACE TRANSPORTATION VEHICLE PROVIDER [EXPIRED]

[**Authority:** 68 O.S., §§ 2357.42 and 3601 et seq.; 74 O.S., §§ 5001 et seq.]

150:95-1-1. Purpose and scope [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:95-1-1 (formerly 150:65-9-1) was no longer effective.*

150:95-1-2. Definitions [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:95-1-2 (formerly 150:65-9-2) was no longer effective.*

150:95-1-3. Applications for Preapproval [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:95-1-3 (formerly 150:65-9-3) was no longer effective.*

150:95-1-4. Approval of Applications for Preapproval [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:95-1-4 (formerly 150:65-9-4) was no longer effective.*

150:95-1-5. Transmittal of Notice of Preapproval: Notice to Applicant and the Oklahoma Tax Commission [EXPIRED]

[**Source:** Added at 21 Ok Reg 15, eff 9-5-03 (emergency); Added at 21 Ok Reg 181, eff 11-5-03 through 7-14-04 (emergency)[1]]

Editor's Note: [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-04 (after the 7-14-04 expiration of this emergency action), Section 150:95-1-5 (formerly 150:65-9-5) was no longer effective.*

CHAPTER 100. COMMUNITY EXPANSION OF NUTRITION ASSISTANCE

[**Authority:** 74 O.S. 5001 et seq.]
[**Source:** Codified 5-26-05]

150:100-1-1. Purpose and scope

The purpose of these rules is to implement the Community Expansion of Nutrition Assistance program at the Oklahoma Department of Commerce.

[**Source:** Added at 22 Ok Reg 95, eff 8-31-04 (emergency); Added at 22 Ok Reg 1053, eff 5-26-04]

150:100-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Community Expansion of Nutrition Assistance" also referred to as **"CENA Program"** means a program that provides funding for general improvement of nutritional conditions, with the overall goal of:

(A) Increase the number of meals served to individuals, families, and their children, and older persons at senior centers; or

(B) Expand other needed services provided at senior centers for residents of the state.

"CENA Centers" means those local nutrition centers that meet the requirements set forth by the Oklahoma Department of Commerce in the annual CENA Request for Application.

"CENA Request for Application" means the application guidance material issued by the Oklahoma Department of Commerce to Eligible Applicants for funding under the CENA Program.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

"Eligible Applicants" means Councils of Government and Oklahoma Department of Human Services Area Agencies on Aging administering senior independent sites and Title III-Multi-Purpose sites. Eligible Applicants does not include Meals-on-Wheels Programs, Title VI or Title III Nutrition Centers.

[**Source:** Added at 22 Ok Reg 95, eff 8-31-04 (emergency); Added at 22 Ok Reg 1053, eff 5-26-04]

150:100-1-3. Funding

(a) The funding to Eligible Applicants will be done based upon an annually determined formula that will take into consideration the number of independent sites, and the senior population. The number of independent sites does not include Meals-on-Wheels Programs, Title VI or Title III Nutrition Centers. To be an eligible independent site a Title III

Nutrition Center must be designated as a Multi-Purpose Center and must meet all other requirements of a CENA Center. To be eligible for funding a CENA Center must meet the following criteria:

(1) Must provide an application to the appropriate Eligible Applicant.

(2) Must have a current Board of Directors

(3) Must have approved By-Laws

(4) Must comply with other requirements of the Oklahoma Department of Human Services (DHS) Area Agencies on Aging.

(b) Local distribution of funding by Eligible Applicants to CENA Centers shall be determined by the governing boards of the Eligible Applicants and shall be filed with and approved by the Oklahoma Department of Commerce.

[**Source:** Added at 22 Ok Reg 95, eff 8-31-04 (emergency); Added at 22 Ok Reg 1053, eff 5-26-04]

150:100-1-4. Application process

Based upon funding availability, the Oklahoma Department of Commerce shall issue a CENA Request for Application to Eligible Applicants that will set forth the requirements for making application to the CENA Program, and being awarded funding to support CENA Centers statewide.

(1) Eligible uses of funding will be set forth in the CENA Request for Application

(2) Only Eligible Applicants can receive funding under the CENA Program.(3)The Director or the Director's designee shall make the funding awards from the Oklahoma Department of Commerce to the Eligible Applicants.

(4) All other terms and conditions of funding shall be set forth in either the CENA Request for Application or the contract between the Oklahoma Department of Commerce and the Eligible Applicant.

[**Source:** Added at 22 Ok Reg 95, eff 8-31-04 (emergency); Added at 22 Ok Reg 1053, eff 5-26-04]

CHAPTER 105. OKLAHOMA LOCAL DEVELOPMENT AND ENTERPRISE ZONE INCENTIVE LEVERAGE ACT

[**Authority:** 62 O. S. § 840.847; and 74 O. S. § 5001 et seq.]
[**Source:** Codified 5-26-05]

150:105-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act program at the Oklahoma Department of Commerce.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05]

150:105-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, and the terms defined in 62 O.S. § 841, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

"District" means as defined in 62 O.S §853.

"EIN" or **"FEI"** means Federal Employer Identification Number.

"Local Development Act" is set forth at 62 O.S. §§ 850 - 869.

"Local governmental entity" *means a county, city or town forming an incentive district or an increment district pursuant to the provisions of the Local Development Act.* [62 O.S. § 841(10)]

"Project Area" means as defined in 62 O.S. §853.

"Retail leasable space" means space intended for retail purposes and shall include, but not be limited to, points of sales, aisles, display areas, storage and warehouse space to support the retail purposes.

"TIF" means Tax Increment Financing as authorized by the Local Development Act.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05 ; Amended at 26 Ok Reg 87, eff 10-17-08 (emergency); Amended at 26 Ok Reg 1013, eff 5-12-09 ; Amended at 28 Ok Reg 635, eff 5-12-11 ; Amended at 39 Ok Reg 866, eff 9-11-22]

150:105-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all units of local governmental interested in the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act 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.

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

(2) The forms and guidelines will provide threshold criteria 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) After the Department's evaluation is completed, the Department shall forward to the Oklahoma Tax Commission the Net Benefit Rate determined by the Department, certification that the project plan is located in an enterprise zone or supports a qualifying major tourism destination project, and certification that the qualifying investment and development has been or will be substantially completed no later than December 31, 2034.

(c) The Department shall forward a complete copy of the submitted application to the Oklahoma Tax Commission upon request.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05 ; Amended at 26 Ok Reg 87, eff 10-17-08 (emergency); Amended at 26 Ok Reg 1013, eff 5-12-09 ; Amended at 39 Ok Reg 866, eff 9-11-22]

150:105-1-4. Threshold and selection criteria

Complete threshold requirements and selection criteria will be set forth in the application guide. The minimum threshold criteria are as follows:

(1) Project must be located entirely within an enterprise zone or in support of a major tourism destination which the local governmental entity determines is likely to significantly benefit contiguous or nearby enterprise zone census tracts;
(2) No more than fifty percent (50%) of the net leasable space of such development may be used for retail purposes except as otherwise provided within the statute and no state local government matching payment shall be made for project costs in support of any gambling establishment;
(3) State local government matching payments cannot be used to supplant local revenue currently being expended within the increment district boundaries;
(4) Certification that all projects described within the related project plan will generate, in the aggregate, a minimum of either One Million Dollars ($1,000,000.00) in payroll, exclusive of payroll for construction, or Five Million Dollars ($5,000,000.00) in investment;
(5) The application must include an estimate of incremental revenues new to the state likely to be derived from the project;
(6) The project must include the commitment of local governmental entity; and
(7) The project meets the time deadlines set forth in 62 O.S. § 842(I).
(8) If the project is in support of a major tourism destination, the application must meet the requirements set forth at 62 O.S. § 842 (B)(3) and (B)(4).
(9) If the project is a Military growth impact project, the application must meet the requirements set forth at 62 O.S. §§

841(13), (14), and (15).
(10) The project is required to be fiscally neutral to the State.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05 ; Amended at 26 Ok Reg 87, eff 10-17-08 (emergency); Amended at 26 Ok Reg 1013, eff 5-12-09 ; Amended at 28 Ok Reg 635, eff 5-12-11 ; Amended at 39 Ok Reg 866, eff 9-11-22]

150:105-1-5. Annual reporting

(a) Before February 1st of each year, entities who have been approved for participation in the program will certify and submit a report to the Department containing information about each of the following:

(1) The amount of local government investment spent in the district to date.
(2) The amount of future local government investment in the district with a projected timeline of the future investment.
(3) The estimated amount of private company investment in the district.
(4) The anticipated amount of future private company investment in the district with a projected timeline of the future investment.
(5) For ad valorem TIF projects:
(A) The aggregate assessed value of properties in the district for the base year;
(B) The aggregate assessed value of properties in the district for each year subsequent to the base year;
(C) The aggregate assessed value of properties in the project area for the base year;
(D) The aggregate assessed value of properties in the project area for each year subsequent to the base year.
(6) For sales tax TIF projects:
(A) The base level of aggregate sales tax attributable to businesses in the district; and
(B) The base level of aggregate sales tax attributable to businesses in the project area.

(b) Attached to the certified report, the entity will include all of the following supporting documentation:

(1) A map with a defined boundary of the district;
(2) A map of the project area; and
(3) A list of properties and operating companies in the district with the FEI/EIN of the operating companies.

(c) The entity will continue submitting these annual reports to the Department until they have submitted a final report after the project has been completed.

[**Source:** Added at 39 Ok Reg 866, eff 9-11-22]

CHAPTER 110. OKLAHOMA SPECIALIZED QUALITY INVESTMENT ACT

[**Authority:** 68 O. S. §§ 4101-4109; and 74 O. S. §§ 5001 et seq.]
[**Source:** Codified 5-26-05]

150:110-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Specialized Quality Investment Act at the Oklahoma Department of Commerce.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05 ; Amended at 25 Ok Reg 57, eff 9-1-07 (emergency); Amended at 25 Ok Reg 1541, eff 6-12-08]

150:110-1-2. Definitions

For purposes of the Oklahoma Specialized Quality Investment Act:

"Capital costs" *means costs for land, buildings, improvements to buildings, fixtures and for machinery, equipment and other personal property used in and for the manufacturing process incurred by a qualified establishment, on or after the effective date of this act, with respect to the manufacturing site located in this state and specified in a quality investment agreement.* [68 O.S. § 4103]

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102, and any successor agencies thereto. [68 O.S. § 4103]

"Department" *means the Oklahoma Department of Commerce.* [68 O.S. § 4103]

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

"Fiscal year" *means the state fiscal year, which shall begin on July 1 of a calendar year and end on June 30 of the next calendar year.* [68 O.S. § 4103]

"Qualified establishment" *means a business entity engaged in the activity described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification manual, latest revision. No establishment that has been certified as eligible to participate in the Oklahoma Quality Jobs Incentive Leverage Act incentive program shall be eligible for any investment payment pursuant to the Oklahoma Specialized Quality Investment Act. A qualified establishment shall enter into a quality investment agreement pertaining to a single manufacturing site as that term is defined in Section 1352 of Title 68 of the Oklahoma Statutes. No combination of other locations of an establishment or any related entities of an establishment shall be included in a quality investment agreement. An establishment may enter into additional quality investment agreements for additional sites.* [68 O.S. § 4103]

"Quality investment agreement" *means an agreement with duration, for purposes of computing the total incentive payment amount, of not more than five (5) years entered into between a qualified establishment and the Department.* [68 O.S. § 4103]

"Start date" *means the date on which a qualified establishment begins accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement with the Oklahoma Department of Commerce.* [68 O.S. § 4103]

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05 ; Amended at 25 Ok Reg 57, eff 9-1-07 (emergency); Amended at 25 Ok Reg 1541, eff 6-12-08]

150:110-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all qualified establishments to submit an application on a form prescribed by the Department.

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

(2) The forms and guidelines will provide threshold criteria 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) Upon approval of the establishment by the Department, the Department shall enter into a quality investment agreement with the establishment for a period of not to exceed five (5) years, and the quality investment agreement shall comply with the requirements of 68 O.S. § 4104. Once the quality investment agreement is executed by the Director of the Department, or designee, and the establishment, a fully executed copy of the quality investment agreement will be forwarded to the Commission.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05]

150:110-1-4. Threshold and selection criteria

Complete threshold requirements and selection criteria will be set forth in the application guide. The minimum threshold criteria are as follows: The project meets the requirements set forth in 68 O.S. § 4104.

[**Source:** Added at 22 Ok Reg 1054, eff 5-26-05]

CHAPTER 115. RX FOR OKLAHOMA PROGRAM

[**Authority:** 74 O.S. §§ 5001 et seq.; Laws 2005, c. 467, § 2]
[**Source:** Codified 5-25-06]

150:115-1-1. Purpose and scope

The purpose of these rules is to implement the Rx for Oklahoma Program at the Oklahoma Department of Commerce as set forth in the Rx for Oklahoma Act.

[**Source:** Added at 23 Ok Reg 106, eff 8-31-05 (emergency); Added at 23 Ok Reg 1203, eff 5-25-06]

150:115-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Department" means the oklahoma department of commerce established pursuant to 74 o.s. §§ 5001 et seq. And any successor agencies thereto.

"Director" means the duly appointed and acting director of the department or during any period of time that the position of director is vacant; such term shall refer to the person serving as the acting director.

"Eligible Applicants" include, but are not limited to county offices of the department of human services; county health departments; community action agencies designated by the oklahoma department of commerce pursuant to section 5038 of title 74 of the oklahoma statutes; community mental health centers; private nonprofit agencies; and public entities engaged in the delivery of social services.

"Eligibility for the Rx for Oklahoma Act" *Shall be residents of oklahoma who:*

(A) *Are medically indigent; or*
(B) *Are not medically indigent but cannot reasonably afford to pay for prescription medications. [74 O.S. § 5040.4(D)]*

"Manufacturer Sponsored Prescription Assistance Program" Means drug company programs that provide prescription drugs to physicians or programs for patients who could not otherwise afford them.

"Medically Indigent" *means a person who meets the criteria established by the drug manufacturer assistance programs for the purchase of prescribed medications; [74 O.S. § 5040.3].*

"Prescription Drug" *Means a drug which may be dispensed only upon prescription by a health care professional authorized by the appropriate licensing authority and which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the federal food, drug, and cosmetic act (52 stat. 1040 (1938), 21 u.s.c.a., section 301). [74 O.S. § 5040.3]*

[**Source:** Added at 23 Ok Reg 106, eff 8-31-05 (emergency); Added at 23 Ok Reg 1203, eff 5-25-06 ; Amended at 24 Ok Reg 1208, eff 5-25-07]

150:115-1-3. Funding

Agencies selected by the Department to provide services pursuant to the Rx for Oklahoma Act shall, at a minimum, demonstrate their ability to:

(1) *Deliver services in a community or geographic area of the state that is not currently receiving services pursuant to the Rx for Oklahoma Act;*

(2) *Maintain a dedicated telephone line and computer with Internet access with appropriate software during normal business hours; and*

(3) *Have staff or volunteers available who can:*

(A) *develop and implement community awareness initiatives about the prescription assistance services offered by the agency,*

(B) *determine whether a pharmaceutical program is offered for the drug or drugs a person needs,*

(C) *determine whether a person is eligible for assistance through a pharmaceutical program,*

(D) *assist a person to make application to and enroll in a pharmaceutical assistance program,*

(E) *keep accurate records of the number of clients served,*

(F) *maintain the confidentiality of all client information including, but not limited to, the client's identity, application information and other records, and*

(G) *estimate the value of prescriptions provided to clients under the program.*[74 O.S. § 5040.4(C).

[**Source:** Added at 23 Ok Reg 106, eff 8-31-05 (emergency); Added at 23 Ok Reg 1203, eff 5-25-06]

150:115-1-4. Application process

Based upon funding availability, the Oklahoma Department of Commerce shall issue a Rx for Oklahoma Program Request for Application to Eligible Applicants that will set forth the requirements for making application to the Rx for Oklahoma Program, and being awarded funding.

(1) Eligible uses of funding will be set forth in the Rx for Oklahoma Program Request for Application

(2) Only Eligible Applicants can receive funding under the Rx for Oklahoma Program.

(3) The Director or the Director's designee shall make the funding awards from the Oklahoma Department of Commerce to the Eligible Applicants.

(4) All other terms and conditions of funding shall be set forth in either the Rx for Oklahoma Program Request for Application or the contract between the Oklahoma Department of Commerce and the recipient of funding.

[**Source:** Added at 23 Ok Reg 106, eff 8-31-05 (emergency); Added at 23 Ok Reg 1203, eff 5-25-06]

CHAPTER 120. WORKFORCE INVESTMENT ACT [REVOKED]

[**Authority:** Strategic State Workforce Plan submitted by Governor to 6.5. Department of Labor; 74 O.S. §§ 5001 et seq.]
[**Source:** Codified 5-25-06]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

150:120-1-1. Purpose [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-1-2. Definitions [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-1-3. Addresses for appeals [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

SUBCHAPTER 3. DENIAL OR TERMINATION OF A TRAINING PROVIDER [REVOKED]

150:120-3-1. Reporting - termination [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-3-2. Notice to the training provider [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-3-3. Appeal [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-3-4. Hearing [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-3-5. District court appeal [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-3-6. Administrative record [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

SUBCHAPTER 5. DENIAL OF REQUEST FOR DESIGNATION AS A LOCAL WORKFORCE INVESTMENT AREA [REVOKED]

150:120-5-1. Appeal [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-5-2. Appeal time [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-5-3. Hearing [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-5-4. Decision [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-5-5. Appeal of decision [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

SUBCHAPTER 7. MONITORING [REVOKED]

150:120-7-1. Monitoring [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-7-2. Monitoring report [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-7-3. Monitoring resolution [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-7-4. Final monitoring determination [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-7-5. Appeal [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-7-6. Hearing [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

SUBCHAPTER 9. AUDITS [REVOKED]

150:120-9-1. Audit requirements [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-2. Delinquent audit [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-3. Audit resolution [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-4. Audit review and request for information [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-5. Initial determination [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-6. Final determination [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-7. Appeal [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-9-8. Hearing [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

SUBCHAPTER 11. GRIEVANCE PROCEDURE [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

150:120-11-1. Grievances [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

PART 3. GRIEVANCES FILED DIRECTLY WITH ODOC [REVOKED]

150:120-11-10. Filing [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-11. Time limit for filing a grievance with ODOC [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-12. Contents of a grievance [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-13. Referral of a grievance filed with ODOC [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

PART 5. APPEALS TO ODOC FROM GRIEVANCE DECISIONS OF A LOCAL AREA [REVOKED]

150:120-11-20. Filing grievance with local area [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-21. Appeals with ODOC [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-22. Time limit for filing an appeal with ODOC [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

PART 7. INFORMAL AND FORMAL RESOLUTIONS OF GRIEVANCES [REVOKED]

150:120-11-30. Informal resolution [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-31. Hearing [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Amended at 31 Ok Reg 887, eff 9-12-14 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-32. Remedies [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-33. Appeal to Secretary or investigation by Secretary [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

150:120-11-34. Decision of the Secretary [REVOKED]

[**Source:** Added at 23 Ok Reg 1205, eff 5-25-06 ; Revoked at 40 Ok Reg 881, eff 8-11-23]

CHAPTER 125. OKLAHOMA OPPORTUNITY FUND [REVOKED]

[**Authority:** 62 O.S. § 48(D); 74 O.S. §§ 5001 et seq.]
[**Source:** Codified 5-25-07]

150:125-1-1. Purpose and scope [REVOKED]

[**Source:** Added at 23 Ok Reg 3160, eff 7-20-06 (emergency); Added at 24 Ok Reg 1209, eff 5-25-07 ; Revoked at 39 Ok Reg 868, eff 9-11-22]

150:125-1-2. Definitions [REVOKED]

[**Source:** Added at 23 Ok Reg 3160, eff 7-20-06 (emergency); Added at 24 Ok Reg 1209, eff 5-25-07 ; Revoked at 39 Ok Reg 868, eff 9-11-22]

150:125-1-3. Application process [REVOKED]

[**Source:** Added at 23 Ok Reg 3160, eff 7-20-06 (emergency); Added at 24 Ok Reg 1209, eff 5-25-07 ; Revoked at 39 Ok Reg 868, eff 9-11-22]

150:125-1-4. Threshold and selection criteria [REVOKED]

[**Source:** Added at 23 Ok Reg 3160, eff 7-20-06 (emergency); Added at 24 Ok Reg 1209, eff 5-25-07 ; Revoked at 39 Ok Reg 868, eff 9-11-22]

150:125-1-5. Award process [REVOKED]

[**Source:** Added at 23 Ok Reg 3160, eff 7-20-06 (emergency); Added at 24 Ok Reg 1209, eff 5-25-07 ; Revoked at 39 Ok Reg 868, eff 9-11-22]

CHAPTER 130. OKLAHOMA QUALITY INVESTMENT ACT

[**Authority:** 68 O.S.§§ 4201-4210; 74 O.S. §§ 5001 et seq.]
[**Source:** Codified 6-12-08]

150:130-1-1. Purpose

The purpose of these rules is to implement the Oklahoma Quality Investment Act at the Oklahoma Department of Commerce.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"At-risk establishments" *are those manufacturing establishments, presently existing in Oklahoma which the Quality Investment Committee, as described in paragraph 6 of this section, finds would be lost within the state based on changes in global economies, establishment structure, consolidation of establishments, and which are structurally noncompetitive but which could regain a competitive position with new investment if incentives are offered.* [68 O.S. § 4203(1)]

"Capital costs" *means costs for land, building, improvements to buildings, fixtures and for machinery and equipment as those terms are described in Section 2902 of Title 68 of the Oklahoma Statutes*. [68 O.S. § 4203(2)]

"Economic impact" *means economic impact as described in analyses that identify the value in terms of sales tax and income tax revenues to the state and to the local community of the establishment that the retention and expansion or modernization of the manufacturing site provides. The Oklahoma Department of Commerce may contract for the performance of an economic impact analysis to aid it in determining whether to recommend entering into a Quality Investment Contract with a particular establishment.* [68 O.S. § 4203(3)]

"Historical contributions trends" *means historical contributions of an establishment as described in analyses of direct and indirect historical contributions to the state and local economies that an establishment has had on jobs and tax base growth, and on payroll and tax revenue inputs and growth. Analyses shall include consideration of positive trends attributable to suppliers of the establishment. The Oklahoma Department of Commerce may contract for the performance of an historical contributions analysis to aid the Quality Investment Committee in determining whether to recommend entering into a Quality Investment Contract with a particular establishment*. [68 O.S. § 4203(4)]

"Local community" *means the town or city and the county of the location of the establishment; provided, a city or town and a county may jointly constitute the"local community". [*68 O.S. § 4203(5)]

"Quality Investment Committee" *means the independent committee referenced in paragraph 6 of Section 23 of Article X of the Oklahoma Constitution that consists of the following members:*

(A) *the Director of the Oklahoma Department of Commerce,*
(B) *the Dean of Engineering of Oklahoma State University,*
(C) *the Director of the Oklahoma Alliance for Manufacturing Excellence,*
(D) *the Dean of the Price Business College of the University of Oklahoma,*
(E) *the Executive Director for the Oklahoma Center for the Advancement of Science and Technology,*
(F) *one small business representative from the Oklahoma Science and Technology Research and Development Board, and*
(G) *the State Director of Career Technology Education.* [68 O.S. § 4203(6)]

"Tax revenues projections" *means a projection of anticipated tax revenues based upon an analysis of historic taxes collected from the establishment in the local community and in the state overall over the previous ten (10) years in order to determine:*

(A) *the average of the growth percentages to determine the projected growth in such revenues to the community and the state over the following ten (10) years if no retooling occurs but retention is assumed to be a constant and remains stagnant,*
(B) *the modernization or retooling project's estimated impact on tax revenues and growth rates over the following ten (10) years, and*
(C) *the projections of loss in tax revenues should the plant location close and operations, in whole or in part, are removed from the state.The Oklahoma Department of Commerce may contract with the Oklahoma Tax Commission for performance of tax revenues projections analyses to aid it in determining whether to enter into an agreement upon recommendation of the Quality Investment Committee*. [68 O.S. § 4203(7)]

"Establishment" *means a manufacturer that is a partnership, limited partnership, corporation, limited liability company, limited liability partnership, or sole proprietorship. The establishment may enter into a Quality Investment Contract pertaining to only one manufacturing site as that term is defined in Section 1352 of Title 68 of the Oklahoma Statutes. No combination of other locations of the establishment, or any related entities of the establishment is contemplated. An establishment may have multiple contracts due to multiple sites or multiple expansions due to retooling and modernization at one site*. [68 O.S. § 4203(8)]

"NAICS" Manual" *means any manual book or other publication containing the North American Industry Classification System, United States, 1997, or as updated or amended from time to time, promulgated by the Office of Management and Budget of the United States of America.* [68 O.S. § 4203(9)]

"Start date" *means the date on which an establishment may begin accruing benefits for investment of new capital costs in a manufacturing site that is assigned in the agreement with the Oklahoma Department of*

*Commerce. [*68 O.S. § 4203(10)]

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102, and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-3. Eligible entities

Eligible entities to make application to the Oklahoma Department of Commerce under the Oklahoma Quality Investment Act are establishments as defined at 68 O.S. § 4203(8).

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-4. Application and required information

(a) An establishment shall prepare a written application following the guidelines, forms, and procedures as set forth in the application prepared by the Oklahoma Department of Commerce and approved by the Quality Investment Committee. An establishment shall be required to provide the following information:

(1) The location of the project and if the location is an economically distressed area of the State.
(2) The number of jobs that are at risk and the average salary of the jobs at risk.
(3) The calendar year and quarter in which the investment begins.
(4) The projected employment and investment resulting from the project over three (3) years.
(5) The third year average salary of the new workers hired in the new direct jobs.
(6) A description of the establishment's operations and the lines of business and operations of the project for which an application is being submitted.
(7) NAICS code number for the establishment.
(8) Business plans.
(9) Feasibility studies.
(10) Financing proposals.
(11) Financial statements for the previous three (3) years.
(12) Marketing plans.
(13) Registration with the Oklahoma Secretary of State.
(14) Registration with the Commission.
(15) Such other information as may be required by the Department for a full and detailed analysis of the project.

(b) The establishment shall also provide a copy of its basic health benefits plan offered to employees or a description of the plan that will be offered within twelve (12) months of the date that it enters into a Quality Investment Contract.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-5. Quality investment contract

An establishment which meets the qualifications specified in the Oklahoma Quality Investment Act may apply to enter into a Quality Investment Contract with the Oklahoma Department of Commerce to receive annual incentive payments over a five-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Investment Act pursuant to the requirements set forth in 68 O.S. § 4204, with the following specific requirements more fully set forth:

(1) Be engaged in manufacturing in activities described under Industry Group Nos. 31 through 33 of the NAICS Manual;
(2) Incur capital costs for new retooling or modernization projected to equal or exceed One Million Dollars ($1,000,000.00) within twenty-four (24) months of the start date; and
(3) Apply to and enter into a Quality Investment Contract specifying:

(A) The amount of capital investment the establishment must make within twenty-four (24) months of the start date in order to remain in the Oklahoma Quality Investment Program,
(B) The total minimum amount of Oklahoma taxable payroll it will maintain in this state during the course of the agreement,
(C) The total amount in incentive payments it may receive,
(D) If applicable, the amount of local revenues a county or municipality intends to apportion to the establishment annually, and
(E) That it will offer "basic health insurance" as defined in the Oklahoma Quality Jobs Program Act, within twelve (12) months of entering into a Quality Investment Contract.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-6. Transmittal of information

The Department shall notify the Commission of each approved Quality Investment Contract. The Department shall provide the Commission with a copy of each approved Quality Investment Contract.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-7. Claim for incentive payments

At the end of a calendar year for which an establishment has qualified to receive an incentive payment, the establishment shall file a claim with the Commission following the requirements and procedures established by the Commission and the requirements set forth at 68 O.S. § 4205.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

150:130-1-8. Prohibition on receiving other credits or exemptions

Notwithstanding any other provision of law, if a qualified establishment receives an incentive payment pursuant to the provisions of the Oklahoma Quality Investment Act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for at 68 O.S. § 4207.

[**Source:** Added at 24 Ok Reg 2813, eff 7-13-07 (emergency); Added at 25 Ok Reg 1542, eff 6-12-08]

CHAPTER 135. OKLAHOMA BIOENERGY CENTER ACT [REVOKED]

[**Authority:** 68 O.S.§§ 4201-4210; 74 O.S. §§ 5001 et seq.]
[**Source:** Codified 6-12-08]

150:135-1-1. Purpose [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-2. Mission [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-3. Rules and regulations [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-4. Definitions [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-5. Management [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-6. Board membership [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-7. Powers and duties [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-8. Policies and procedures [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

150:135-1-9. Limited liability [REVOKED]

[**Source:** Added at 25 Ok Reg 1544, eff 6-12-08 ; Revoked at 38 Ok Reg 1725, eff 9-11-21]

CHAPTER 140. OKLAHOMA QUICK ACTION CLOSING FUND

[**Authority:** 62 O. S. § 48.2(F) and 75 O.S. §§ 5001 et seq.]
[**Source:** Codified 5-25-13]

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, 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)]

[**Source:** Added at 30 Ok Reg 101, eff 11-1-12 (emergency); Added at 30 Ok Reg 481, eff 5-25-13 ; Amended at 37 Ok Reg 1041, eff 9-11-20]

150:140-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting or interim director.

"Oklahoma Quick Action Closing Fund" means the fund established at the Oklahoma Treasury for the Oklahoma Department of Commerce, for the purposes set forth in 62 O.S. § 48.2.

[**Source:** Added at 30 Ok Reg 101, eff 11-1-12 (emergency); Added at 30 Ok Reg 481, eff 5-25-13]

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) Applications other than those from high impact production companies which have been approved for a rebateshall 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.

[**Source:** Added at 30 Ok Reg 101, eff 11-1-12 (emergency); Added at 30 Ok Reg 481, eff 5-25-13 ; Amended at 37 Ok Reg 1041, eff 9-11-20]

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, theDirector 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) *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.

[**Source:** Added at 30 Ok Reg 101, eff 11-1-12 (emergency); Added at 30 Ok Reg 481, eff 5-25-13 ; Amended at 37 Ok Reg 1041, eff 9-11-20]

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)]*

[**Source:** Added at 30 Ok Reg 101, eff 11-1-12 (emergency); Added at 30 Ok Reg 481, eff 5-25-13 ; Amended at 37 Ok Reg 1041, eff 9-11-20]

150:140-1-6. Disclosure of payments

The Department of Commerce shall make available on its website or other website dedicated for this purpose a complete disclosure of all payments made from the Oklahoma Quick Action Closing Fund. The disclosure shall include a description of the expenditures made by the business establishment with the payments made from the fund. No proprietary information of the business establishment shall be subject to the requirements of this subsection. [62 O.S. § 48.2(I)]

[**Source:** Added at 30 Ok Reg 101, eff 11-1-12 (emergency); Added at 30 Ok Reg 481, eff 5-25-13]

CHAPTER 145. OKLAHOMA ECONOMIC DEVELOPMENT POOLED FINANCE ACT

[**Authority:** 74 O.S., §§ 5001 et seq.; 62 O.S., § 891.10 and 2891.17(D)]
[**Source:** Codified 9-11-20]

SUBCHAPTER 1. GENERAL

150:145-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Economic Development Pooled Finance Act at the Oklahoma Department of Commerce.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

150:145-1-2. Definitions

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

"Department" means the Oklahoma Department of Commerce.

"Economic development pool" *means proceeds of obligations sold by the Authority to provide resources for eligible local government entities or a local government entity in conjunction with a for-profit business entity to finance an eligible economic development project or other purposes authorized by this act.* [62 O.S. 891.3(9)]

"Infrastructure pool" *means the proceeds of obligations sold by the Authority to provide resources for eligible local government entities to provide financing for infrastructure or other purposes authorized by this act.*[62 O.S. 891.3 (14)]

"Public-private partner development pool" *means proceeds of obligations sold by the Oklahoma Development Finance Authority to provide resources for eligible local government entities to provide financing for infrastructure in conjunction with for-profit business entities and federal government defense entities or any other purpose authorized by this act.* [62 O.S. 891.3 (17)]

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

150:145-1-3. Applications

For the purpose of evaluating applications, the Department will require all applicants interested in the Infrastructure Pool, the Economic Development Pool, or the Public-Private Partner Development Pool 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 whether or not the project meets the statutory requirements and to evaluate the project under the relevant scoring system.

(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.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

SUBCHAPTER 2. INFRASTRUCTURE POOL

150:145-2-1. Criteria

Funds obtained from the Infrastructure Pool may be used for the acquisition, construction, reconstruction, repair, rehabilitation or installation of Infrastructure, as defined in 62 O.S. §891.3, and carried out by the recipient or other public entities.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

150:145-2-2. Scoring system

(a) The Department shall develop a scoring system in order to evaluate potential projects which may be eligible for pooled financing from the infrastructure pool. This scoring system shall include, but not be limited to, the following factors:

(1) Capital investment by eligible local governmental entities as defined in 62 O.S. §891.3;
(2) Amount and type of benefit to low and moderate income persons;
(3) Whether or not the improvement will contribute significantly to the safety, health, or welfare of the residents of the area;
(4) Whether or not the area is in a Federally-designated Empowerment Zone or Enterprise Community or Opportunity Zone;
(5) Whether or not the infrastructure improvement would allow the local government entities create jobs;
(6) Whether or not the infrastructure improvement would allow the local governmental entities to retain jobs that would likely be lost without the funds;
(7) Whether or not the infrastructure project provide or significantly improve locally owned broadband internet lines and/or facilities; and
(8) Any other factor(s) deemed relevant by the Department.

(b) This scoring system shall only be used as necessary to prioritize the funding of qualified infrastructure pool projects.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

SUBCHAPTER 3. ECONOMIC DEVELOPMENT POOL

150:145-3-1. Scoring system

The Department shall develop a scoring system in order to evaluate potential projects which may be eligible for pooled financing from the economic development pool. The scoring system shall include, but not be limited to, the following factors:

(1) Capital investment by a for-profit business entity or entities;
(2) New direct jobs as such term is defined by 68 O.S. §3603, to be created by a for-profit business entity or entities;
(3) Salary and wage payments to persons employed in new direct jobs;
(4) Likelihood of additional business location decisions resulting from the activity of the for-profit business entity or entities that would benefit from the use of the economic development pool;
(5) Capital investment by governmental and/or not for profit entities;
(6) The amount and degree of net benefit to be had by the State from completion of the project;
(7) Whether or not the local government entity or for-profit business entity is a participant in any other projects governed by the Oklahoma Economic Development Pooled Finance Act; and
(8) Any other factor(s) deemed relevant by the Department.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

SUBCHAPTER 4. PUBLIC-PRIVATE PARTNER DEVELOPMENT POOL

150:145-4-1. Criteria

Funds obtained from the Public-Private Partner Development Pool may be used for the acquisition, construction, reconstruction, repair, rehabilitation or installation of infrastructure owned by an eligible local government entity, as defined in 62 O.S. §891.3.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

150:145-4-2. Scoring system

The Department shall develop a scoring system in order to evaluate potential projects which may be eligible for pooled financing from the Public Private Partnership Pool. The scoring system shall include, but not be limited to:

(1) Capital investment by one or more for-profit business entities and/or federal government defense entities;
(2) Additional capital investment by one or more local government entities;
(3) New direct jobs as defined 68 O.S. §3603, to be created by a for-profit business entity or entities;
(4) Salary and wage payments to persons employed in new direct jobs;

(5) The likelihood of additional business location decisions resulting from the activity of the for-profit business entity or entities that would benefit from use of the Public-Private Partner Development Pool;
(6) The amount and degree of net benefit to be had by the State from completion of the project;
(7) Whether or not the local government entity or business entities is a participant in other projects governed by the Oklahoma Economic Development Pooled Finance Act; and
(8) Any other factor(s) deemed relevant by the Department.

[**Source:** Added at 37 Ok Reg 1044, eff 9-11-20]

CHAPTER 150. THE OKLAHOMA FILM AND MUSIC OFFICE

Editor's Note: *Effective 7-1-21, the rules in this Chapter were transferred from the Oklahoma Tourism and Recreation Department [OAC 725:35-1-1 through 725:35-1-5]. Pursuant to Senate Bill 949 (2021), "all rules promulgated by the Oklahoma Tourism and Recreation Department regarding the Oklahoma Film and Music Office shall be transferred to and become a part of the administrative rules of the Oklahoma Department of Commerce. . . . any amendment, repeal or addition to the transferred rules shall be under the rulemaking authority of the Oklahoma Department of Commerce" [Senate Bill 949 (2021), Section 6(A)]. As directed by SB 949, an Editor's Notice was published in the Oklahoma Register [see 39 Ok Reg 141], announcing the transfer of the rules from 725:35 to this Chapter [OAC 150:150], and identifying the new location in this Chapter of each transferred rule. For additional information relating to this transfer, see Senate Bill 949 (2021).*

[**Authority:** 74 O.S., §§ 2204; 5003.1 et seq.; 68 O.S. § 2357.105; 69 O.S. § 4041(C)]
[**Source:** Codified 7-1-21]

SUBCHAPTER 1. FILMED IN OKLAHOMA ACT

150:150-1-1. Purpose

These rules implement the Filmed In Oklahoma Act at the Oklahoma Film and Music Office (OFMO) within the Oklahoma Department of Commerce.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-2. Definitions

In addition to the definitions in the Filmed in Oklahoma Act, the following terms when used in this Subchapter have the following meanings, unless the context clearly indicates otherwise:

"Above-the-line personnel" or **"ATL"** means as defined in 68 O.S. §3632. It includes individuals hired or credited on screen for the Production as producers (all levels), principal cast (SAG Schedule F/Run of Show or equivalent), screenwriters and the Film director.

"Act" means the Filmed in Oklahoma Act

"Application estimate" means the estimated QPEs submitted to OFMO prior to the start of principal photography.

"Commission" means the Oklahoma Tax Commission or its successor entity.

"Conditional pre-qualification" or **"conditionally pre-qualified"** means the status or act of approval being granted to a Production's Eligibility Application by OFMO.

"Department" means the Oklahoma Department of Commerce.

"Eligibility application" means the application of eligibility for the program. If the application is approved by OFMO, the film is

"Conditionally Pre-Qualified"

"Episodic pilot" means a standalone episode of a television series used to sell the show to a television station, television network, cable television station or streaming service.

"Final application" means the package submitted to OFMO documenting all criteria for a rebate has been met and the Production Company is requesting payment of a Rebate Claim. This package includes all documentation reasonably necessary to prove eligibility that has not previously been provided to OFMO.

"Hub location" means the Municipality where most of the principal photography conducted in Oklahoma on the film has occurred.

"Loan-out corporation" or **"Loan-out company"** means a corporation or limited liability company actively registered with the Oklahoma Secretary of State to do business in this state as a foreign or domestic entity used by Above-the-line personnel and Crew to report payments received from the Production as Oklahoma earnings for the personnel or Crew member.

"Master tradesperson" means a skilled and experienced tradesperson who instructs an Apprentice through use of practical experience so the Apprentice may learn a trade, craft or profession.

"Municipality" means an incorporated city or town. If a location is not in an incorporated city or town, it is considered part of the nearest incorporated city, or town.

"Office" or **"OFMO"** means the Oklahoma Film and Music Office or its successor entity.

"Oklahoma based" means as defined in 68 O.S. §3632. This term includes a business entity registered and in good standing as a Domestic entity with the Oklahoma Secretary of State and that files an Oklahoma income tax return.

"Oklahoma expatriate" means a person who has previously resided for at least one year, but does not currently reside, in Oklahoma.

"Oklahoma resident" means a person who is a resident under the Oklahoma Tax Code at the time of hire.

"Oklahoma vendor" means a seller, renter or lessor of goods or services who charges Oklahoma sales tax under an Oklahoma Sales Tax Permit on taxable transactions and is either (1) Oklahoma-Based or (2) a foreign business entity with an active registration to do business in Oklahoma and an Oklahoma physical location for transacting business.

"Payroll burden" means employer-paid taxes (e.g. FICA, Medicare and Unemployment Insurance) and payroll-associated payments made on a specific employee's behalf by law or collective labor bargaining agreement (e.g. union dues and union fringes). Payroll Burden includes the employer-paid portion of health insurance for an employee, if such insurance was paid to an Oklahoma-Based insurance company or obtained through a licensed Oklahoma insurance broker.

"Per diem" means fixed payments made to Crew and Above-the-line personnel regardless of residency in lieu of reimbursement for lodging/housing, meals and incidentals, up to a maximum of the Per Diem Rate allowed for the applicable location and date in the U.S. General Services Administration Per Diem Rates. This does not include car and travel stipends, as these expenses are ineligible for rebate.

"Principal photography" means the filming of significant components of a Film which involve principal cast or, in the case of Films that do not involve live actors, the beginning of substantive work on the animation or graphics that form the Film's primary visual story.

"Production" means a project to make a Film.

"Production budget" means the total budgeted cost of the Production.

"Production company" means as defined in 68 O.S. §3632. Eligibility and Final Applications are filed by the Production Company and, unless previously agreed to in writing by the OFMO, payment of approved Rebate Claims is made to the Production Company.

"Project filmed in this state" means that at least one of the film's principal photography production days have occurred in Oklahoma. A project that does not meet this threshold is a "project filmed outside this state".

"Proof of funding" means demonstration in a form acceptable to the OFMO that a Production has or will have funding in place to cover the Production Budget. Acceptable forms approved by the OFMO may include a letter of intent from a recognized industry financier, written verification of dedicated deposits in a recognized financial institution or a letter of credit from an acceptable guarantor.

"Qualified production expenditure amount" or **"QPE"** means a qualified production expenditure.

"Rebate claim" means the formal request for OFMO to issue a Rebate under the Program.

"Rebate enhancement" means the additional incentive amounts a project may be eligible for which may be offered in addition to the base incentive amount. These Rebate Enhancements are specifically listed in 68 O.S. §§3635(B) and 3636(B).

"Rebate schedule" means a schedule of dates, deadlines, and submittals the Production is to achieve to submit the Final Application and have its Rebate Claim approved.

"Salaries" or **"Wages"** means those salaries and wages designated as Oklahoma earnings on payroll records along with the associated Payroll Burden, Per Diem and Housing Allowance.

"Scouting expenses" means costs incurred to identify locations, Crew, facilities, services and equipment to be used in the Production.

"Series season" means a group of episodes of the same Eligible Television Series which are either released simultaneously or at regular intervals to be aired within a certain time frame through traditional television content providers or through a streaming service.

"Start of pre-production" means the opening of an Oklahoma office for the Production, or incurring QPE other than Scouting Expenses, or otherwise commencing business on the Production in Oklahoma other than scouting.

"Television series" means a group of two or more episodes of a production with a common series title and general theme intended to be released for viewing through a traditional television content provider or through a streaming service.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-3. Program criteria and qualification

(a) Applying for rebate eligibility:

(1) Applications and all necessary forms may be submitted to OFMO through the OFMO website or as otherwise specified by OFMO.

(2) Unless otherwise authorized by OFMO, Eligibility Applications submitted for projects filmed inside the State pursuant to 68 O.S. §3635 may be submitted no earlier than one (1) year prior to the start of Principal Photography but no later than forty-five (45) days prior to the start of Principal Photography. The exact specifications of the Eligibility Application are shown on the OFMO website, and include but are not limited to:

(A) General information about the Production;

(B) Contact information;

(C) Preliminary production milestone dates;

(D) A copy of the screenplay (or treatment if appropriate);

(E) The Production Budget top sheet and estimated headcount;

(F) Various acknowledgements of program and OFMO criteria and agreements to abide by them;

(3) Unless otherwise authorized by OFMO, Eligibility Applications for post-production activity on a Project filmed outside of this state pursuant to 68 O.S. §3636 may be submitted no earlier than one (1) year prior to the occurrence of the post-production activity occurring in Oklahoma but no later than fourteen (14) days prior to the occurrence of the post-production activity occurring in Oklahoma. The exact specifications of this Eligibility Application are shown on the OFMO website, and include but are not limited to:

(A) The post-production budget or budget top sheet including post-production services and

(B) Proof of funding for the post-production services.

(4) Applicants may track the status of their Eligibility Application on the OFMO website.

(5) Application does not guarantee acceptance. OFMO considers each Eligibility Application individually based upon many factors, including compliance with these Rules, the Act, the benefits of the project to Oklahoma (such as economic impact, jobs, tourism, branding, image and follow-on work), funds available, anticipated future Program needs, and other projects applying for a rebate.

(6) If the Eligibility Application is approved, the Production Company will be Conditionally Pre-Qualified and OFMO will work with the Production to establish a Rebate Schedule.

(7) Conditional Pre-Qualification does not guarantee ultimate approval of a Rebate Claim. The Rebate Claim is not deemed to be approved until after the Final Application is approved.

(8) If the Eligibility Application is denied, OFMO may provide the applicant with the reason(s) it was denied.

(9) Only one Eligibility Application per fiscal year per Production may be accepted.

(10) OFMO may provide the Oklahoma Tax Commission with quarterly reports containing information concerning the Conditional Pre-Qualification of Applications and approved Rebate Claims.

(b) Application Estimate. If the Eligibility Application is approved, the Application Estimate will be multiplied by the rebate percentage deemed appropriate by the Department. The resultant amount is the amount that may later be paid as the Rebate Claim (the "Potential Rebate Claim"

(c) If the Final Application and Rebate Claim are later approved:

(1) If the QPE are less than or equal to the application Estimate, the Rebate claim may be paid in full up to the Potential Rebate Claim amount. Any amount of the Potential Rebate Claim that has been Pre-Qualified but is less than the actual Rebate Claim may be deemed not Pre-Qualified and will not count toward the limitations set forth in 68 O.S. §3634.

(2) If the actual QPE are more than the Application Estimate, the amount that may be paid on the Rebate Claim is limited to the Potential Rebate Claim Amount. QPE that exceed the Potential Rebate Claim Amount are considered an additional claim and may, at OFMO's discretion, be approved for payment. If the additional claim is approved, the additional amount agreed to be paid counts toward the Conditional Pre-Qualification limits set forth in 68 O.S. §3634 of the then current fiscal year.

(d) Rebate Schedule. For Projects filmed in this State pursuant to 68 O.S. §3635, unless otherwise agreed by OFMO in writing, after Conditional Pre-Qualification, OFMO and the Production Company will establish a schedule of dates based upon the following benchmarks:

(1) 45 calendar days prior to Principal Photography- submit Application Estimate and Proof of Funding for at least fifty percent (50%) of the Production budget unless otherwise agreed upon beforehand by OFMO.

(2) Prior to paying salaries or wages to a Production Company's employee in Oklahoma- submit a certificate of workers' compensation insurance with limits pursuant to Oklahoma Law.

(3) 30 calendar days prior to Principal Photography - submit the following:

(A) Proof of funding for the Production Budget;

(B) Updated filming schedule;

(C) Updated screenplay (or treatment if appropriate);

(D) Copy of the completion bond as described in "(e)" Below, if applicable;

(E) Additional documents as reasonably requested by OFMO.

(4) 10 calendar days prior to Principal Photography:

(A) Submit a certificate of general liability insurance with a minimum limit of $1,000,000 in coverage (or a binder for such with a state date no later than the estimated Start of Pre-Production).

(B) Submit a certificate of automobile liability insurance with minimums of $250,000/500,000/250,000 coverage (or a binder for such with a state date no later than the estimated Start of Pre-Production) or certification that no employee of the Production will drive an automobile as part of the Production.

(5) During Principal Photography - submit the following (preferably in advance, if practical):

(A) Updates to the filming schedule;

(B) Updates to the screenplay (or treatment if appropriate);

(C) Call Sheets.

(6) Within 90 calendar days of completion of the Production (or payment date of last QPE, if later):

(A) Upload through the OFMO website the list of Oklahoma Crew, Oklahoma Expatriates and Oklahoma Vendors used on the Production;

(B) Submit the Final Application.

(e) Completion Bond. Unless a Production is backed by a major studio or other financing source acceptable to OFMO, the Production will post a Completion Bond from a guarantor acceptable to OFMO guaranteeing completion of the Production and payment of all Oklahoma liabilities. In lieu of a Completion Bond, a Production may produce evidence acceptable to OFMO that all Crew, vendors and taxes have been paid and there are no outstanding or potential liens in Oklahoma against the Production Company.

(f) End of Production credits:

(1) The end credit crawl of all release prints of a Film filmed in Oklahoma will include "filmed in Oklahoma using the Filmed in Oklahoma Act" and a logo provided by OFMO.

(2) The end credit crawl for all release prints of a Film for Projects filmed outside of this state pursuant to 68 O.S. §3636 will include "postproduction activity for the film was conducted in Oklahoma using the Filmed in Oklahoma Act" and a logo provided by OFMO.

(3) If the production does not contain end credits, the production company will provide equivalent value as determined by OFMO prior to payment of the Rebate Claim. If the production does not intend to use end credits, this should be disclosed to OFMO prior to Conditional Pre-Qualification of the project.

(g) Certified Public Accountant's Report: Final Applications for both Projects filmed in this state and for Projects filmed outside of this state pursuant to 68 O.S. §3636 will be accompanied by a CPA's Report, prepared at the expense of the Applicant, attesting that the amounts in the Final Application are QPE that comply with these rules.

(1) Reports will be prepared by a CPA currently licensed by the State of Oklahoma and who is independent under the American Institute of certified Public Accountants' (AICPA) Independence Rule.

(2) CPAs will carry professional liability insurance, in a form and from a carrier acceptable to OFMO, for at least $500,000.

(3) The CPA's examination will be conducted according to the AICPA's Attestation Standards.
(4) Reports will use a materiality threshold set by OFMO and published on its website.
(5) CPAs will work with the Production Company to resolve exceptions or discrepancies prior to submitting the Final Application, such that the CPA's Report attests to the validity and accuracy of the amounts on the Application without exception.
(6) The CPA's Report will attest:
(A) Actual Production expenditures were at least $50,000 and QPE at least $25,000.
(B) All amounts on the Application are properly calculated and materially accurate.
(C) All Oklahoma payroll tax returns due from the Production Company (or its payroll processor) have been filed.
(D) All Oklahoma income tax returns for the Production Company due as of the review date have been filed.
(7) The CPA will retain all workpapers for the CPA's Report for seven years, during which they may be subject to audit by OFMO or its agents, upon a request by OFMO.

(h) Final Application:
(1) Upon completion of the Production and mandates herein, the Production Company may submit a Final Application.
(2) Submitting a Final Application does not guarantee approval. OFMO may approve or disapprove of all claims within 60 calendar days of receipt of a properly completed Final Application.
(3) If a Final Application or Rebate Claim is denied, the Production Company may attempt to correct any discrepancies or problems and resubmit within thirty (30) days of denial.
(4) Once a Final Application is approved by OFMO,
(A) Amendments are not allowed;
(B) The Production Company will work with OFMO to establish a vendor ID with the State.
(5) The Oklahoma Tax Commission will, upon notification of approval from the OFMO, issue payment for all approved Rebate Claims, subject to any statutory limitations and any other written agreements between the Production Company and the Department.

(i) Delays, Transferability and Expiration:
(1) A Conditionally Pre-Qualified Production may delay the start of Principal Photography two times for a total delay of up to ninety (90) days from the date when principal photography was originally scheduled to begin, unless other extensions are granted in writing by OFMO for good cause. If the start is delayed a third time, or a Production does not start by the date specified in their latest update to the Production Schedule submitted to OFMO, Pre-Qualification is revoked, the Eligibility Application is denied and the Production cannot apply again until the following fiscal year.

(2) Conditional Pre-Qualification is specific to the Production and Production Company and is non-transferable. Productions, screenplays and budgets may evolve as long as they are substantially similar to those submitted in the Eligibility Application.
(3) Unless otherwise approved by OFMO in writing, Conditional Pre-Qualification expires:
(A) If the letter offering Conditional Pre-Qualification is not signed and returned to OFMO within seven (7) business days of receiving it; or
(B) Two (2) years from the start of Principal Photography.
(4) If Conditional Pre-Qualification expires or is revoked, the Potential Rebate Claim amount from the revoked or expired Conditional Pre-Qualification does not count toward the Conditional Pre-Qualification cap set forth in 68 O.S. §3634.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-4. Multi-film deals

(a) As part of the Eligibility Application, an applicant will provide information as requested by OFMO indicating whether the Film being produced is intended to be part of a "Multi-Film" Deal.
(b) If an applicant indicates that a film is part of a Multi-Film Deal, and provides the requested documentation, the Department may Conditionally Pre-Qualify the Multi-Film Deal Rebate Enhancement amount in a manner consistent with these rules. The Multi-Film Deal Rebate Enhancement amount Conditionally Pre-Approved for each Film in a Multi-Film Deal may only be approved for payment after approval of the Final Application of the third film in the Multi-Film Deal.
(c) After approval of the Final Application of the third film in a Multi-Film deal, and for each subsequent film that is part of the Multi-Film deal, the Department may formally approve the Rebate Enhancement applicable for the Multi-Film Deal and notify the Commission so the Conditionally Pre-qualified Rebate Enhancement for the Multi-Film deal may be paid.
(d) Episodes filmed as part of a single Series Season do not qualify for the Multi-Film Deal incentive enhancement.
(e) A television Episodic Pilot which is part of a Multi-Film Deal for purposes of the incentive enhancement cannot receive an Incentive Enhancement for a television Episodic Pilot as otherwise provided in the act.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-5. Apprentices

(a) OFMO may maintain a list of trades or departments deemed necessary for a film production where an Apprentice may be utilized to qualify for the rebate pursuant to the Act and list these trades on the OFMO website.
(b) A person is considered an Apprentice as defined by the act, if he or she meets all of the following criteria:

(1) The Apprentice is an Oklahoma resident;
(2) The Apprentice is supervised by an experienced Master Tradesperson in the trade, craft or profession being practiced by the Apprentice in the production;
(3) The Apprentice works in a trade recognized by OFMO as necessary for a film production;
(4) Unless otherwise approved by OFMO in writing, the Apprentice works under the supervision of the Master Tradesperson at least one-half (1/2) of the days the Master Tradesperson under which the Apprentice is learning is actively engaged in the film.
(5) The Apprentice is paid, at minimum, federal minimum wage for all hours worked during their apprenticeship;
(6) The Apprentice completes a questionnaire or survey provided by OFMO to be returned to OFMO with the Final Application.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-6. State Certified Industry Standard Soundstage Facility

(a) A facility may be considered a State Certified Industry Standard Soundstage Facility (State Certified Soundstage Facility), if a building, or complex of buildings, building improvements and associated back-lot facilities on a property meets all of the following criteria:

(1) Multiple Productions are, or are intended to be, regularly produced at the facility throughout the year;

(2) The primary revenue source for such a facility is from industry Productions and ancillary services to such Productions;

(3) The facility is marketed and made available to third party productions planning to rent such facility and the facility is able to be listed on the OFMO website for such rental;

(4) The facility provides additional industry specific on-site services and amenities for third party Productions;

(5) The facility contains at least 7,500 sq feet of combined and dedicated studio space which:

(A) Features acoustically treated walls.

(B) Achieves a noise criterion rating of 30 or better

(C) Has a height of at least 15 feet and;

(D) Is equipped with sufficient heating and air conditioning for filming without the need for supplemental units (but supplemental units may be used)

(E) Otherwise meets the criteria for a qualified soundstage facility as defined in the Act.

(b) OFMO may compile and maintain a list of State Certified Soundstage Facilities located within the State of Oklahoma and may make this list available either through request or by publishing a regularly updated list on the OFMO website.

(c) A soundstage facility may apply to OFMO and request to be listed as a State Certified Soundstage Facility by contacting OFMO and making application to the Department in a manner and on an application provided by OFMO.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-7. Incentive amounts

(a) The base incentive amount and all Rebate Enhancement percentages set forth in 68 O.S. §3635 and §3636 are the maximum possible incentive percentage amounts payable under each specific circumstance. The decision as to whether to offer an incentive, and how much of an incentive may be offered is made at the discretion of OFMO.

(b) The actual rebate percentage approved for a project, if any, is determined by the Department in a way that achieves the maximum positive impact for the Oklahoma economy.

(c) In determining the rebate percentage amount to be approved, if any, pursuant to either 68 O.S. §3635 or §3636, the Department may consider the following:

(1) Benefits of the project to the State (including economic impact, industry infrastructure impact, jobs, tourism, branding, image and follow-on work);

(2) The amount of rebate payments conditionally prequalified by the Department for the current fiscal year;
(3) Impact on the ability of the Department to commit funds to additional projects for the current fiscal year;
(4) The amount of incentive believed to be necessary to win the project.

(d) The incentive percentage to be approved for a project may be determined at the time of Conditional Pre-Qualification of the application with the following limitations:

(1) If a project fails to meet the criteria for a particular Rebate Enhancement for which the project was initially pre-qualified to receive, the percentage of that specific incentive enhancement is removed from the total percentage of the incentive offer.
(2) If a project underperforms with regards to any of the Rebate Enhancement categories from what they projected in the initial application, the additional incentive amount offered for that category may be reduced.
(3) If a project uses fewer apprentices than the amount claimed at the time of Conditional Pre-Qualification, the base incentive amount may be reduced.
(4) If the Rebate Claim amount is fifteen or more percent (15% +)lower than the amount for which the Film was pre-qualified, one percent (1%) of the Rebate amount for which the Film would otherwise be paid may be reduced due to the reduced economic benefit to the State.

(e) OFMO may utilize a scoring system to provide guidelines as to the amount of incentive offered for a project, if any. OFMO may also rank projects to determine which projects should receive priority in receiving an incentive offer. Any list created by OFMO ranking projects is not subject to the Open Records Act.

(f) OFMO may prioritize projects on a project ranking list which meet the following criteria:

(1) Projects which are the second or subsequent film in a Multi-Film Deal;
(2) Projects which are part of a television series filmed in Oklahoma where either the series Television Pilot or a previous Series Season was filmed in Oklahoma
(3) Post-production activity occurring in Oklahoma on a television series filmed outside of Oklahoma where post-production activity on either the series Television Pilot or a previous Series Season had occurred in Oklahoma.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-8. Qualified production expenditures

A Qualified Production Expenditure, or production cost, includes Oklahoma expenditures or production costs as defined in 68 O.S. §3632 including as the following expenditures, whether paid directly or through an Oklahoma based entity, subject to statutory limitations:

(1) Salary Costs for Oklahoma Resident Crew;

(2) Salary Costs for Oklahoma Expatriate Crew;
(3) Payments to the owner(s) of an Oklahoma Loan-Out Company for Oklahoma Resident Crew;
(4) Payments to the owner(s) of an Oklahoma Loan-Out Company or salary payments for Crew that is not Oklahoma-Based or who are non-residents, other than above-the-line personnel, subject to the sunset limitations in 68 O.S. §3635(A);
(5) Subject to the twenty-five percent limitation, the sum of:
(A) payments to Oklahoma-Based above the line personnel
(B) payments to Oklahoma Loan-Out Companies for Above-the-line personnel; and
(C) payments to an Oklahoma-Based entity for using the Film's underlying creative work (e.g., screenplay, treatment, or novel).
(6) Permits and fees paid to an Oklahoma state, county, or municipal governmental or quasi-governmental entity;
(7) Payments to an Oklahoma Vendor for the following:
(A) Studio, stage or set construction and dismantling;
(B) Production scheduling, management, administration and operations;
(C) Casting and security services;
(D) Wardrobe and make-up materials, consumables and services;
(E) Set props and accessories (individual props costing in excess of fifty thousand dollars ($50,000) may only be included as a QPE if prior approval is granted by the OFMO);
(F) Cameras, film, microphones, tape, digital storage media and other materials and equipment used to record sound and images;
(G) Photography, visual image editing, animation, Computer graphics and effects, and related visual services;
(H) Sound (other than music) recording, editing, synchronization and related services;
(I) Licensing or use rights for music, or recording of songs or musical score, used in the Film including, with the approval of OFMO, licensing fees paid to an out of state entity for the use of music made by a musician that is an Oklahoma Resident);
(J) Lighting and electrical materials, equipment and services;
(K) Location, building, facility, equipment, prop and wardrobe rental;
(L) Stunts, special effects, pyrotechnics, firefighting, safety, handling/wrangling, security and other specialty services;
(M) Lodging and accommodations (whether paid for directly by the Production Company, paid through a third party who is paid by the production company, or provided as an allowance in the amount of actual costs of housing)

for ATL and Crew;
(N) Food, restaurants and catering (whether paid for directly by the Production company or paid through a third party who is paid by the Production Company);
(O) Transportation of ATL, Crew, equipment and supplies (whether paid for directly by the Production company or paid through a third party who is paid by the Production Company);
(P) Travel costs to and from Oklahoma paid to or through an Oklahoma travel agent;
(Q) Completion bonds and insurance where either the guarantor or the is an Oklahoma Vendor);
(R) Shipping and postage for packages originating or terminating within Oklahoma;
(S) Fees, interest and financing charges paid to Oklahoma-Based Vendors and Oklahoma Based financial institutions and companies;
(T) Other materials, supplies and contracted services approved in advance by OFMO;
(U) CPA Report.

(8) Payments to an Oklahoma Vendor for the following valid Scouting Expenses of the Production:
(A) Location scouting, planning and packaging services;
(B) Travel costs to and from Oklahoma paid to a travel agent;
(C) Lodging and accommodations within Oklahoma;
(D) Transportation within Oklahoma;
(E) Meals purchased within Oklahoma.

(9) Reimbursements made to individuals for goods and Services provided by an Oklahoma Vendor that would have been QPE if paid directly by the Production, provided the individual provides a receipt for such goods and services.

(10) Reimbursements made for automobile mileage and toll fees paid to crew for travel beginning from a location in Oklahoma and ending at another location in Oklahoma as long as:
(A) mileage payments are limited to the current Internal Revenue Service (IRS) standard mileage rates and
(B) the payment of mileage is compliant with IRS rules for claiming mileage.

(11) Box rental fees paid to an Oklahoma resident crew member or an Oklahoma Expatriate crew member for the crew member using his or her own equipment or resources on a Film.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

150:150-1-9. Oklahoma expatriate crew program

(a) OFMO may maintain a roster of Oklahoma Expatriate Crew and make such roster available to a Production Company upon request.

(b) The Expatriate roster may consist of Oklahoma Expatriates who are:
(1) Registered as an Oklahoma Expatriate with OFMO and;

(2) Have completed a Declaration of Expatriate Status satisfactory to OFMO.

[**Source:** Added at 38 Ok Reg 851, eff 7-19-21 (emergency); Added at 39 Ok Reg 869, eff 9-11-22]

SUBCHAPTER 3. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

150:150-3-1. Purpose

The purpose of the Oklahoma Film Enhancement Rebate Program (Program) is an incentive program to build a film industry in the state. In accordance with 68 O.S. § 3624, this Program shall be administered by the Oklahoma Tax Commission and Office of the Oklahoma Film and Music Commission (OFMO).

[**Source:** Transferred from 725:35-1-1 by SB 949 (2021), eff 7-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:150-3-2. Definitions

In addition to the definitions in the statute (68 O.S. § 3623), the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Above the Line Personnel (ATL)" means, as defined in 68 O.S. § 3623, namely individuals hired or credited on screen for the Production as producers (all levels), principal cast (SAG Schedule F/Run of Show or equivalent), screenwriters and the Film director(s).

"Application estimate" means, the estimated QOE submitted to OFMO 60 calendar days before the start of Principal Photography.

"ATL Limitation" means up to twenty-five percent (25%) of total Qualifying Oklahoma Expenditures (QOE), see Section 725:35-1-4).

"Crew" means, as defined in 68 O.S. § 3623, namely persons who work on the Production who are not ATL (also known in the industry as "below-the-line" personnel).

"Documented expenditures" means, referred to in 68 O.S. § 3624(A), shall mean QOE as described in Section 725:35-1-4 below.

"Eligibility application" means the application of eligibility for the Program. If the application is approved by OFMO, a Film is "Pre-Qualified."

"Final application" means the package submitted to OFMO documenting all requirements have been completed and the Production Company is requesting payment of a Rebate Claim.

"Fiscal earmark year" means the fiscal year to which payment of potential Rebate Claims is assigned.

"High-impact production" means a Production that meets the requirements of 68 O.S. § 3623 and is so designated by the Oklahoma Tourism and Recreation Department (OTRD) Executive Director.

"Loan out company" means a legal entity (i.e., corporation, partnership or limited liability company) used by ATL and Crew to contract their services to the Production.

"Loan-out limitation" means up to twenty-five percent (25%) of Salary Costs for Oklahoma-Based Crew [as found in Section 725:35-1-4(a)]. The OTRD Executive Director may, in their discretion, specify a different percentage for High Impact Productions.

"Oklahoma-based" means a natural person that files, or is legally claimed as a dependent on, an Oklahoma resident tax return, or a business entity registered and in good standing as a Domestic entity with the Oklahoma Secretary of State and that files an Oklahoma income tax return.

"Oklahoma expatriate" means a person who previously resided for at least one year, but does not currently reside, in the state of Oklahoma.

"Oklahoma loan out company" means a Loan-Out Company with an active registration to do business in the state of Oklahoma as a domestic or foreign entity and that either reports payments received for the Production as Oklahoma earnings for the artist on an IRS Form W-2 or is considered a disregarded entity for federal income tax purposes.

"Oklahoma resident" means a person who is a resident under the Oklahoma Tax Code at the time of hire.

"Oklahoma vendor" means a seller, renter or lessor of goods or services who charges Oklahoma sales tax under an Oklahoma Sales Tax Permit on taxable transactions and is either (1) Oklahoma-Based or (2) a foreign business entity with an active registration to do business in Oklahoma and a physical Oklahoma location for transacting business.

"Payroll burden" means employer-paid taxes (e.g., FICA, Medicare and unemployment insurance) and payroll-associated payments made on a specific employee's behalf by law or collective labor bargaining agreement (e.g., union dues and union fringes). Payroll Burden also includes the employer-paid portion of health insurance for an employee, provided such insurance was paid to an Oklahoma-Based insurance company or obtained through a licensed Oklahoma insurance broker.

"Per diem" means fixed payments made to Crew and ATL in lieu of reimbursement for lodging/housing, meals and incidentals, up to a maximum of the Per Diem Rate allowed for the applicable location and date in the U.S. General Services Administration Per Diem Rates.

"Pre-qualified" or **"Pre-qualification"** means the status or act of approval being granted to a Production's Eligibility Application by OFMO.

"Principal photography" means the filming of significant components of a Film which involve principal cast or, in the case of Films that do not involve live actors, the beginning of substantive work on the animation or graphics that form the Film's primary visual story.

"Production" means a project to make a Film.

"Production budget" means the total budgeted cost of the Production.

"Production company" means, as defined in 68 O.S. § 3623, more specifically the legal entity responsible for the Production. Eligibility and Final Applications will be filed by the Production Company and, unless previously agreed to in writing by OFMO, payment of approved Rebate Claims will be made to the Production Company.

"Proof of funding" means demonstration in a form acceptable to OFMO that a Production has or will have funding in place to cover the Production's budget. Acceptable forms will be specifically approved by OFMO, but could include a letter of intent from a recognized industry financier, written verification of dedicated deposits in a recognized financial institution or a letter of credit from an acceptable guarantor.

"Rebate" means the percentage defined in 68 O.S. § 3624 of QOE.

"Rebate claim" means the formal request for OFMO to issue a Rebate under the Program. Only one Rebate Claim shall be processed per Production.

"Rebate schedule" means a schedule of dates, deadlines and submittals the Production must achieve to submit the Final Application and have its Rebate Claim approved.

"Salary costs" means those salaries and wages designated as Oklahoma earnings on payroll records, along with the associated Payroll Burden, Per Diem and Housing Allowance;

"Scouting expenses" means costs incurred to identify locations, Crew, facilities, services and equipment to be used in the Production.

"Start of pre-production" means the opening of an Oklahoma office for the Production, or incurring QOE other than Scouting Expenses, or otherwise commencing business on the Production in Oklahoma other than scouting.

[**Source:** Transferred from 725:35-1-2 by SB 949 (2021), eff 7-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:150-3-3. Program requirements and qualification

(a) Applying for Rebate Eligibility:

(1) Applications and all necessary forms will be submitted through the OFMO website (okfilmmusic.org) or as otherwise specified by OFMO.

(2) Unless otherwise agreed to by OFMO, Eligibility Applications will be submitted at least 60 calendar days prior to the Start of Principal Photography. The exact requirements of the Eligibility Application are shown on the OFMO website, but generally include:

(A) General information about the Production;

(B) Contact information;

(C) Preliminary Production milestone dates;

(D) A copy of the screenplay;

(E) The Production Budget top sheet and estimated headcount;

(F) Various acknowledgements of Program and OFMO requirements and agreements to abide by them.

(3) Applicants may track the status of their Eligibility Application on the OFMO website.

(4) Application does not guarantee acceptance. OFMO considers each Eligibility Application individually based upon many factors, including compliance with these Rules, the benefits of the project to Oklahoma (such as jobs, tourism, branding, image and follow-on work), funds available, anticipated future Program needs and

other projects applying for a Rebate.

(5) If the Eligibility Application is approved, the Production Company will be Pre-Qualified and OFMO will work with the Production to establish a Rebate Schedule.

(6) At the time of Pre-Qualification, Productions are assigned to a Fiscal Earmark Year based upon the start of Principal Photography.

(7) Pre-Qualification does not guarantee ultimate approval of a Rebate Claim. The Production Company must meet the requirements of the Rebate Schedule and their Final Application must be approved in order for the Rebate Claim to be approved.

(8) If the Eligibility Application is denied, OFMO will provide the applicant with the reason(s) it was denied.

(9) Only one Eligibility Application per fiscal year per Production will be accepted.

(b) Application Estimate: If the Eligibility Application is approved, the Application Estimate will be multiplied by the appropriate rebate percentage to determine the estimated amount to be paid in the Rebate Claim (the "Potential Rebate Claim").

(c) If the Final Application and actual Rebate Claim are approved:

(1) If the actual QOE are less than or equal to the Application Estimate, the Rebate Claim will be paid in full.

(2) If the actual QOE are more than the Application Estimate, the Potential Rebate Claim amount will be paid within the normal payment timeframe and the remainder will be considered an additional claim and may, depending upon OFMO's discretion and budget, be paid at a later date outside the normal timeframe.

(d) Rebate Schedule: After Pre-Qualification, OFMO and the Production Company will establish a schedule of dates based upon the following benchmarks:

(1) 60 calendar days prior to Principal Photography - submit Application Estimate and Proof of Funding for at least fifty percent (50%) of the Production Budget.

(2) Prior to paying salaries or wages to a Production Company's employee in Oklahoma - submit a certificate of workers' compensation insurance with limits pursuant to Oklahoma law.

(3) 30 calendar days prior to Principal Photography - submit the following:

(A) Proof of Funding for the Production Budget;

(B) Updated shooting schedule;

(C) Updated screenplay;

(D) Copy of the Completion Bond (defined in (e) below), if applicable;

(E) Additional documents as may be reasonably requested by OFMO.

(4) 10 calendar days prior to Principal Photography

(A) Submit a certificate of general liability insurance with a minimum limit of $1,000,000 in coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production);

(B) Submit a certificate of automobile liability insurance with minimums of $250,000/500,000/250,000 coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production) or certification that no employee of the Production will drive an automobile as part of the Production;

(C) Work with OFMO to draft and distribute a press release about the Production to relevant media.

(5) During Principal Photography - submit the following (preferably in advance, if practical):

(A) Updates to the shooting schedule;

(B) Updates to the screenplay.

(6) Within 90 calendar days of completion of the Production (or payment date of last QOE, if later):

(A) Upload through the OFMO website the list of Oklahoma Crew, Oklahoma Expatriates and Oklahoma Vendors used on the Production;

(B) Submit the Final Application.

(e) Completion Bond: Unless a Production is backed by a major studio or other financing source acceptable to OFMO, the Production will post a Completion Bond from a guarantor acceptable to OFMO guaranteeing the completion of the Production and payment of all Oklahoma liabilities. In lieu of a Completion Bond, a Production may produce evidence acceptable to OFMO that all Crew, vendors and taxes have been paid and there are no outstanding or potential liens in Oklahoma against the Production Company.

(f) Incremental Music Rebate: To qualify for the additional rebate for Oklahoma music described in 68 O.S. § 3624(B), QOE described in Section 725:35-1-4(g)(9) must be $20,000 or more.

(g) End of Production Requirements:

(1) Unless otherwise approved by OFMO, the end credit crawl of all release prints of a completed short or long-form film shall include "Filmed in Oklahoma utilizing the Oklahoma Film Enhancement Rebate Program" and a logo provided by OFMO.

(2) The Production Company shall provide to OFMO

(A) A film poster, final release copy of the Film on DVD and digital link to a copy of the Film if available.

(B) Production stills, behind-the-scenes footage or other images OFMO can use to promote the Program.

(h) Certified Public Accountant's Report: Final Rebate Applications will be accompanied by a CPA's Report, prepared at the expense of the Applicant, attesting that the amounts in the application are QOE that comply with the requirements of these rules.

(1) Reports will be prepared by a CPA currently licensed by the State of Oklahoma and who is independent under the American Institute of certified Public Accountants' (AICPA) Independence Rule.

(2) CPAs will carry professional liability insurance, in a form and from a carrier acceptable to OFMO, for at least $500,000.

(3) The CPA's examination will be conducted according to the AICPA's Attestation Standards.

(4) Reports will use a materiality threshold set by OFMO and published on its website.

(5) CPAs will work with the Production Company to resolve exceptions or discrepancies prior to submitting the Final Application, such that the CPA's Report attests to the validity and accuracy of the amounts on the Application without exception.

(6) The CPA's Report will attest:

(A) Actual Production expenditures were at least $50,000 and QOE at least $25,000, or if a High-Impact Production, actual expenditures were at least $50,000,000 and QOE at least $16,666,667.

(B) All amounts on the Application are properly calculated and materially accurate.

(C) All Oklahoma payroll tax returns due from the Production Company (or its payroll processor) have been filed.

(D) All Oklahoma income tax returns for the Production Company due as of the review date have been filed.

(7) The CPA will retain all workpapers for the CPA's Report for seven years, during which they may be subject to audit by the OFMO or its agents, upon a request by OFMO.

(i) Final Application:

(1) Upon completion of the Production and requirements herein, the Production Company will submit a Final Application.

(2) Submitting a Final Application does not guarantee approval. OFMO will approve or disapprove of all claims within 60 calendar days of receipt of a properly completed Final Application.

(3) If a Final Application or Rebate Claim is denied, the Production Company may attempt to correct any discrepancies or problems and resubmit within thirty (30) days of denial.

(4) Once a Final Application is approved by OFMO,

(A) Amendments are not allowed;

(B) The Production Company will work with OFMO to establish a vendor ID with the State.

(5) The Oklahoma Tax Commission will, upon notification of approval from the OFMO, issue payment for all approved Rebate Claims, subject to any Fiscal Year Maximum imposed by statute and any other agreements that the Production Company and OFMO have agreed to in writing in the case that the Production is a High-Impact Production.

(j) Fiscal Year Maximum: The Program has a rolling cap, which adds a new amount to the fund available to pay Rebate Claims each fiscal year. In order to ensure funds are available to pay all Pre-Qualified Productions, OFMO assigns each Pre-Qualification to a Fiscal Earmark Year, which may be one or more fiscal years in the future. If the total amount available to pay claims in any one fiscal year is restricted by statute, claim approval priority will be determined using the Fiscal Earmark Year and some Productions might have to wait until the first day of a future Fiscal Earmark Year in order to receive payment. This statutory maximum would not affect the amount of the Rebate Claim or its ultimate payment, but could affect the timing of when it is paid.

(k) Delays, Transferability and Expiration:

(1) A Pre-Qualified Production may delay the start of Principal Photography two times as described below. If the start is delayed a third time, or a Production does not start by the date specified in their latest update to the Production Schedule submitted to OFMO, Pre-Qualification is revoked, the Eligibility Application is denied and the Production cannot apply again until the following fiscal year.

(A) The first time a Pre-Qualified Production delays the start of Principal Photography, it moves to the end of the queue for the Fiscal Earmark Year of the new start date. Subsequent Pre-Qualifications with the same Fiscal Earmark Year are placed after it in the queue.

(B) The second time a Pre-Qualified Production delays the start of Principal Photography, it is placed last in the queue for the Fiscal Earmark Year of the new start date. Subsequent Pre-Qualifications with the same Fiscal Earmark Year are placed ahead of it in the queue.

(2) Pre-Qualification is specific to the Production and Production Company, and is non-transferable. Productions, screenplays and budgets may evolve but must remain substantially similar to those submitted in the Eligibility Application.

(3) Unless otherwise approved by OFMO, Pre-Qualification expires:

(A) Two years after the approval date of the Eligibility Application, if Principal Photography has not started, OR

(B) Two years from the start of Principal Photography.

(l) Open Records Act Exemptions:

(1) OFMO is subject to the State of Oklahoma Open Records Act, which governs public access to the records of government agencies. Under 74 O.S. § 2231, certain information provided to OFMO by a person or entity seeking economic advice from OFMO and any information compiled by OFMO in response to submissions, may be kept confidential.

(2) In order to protect confidentiality of such items, applicants must submit a written request to OFMO at the time of the Eligibility Application to withhold its information from disclosure on the grounds that it constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the applicant. Applicants must specify the information for which they are seeking protection along with clearly stated reasons for the requested exception.

(3) OFMO reserves the right to determine whether the information submitted by the applicant will be withheld from disclosure. OFMO will notify the applicant of any requests for disclosure and notify the applicant as to whether the information will be disclosed.

(m) High Impact Production Requirements: Due to the size of potential rebates and considerable number of variables in High Impact Productions, the Executive Director is authorized to negotiate and

finalize High Impact Production Requirements as part of the High Impact Production Eligibility Application process. High Impact Production Requirements can be tailored to the type and scope of the Production, and may carry additional incentives, provided these requirements and incentives do not contradict statutory provisions of the ACT. Applicants would be required to meet the High Impact Production Requirements in order for the Final Application to be approved.

[**Source:** Transferred from 725:35-1-3 by SB 949 (2021), eff 7-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:150-3-4. Qualifying Oklahoma Expenditures

(a) Salary Costs for Oklahoma-Based Crew;
(b) Salary Costs for Oklahoma Expatriate Crew (as described in Section 725:35-1-5);
(c) Payments to Oklahoma Loan-Out Companies for Oklahoma-Based Crew;
(d) Payments to Oklahoma Loan-Out Companies for Crew that is not Oklahoma-Based, subject to the Loan-Out Limitation;
(e) Subject to the twenty-five percent limitation, the sum of:
(1) payments to Oklahoma-Based ATL;
(2) payments to Oklahoma Loan-Out Companies for ATL; and (3) payments to an Oklahoma-Based entity for using the Film's underlying creative work (e.g., screenplay or novel).
(f) Permits and fees paid to an Oklahoma state, county, or municipal governmental or quasi-governmental entity;
(g) Payments to an Oklahoma Vendor for the following:
(1) Studio, stage or set construction and dismantling;
(2) Production scheduling, management, administration and operations;
(3) Casting and security services;
(4) Wardrobe and make-up materials, consumables and services;
(5) Set props and accessories (individual props costing in excess of fifty thousand dollars ($50,000) require prior approval by OFMO to be included as a QOE);
(6) Cameras, film, microphones, tape, digital storage media and other materials and equipment used to record sound and images;
(7) Photography, visual image editing, animation, computer graphics and effects, and related visual services;
(8) Sound (other than music) recording, editing, synchronization and related services;
(9) Licensing or use rights for music, or recording of songs or musical score, used in the Film;
(10) Lighting and electrical materials, equipment and services;
(11) Location, building, facility, equipment, prop and wardrobe rental;
(12) Stunts, special effects, pyrotechnics, firefighting, safety, handling/wrangling, security and other specialty services;
(13) Lodging and accommodations (whether paid for directly by the Production Company or provided as an allowance in the amount of actual costs of housing) for ATL and Crew;

(14) Food, restaurants and catering;
(15) Transportation of ATL, Crew, equipment and supplies;
(16) Travel costs to and from Oklahoma paid to or through a travel agent;
(17) Completion bonds and insurance (either guarantor or broker must be an Oklahoma Vendor);
(18) Shipping and postage for packages originating or terminating within Oklahoma;
(19) Fees, interest and financing charges paid to Oklahoma-Based financial institutions;
(20) Other materials, supplies and contracted services approved in advance by OFMO;
(21) CPA Report.

(h) Payments to an Oklahoma Vendor for the following valid Scouting Expenses of the Production:
(1) Location scouting, planning and packaging services;
(2) Travel costs to and from Oklahoma paid to a travel agent;
(3) Lodging and accommodations within Oklahoma;
(4) Transportation within Oklahoma;
(5) Meals purchased within Oklahoma.

(i) Payments made in accordance with the High Impact Production Requirements.

(j) Reimbursements made to individuals for goods and services that would have been QOE if paid directly by the Production, provided the individual provides a receipt for such goods and services.

[**Source:** Transferred from 725:35-1-4 by SB 949 (2021), eff 7-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:150-3-5. Oklahoma Expatriate Crew Program

(a) OFMO will maintain a roster of Oklahoma Expatriate Crew and make such roster available to a Production Company upon request.

(b) The Expatriate roster will consist of Oklahoma Expatriates who:
(1) Have registered as an Oklahoma Expatriate with OFMO;
(2) Have completed a Declaration of Expatriate Status satisfactory to OFMO;
(3) At the request of OFMO, agree to be accompanied by an intern provided by an Oklahoma educational institution for a period of time acceptable to OFMO during the Production.

[**Source:** Transferred from 725:35-1-5 by SB 949 (2021), eff 7-1-21 (Editor's Notice published at 39 Ok Reg 141)]

CHAPTER 155. OKLAHOMA SUPPLIER DIVERSITY INITIATIVE

[**Authority:** 74 O.S. §§ 5001 et seq. and 85.45j.11]
[**Source:** Codified 9-11-22]

150:155-1-1. Purpose and authority

(a) These rules implement the Oklahoma Supplier Diversity Initiative as set forth in Section 85.45j.11 of Title 74 of the Oklahoma Statutes.
(b) The Oklahoma Department of Commerce has the authority to qualify and certify diverse business enterprises for the State.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-2. Definitions

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

"African American" means a US Citizen or lawful resident who has origins in any of the African racial groups of Africa.

"Asian American" means a US Citizen or lawful resident whose heritage is from Asia or the Indian subcontinent including, but not limited to Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, The U.S. Trust Territories of the Pacific Islands, The Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan or Bangladesh.

"Controlled" means having a sufficient amount of voting shares of a company to make all business decisions.

"Department" means the Oklahoma Department of Commerce

"Hispanic American" means a US Citizen or lawful resident of Spanish Heritage from any of the following countries or regions: Mexico, Puerto Rico, Cuba, Central or South America.

"Military veteran" means a US Citizen or lawful resident who has either served in the active military, naval or air service and who has been discharged in a manner other than dishonorably or a US Citizen or lawful resident who served in the National Guard and has been deployed on federal active-duty orders for at least 180 days and who has been discharged in a manner other than dishonorably.

"Native American" means a US Citizen or lawful resident who has a blood degree from and is recognized as an enrolled citizen of a federally recognized tribe and/or who has a Certificate of Degree of Indian Blood (CDIB) issued by the United States Bureau of Indian Affairs.

"Oklahoma owned" means that at least fifty one percent (51%) of the ownership group maintains a primary residence in the State of Oklahoma and have filed personal state income tax returns for the previous two years.

"Racial minority" means a citizen of the United States or other lawful resident who is African American, Hispanic American, or Asian American.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-3. Eligible entities

To be certified by the Department as a Diverse Business Enterprise, a business will meet all of the following criteria:

(1) Have less than Five Hundred (500) total employees.

(2) Have an annual revenue equal to or less than Twenty-Five Million Dollars ($25,000,000).

(3) Be Oklahoma Owned and Operated.

(4) Be registered to do business with the Oklahoma Secretary of State, if applicable.

(5) Not be a publicly traded company.

(6) Meet one or more of the following criteria:

(A) Certified by the United States Small Business Administration as one or more of the following types of entities:

(i) Woman-Owned Small Business

(ii) Minority-Business Enterprise

(iii) Small Disadvantaged Business

(iv) Service-disabled Veteran-Owned Small Business

(v) HUBZone Small Business Concern

(vi) 8(a) Business Development Program member.

(B) Fifty-one percent (51%) or more owned and controlled by a member of one of the following diverse groups:

(i) Native Americans,

(ii) United States Military Veterans,

(iii) Women,

(iv) Racial Minorities.

(C) An Oklahoma Department of Transportation Disadvantaged Business Enterprise.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-4. Applications; contents

(a) Any business seeking certification as a Diverse Business Enterprise may submit an application to the Department on forms or otherwise in a format furnished by the Department.

(b) The application may request the following information:

(1) A complete business history of the enterprise. This may include, as applicable, copies of organizational documents such as the minutes of the first organizational meeting, partnership agreements, articles of incorporation, stock certificates and corporate bylaws or business statement of sole proprietor.

(2) A listing of all principals and the percentages of ownerships and resumes of all principals, key managers and key personnel.

(3) Current financial statements of the business, latest business income tax returns, proof of investment by principals, bank resolution on all company accounts, loan agreements, lease/rental agreements and other information as may be necessary to verify control or ownership.

(4) Any additional information reasonably necessary for the Department to determine whether the business qualifies for certification under the rules of this chapter.

(c) As part of the application, the Department may demand that an applicant provide photocopies of any documentation the Department deems reasonable to determine if a business is an Eligible Entity.

(d) Incomplete or improperly completed applications may be returned to the applicant without further consideration.

(e) Within a reasonable time of having received a qualifying application and all supporting documents, the Department may notify a qualifying company that they are certified as a Diverse Business Enterprise and informing them of the length of their certification.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-5. Length of certification; renewal and revocation

(a) The Department will certify a business which meets the eligibility criteria of this chapter as a Diverse Business Enterprise. This certification will remain in place for up to five (5) years unless any one or more of the following conditions occur:

(1) There is a change in ownership or daily management to persons other than those upon whom certification was based.

(2) The business has a change in yearly revenues or number of employees that exceeds the size limitations for Eligible Entities.

(3) The business ceases to exist as an independent operation.

(4) There is a change which, had it occurred before certification, would have prevented the business from being certified by the Department.

(b) If an event occurs that cause a business to no longer meet the criteria of an Eligible Entity, they are to notify the Department in writing of the change and relinquish their certification within thirty (30) days of the event. The business may reapply for certification at any time, should they once again become an Eligible Entity.

(c) Renewal of Certification

(1) Prior to expiration of the certification, if an entity has experienced no change in ownership and otherwise meets all criteria of an Eligible Entity, the Eligible Entity may submit an affidavit confirming that no changes affecting ownership or the Eligible Entity's ability to meet the program's qualifications have occurred.

(2) If an Eligible Entity has experienced a change in ownership, but still meets the criteria of an Eligible Entity, the Entity may submit a renewal application to the Department along with any documentation requested by the Department if they seek to remain in the program.

(3) If the affidavit or renewal application is approved, the certification of the business may be extended for up to five years from the date the certification was set to expire.

(4) The affidavit form and/or renewal application to be submitted to the Department will be made available to businesses by the Department upon request or otherwise through the Department website.

(d) Expiration of Certification

(1) If the Department has not received an affidavit or renewal application from the business affirming that the business still meets the criteria of an Eligible Entity along with all requested documentation prior to expiration of their current certification, the business will no longer be certified as a Diverse Business Enterprise.

(2) If the affidavit or renewal application is received from the business by the Department prior to expiration of the certification, the Department may grant an extension to the business to provide documentation establishing that the business is still an Eligible Entity.

(3) The Department will notify the Office of Management and Enterprise Services (OMES) of any business whose certification has expired.

(e) Revocation of Certification

(1) A business may have its certification revoked if the business does not meet the criteria of an Eligible Entity as set forth in these rules or by statute.

(2) The Department will send a letter to the business at the address on the Business's application notifying the business that they are having their certification revoked at least thirty (30) days before the revocation is effective.

(3) A business may object to revocation of their certification by mailing a written objection to the Department via certified mail at least ten (10) days prior to the effective date of the revocation. If this letter is not received by the Department prior to the date of revocation, the certification will be revoked.

(4) The Department will notify OMES of any business whose certification is revoked.

(f) A business that has its certification revoked or whose certification expires may reapply for certification whenever that business becomes

eligible for certification as an Eligible Entity.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-6. Administrative hearings

(a) Any applicant who believes that it has been wrongfully denied certification by the Department may request an administrative hearing pursuant to the provisions regarding Individual Proceedings found in 150:1-11-1 et. seq. of the Department's General Rules of Practice and Procedures.
(b) Any business that loses certification through revocation who timely mails or delivers a notice of objection to the Department as set forth within these rules will be presented an opportunity for hearing pursuant to 150:1-15-1 et. seq. of the Department's General Rules of Practice and Procedures.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-7. Additional information; on-site inspections

(a) The Department may request additional information from program applicants or participants as deemed reasonably necessary by the Department at any time. Failure to provide such information may be grounds for denial of certification or revocation of certification.
(b) The Department may conduct on-site evaluations as deemed necessary by the Department.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

150:155-1-8. List of certified entities

The Department will compile a list of all entities certified through the Diversity Initiative and will provide this list to the Central Purchasing Division of the Office of Management and Enterprise Services, or any successor entity, within a reasonable time.

[**Source:** Added at 39 Ok Reg 269, eff 11-30-21 (emergency); Added at 39 Ok Reg 875, eff 9-11-22]

CHAPTER 160. INVEST IN OKLAHOMA ACT

[**Authority:** 62 O.S. § 2402]
[**Source:** Codified 9-11-22]

150:160-1-1. Purpose and authority

These rules implement the Invest in Oklahoma Act as set forth in Section 2400 et. seq. of Title 62 of the Oklahoma Statutes.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

150:160-1-2. Definitions

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

"Department" means the Oklahoma Department of Commerce.

"Firm" means the legal entity charged with management of the private equity fund, venture capital fund, or growth fund.

"Fund" means a private equity fund, venture capital fund or growth fund.

"Oklahoma based" means that the Fund or other business entity maintains their principal physical place of business in the State of Oklahoma.

"Principal" means any person employed by the Fund responsible for making decisions about investments for the Firm, regardless of their job title.

"Principal place of business" means the place where a company's officers direct, control and coordinate the business's activities.

"Program" means the Invest in Oklahoma Program.

"Public entity" means a public entity listed in section 2402 of Title 62 of the Oklahoma Statutes.

"Substantial investments in this state" means that the Fund has invested at least One Million Dollars ($1,000,000) in Oklahoma based businesses over the three (3) years prior to application and is committed to invest at least ten percent (10%) of any funds received by one of the Public Entities in an Oklahoma Based business.

"Venture capital fund" means as defined in paragraph (a) of section 275.203(I) of Title 17 of the Code of Federal Regulations.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

150:160-1-3. Qualifying firms

(a) To qualify to participate in the Program, a Firm must meet all of the following criteria at the time the application is received by the Department:

(1) An internal rate of return, including realized and unrealized gains, for the Firm's portfolio over the last since inception which is the greater of either:

(A) One-third (1/3) of the annual rate of return for venture capital firms as reported by Pitchbook Data, Inc., or

(B) Five percent (5%).

(2) The Firm managing the Fund will have been active for at least one full year prior to application.
(3) The Firm managing the Fund will have at least Five Million Dollars ($5,000,000.00) in assets under management over the most recent year prior to application.
(4) Principals or Limited Partners associated with the Firm cannot have ever been convicted of or received a deferred sentence for the following:
(A) Any felony offense.
(B) Any misdemeanor offense involving a financial related crime.
(5) The Firm will commit to investing at least ten percent (10%) of any investment they receive from a Public Entity in Oklahoma Based businesses.
(6) A Firm participating in the program may charge no more than 2.5% of its capital as a management fee and may collect no more than 30% of carried interest.
(7) Principals affiliated with the Firm will have a minimum of five
(5) years of experience in one of the following areas:
(A) Institutional Investment,
(B) Executive level management, or
(C) Investment Banking.
(8) Be in good standing with all applicable regulatory agencies and taxing entities.

(b) In addition to the criteria set forth above, a Firm which is not Oklahoma Based may only participate if the Firm has made Substantial Investments in this State.
(c) Approval of a Firm for participation in the program may only occur if the Firm meets the qualifications in this subsection, and if the Department believes in its discretion that the Funds appear to be appropriately managed and invested.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

150:160-1-4. Application, renewal, and removal from program

(a) A Firm who wishes to participate in the Program will apply to the Department for participation using a form created by the Department.
(b) The application will mandate that the Firm provide all of the following information:
(1) Documentation concerning the rate of return for the Firm's portfolio from at least the most recent full calendar year to the time of application.
(2) Documentation establishing the Firm's years of operation.
(3) Documentation establishing the amount of assets under management by the Firm from at least the most recent full calendar year to the time of application.
(4) Documentation concerning the differentiation and sustainability of investment strategy.
(5) Documentation establishing that a Firm who is Oklahoma-based meets the definition of an Oklahoma-based Firm.

(6) Documentation of the Firm's fee structure.
(7) Documentation establishing the experience of Principals associated with the Firm.
(8) Other documentation requested by the Department.

(c) Incomplete or improperly completed applications may be returned to the Firm without further consideration.

(d) Firms approved for participation in the Program may be approved for three (3) years.

(e) Renewal of program participation

(1) If a Firm which is participating in the Program seeks to continue in the Program after their approval period expires, the Firm will complete a renewal application and submit the same to the Department along with all documentation requested by the Department.

(2) The Department may provide a simplified renewal application for participation if it is deemed by the Department to be sufficient to determine the Fund meets program criteria.

(3) A Firm who applies for renewal must submit proof that it has invested at least ten percent (10%) of the amount received from a Public Entity in an Oklahoma Based business along with the renewal application. If a Firm cannot provide this information, it will not be renewed.

(3) If a Firm is approved for participation in the Program, the decision as to the length of its participation or renewal will be made in the sole discretion of the Department.

(4) If a Firm is not renewed for participation in the program, the Department will notify each Public Entity that the Firm has been removed from the program for failure to renew participation.

(f) Suspension and Removal of a Firm from the Program.

(1) The Department may suspend a Firm from participation in the Program at any time for any of the following reasons:

(A) If the Department reasonably believes the Firm is not being appropriately managed and invested.

(B) If an event occurs that, had it happened prior to the Firm's application, the Firm would have not been allowed to participate in the program.

(2) If the Department suspends a Firm from the Program, the Department will notify the Firm of the suspension within five (5) business days and will also notify each Public Entity that the Firm has been suspended from the Program.

(3) A Firm who is suspended from the Program may request an administrative hearing pursuant to the provisions regarding Individual Proceedings found in 150:1-11-1 et. seq. of the Department's General Rules of Practice and Procedures. If a hearing is held, each Public Entity will be notified of the result of the administrative hearing within a reasonable time.

(4) If the Firm does not prevail at the hearing, or if they do not timely request a hearing, they may be removed from participation in the Program and each Public Entity will be notified of the removal.

(5) Firms who are removed from the program may be disqualified from future participation by the Department either permanently or for a number of years if the Department believes that it is in the best interest of the State to do so.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

150:160-1-5. Participating public entities

(a) Public Entities who are considering investing under the act should not rely, either solely or in part, on the fact that a Firm has been approved for participation in making investment decisions.
(b) Because the needs of each Public Entity may be different, each Public Entity should do their own due diligence before investing in a participating Firm.
(c) By allowing a Firm to participate, the Department does not make any representation as to the performance or viability of any Fund or Firm. Public entities who choose to participate do so at their own risk after performing their own due diligence and make decisions in accord with their fiduciary duties to their clients.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

150:160-1-6. Sharing of information

The Department of Commerce will maintain a list of Firms who have been approved for participation in the Program. This list, along with a brief description of the Fund and contact information for the Firm may be shared with Public Entities upon request, and/or shared publicly on the website of the Department of Commerce.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

150:160-1-7. Requests for additional information

The Department may request additional information from a Firm as deemed reasonably necessary by the Department at any time. Failure to provide such information within a time period set forth by the Department will be grounds for immediate suspension from the Program.

[**Source:** Added at 39 Ok Reg 343, eff 12-15-21 (emergency); Added at 39 Ok Reg 878, eff 9-11-22]

CHAPTER 165. OKLAHOMA TOURISM DEVELOPMENT ACT TAX CREDIT PROGRAM

Editor's Note: *Effective 11-1-21, the rules in this Chapter were transferred from the Oklahoma Tourism and Recreation Department [OAC 725:15-33-8 through 725:15-33-14]. Pursuant to Senate Bill 739 (2021), "all rules promulgated by the Oklahoma Tourism and Recreation Department regarding the Oklahoma Tourism Development Act shall be transferred to and become a part of the administrative rules of the Oklahoma Department of Commerce. . . . any amendment, repeal or addition to the transferred rules shall be under the rulemaking authority of the Oklahoma Department of Commerce" [Senate Bill 739 (2021), Section 5(H)]. As directed by SB 739, an Editor's Notice was published in the Oklahoma Register [see 39 Ok Reg 140], announcing the transfer of the rules from 725:15-33 to this Chapter [OAC 150:165], and identifying the new location in this Chapter of each transferred rule. For additional information relating to this transfer, see Senate Bill 739 (2021).*

[**Authority:** 74 O.S., § 2204]
[**Source:** Codified 11-1-21]

150:165-1-1. Necessity, function, and conformity

68 O.S. § 2394 requires that the Director shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction projects production and development facility project by the promulgation of rules in accordance with the Administrative Procedures Act.

[**Source:** Transferred from 725:15-33-8 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:165-1-2. Definitions

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

"Act" or **"this act"** means the Oklahoma Tourism Development Act found in 68 O.S. § 2391- §2397;

"Agreement" means an agreement entered into pursuant to Section 2396 of Title 68 of the Oklahoma Statutes, by and between the Director of the Oklahoma Department of Commerce and an approved company, with respect to a tourism attraction project.

"Approved company" means any eligible company or companies seeking to undertake a tourism attraction project and is approved by the Director pursuant to the Act.

"Approved costs" means:

(A) obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project,

(B) the costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto,

(C) the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project which is not paid by the vendor, supplier, contractor, or otherwise provided,

(D) all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project,

(E) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project,

(F) all costs required for the installation of utilities in connection with a tourism attraction project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and

(G) all other costs comparable with those described in this paragraph.

"Director" means the Executive Director of the Oklahoma Department of Commerce or the Director's designated representative.

"Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to this Act and, with respect to an Entertainment District, includes any such entity that will acquire, construct, develop, equip, install, expand or operate all or any portion of the Entertainment District, whether owned or leased.

"Entertainment District" means a mixed-use planned development project, with approved costs of one million dollars ($1,000,000.00) or more in the aggregate, encompassing more than one hundred thousand (100,000) square feet and including an entertainment or recreational component and at least three of the following categories, which may or may not be anticipated to be completed in multiple phases:

(A) retail;

(B) housing;

(C) office;

(D) restaurants;

(E) hotel, regardless of whether the hotel is a destination hotel;

(F) grocery;

(G) brewery facilities for a small brewer (as defined in the Oklahoma Alcoholic Beverage Control Act, Section 1-103 of Title 37A of the Oklahoma Statutes); or

(H) structured parking.

"Entertainment District Tenant Party" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity operating within a tourism attraction project that is an Entertainment District pursuant to a lease or similar agreement with an approved company or otherwise.

"Final approval" means the action taken by the Director authorizing the eligible company to receive inducements under this Act.

"Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification as an approved company or an Entertainment District Tenant Party, as applicable;

"Inducements" means the sales tax credit or incentive payment as prescribed in this Act.

"Preliminary approval" means the action taken by the Director conditioned upon final approval by the Director upon satisfaction by the eligible company of the requirements of the Act.

"Tourism Attraction" means a cultural or historical site; a recreational or entertainment facility; an area of natural phenomenon or scenic beauty; a theme park; an amusement or entertainment park; an indoor or outdoor play or music show; a botanical garden, or a cultural or educational center, a destination hotel whose location and amenities, including but not limited to upscale dining, recreation and entertainment, make the hotel itself a destination for tourists, or an Entertainment District. A tourism attraction shall not include:

(A) lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project, or the lodging facilities are a part of a destination hotel or an Entertainment District,

(B) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project, if the sale of goods is incidental to the tourism attraction project, or such facilities are a part of an Entertainment District.

(C) facilities that are not open to the general public, unless such facilities are a part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director,

(D) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project, unless such facilities are a part of an Entertainment District,

(E) facilities owned by the State of Oklahoma or a political subdivision of this state, or

(F) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under

Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as meeting the definition of a Tourism Attraction or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling.

"Tourism attraction project" or **"project"** means the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction, and the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including, but not limited to: surveys, and installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which shall be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

[**Source:** Transferred from 725:15-33-9 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141); Amended at 39 Ok Reg 880, eff 9-11-22]

150:165-1-3. Standards for preliminary approval

When a written application is submitted to the Director for consideration of preliminary approval of the eligible company and its tourism attraction project, the Director shall base approval of the request upon the information in the application, recommendations from staff and advisory review committees, any written or oral communications with the eligible company, and all requirements as set forth in paragraph B of 68 O.S. §2394.

[**Source:** Added at 35 Ok Reg 207, eff 11-17-17 (emergency); Added at 35 Ok Reg 2125, eff 10-1-18 ; Transferred from 725:15-33-10 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:165-1-4. Oklahoma Tourism Development Act ProgramApplication

(a) An eligible company wishing to participate in the Oklahoma Tourism Development Act Program shall file an application with the Director as prescribed by the Department either through digital upload or through a digital file delivered on a thumb drive to the Office of the Department located in Oklahoma City, Oklahoma. If the application does not contain all information and materials identified below, Director may request supplemental information. Failure by an eligible company to supply requested supplemental information within sixty (60) days of request, shall result in denial of the application. If the application is denied under this Part, then the Eligible Company may not submit another application under the Act within one (1) year following the denial.
(b) The following information and materials shall be submitted as a part of the application:

(1) The following information pertaining to the Eligible Company:

(A) Name;

(B) Address;

(C) Phone;

(D) Email;

(E) Contact Person;

(F) Federal Employer Tax Identification Number;

(G) Form of organization;

(H) Previous participation of eligible company in all Oklahoma tax incentive programs;

(I) Ownership and business structure;

(J) Bankruptcy history; and

(K) Governmental denial, suspension, or revocation of licenses;

(2) The following information pertaining to the Tourism Attraction Project:

(A) Location of tourism attraction project, including a description and boundary of the area encompassing the Entertainment District, if applicable;

(B) Description of the Tourism Attraction Project;

(C) Estimated Project Costs;

(D) Proposed sources of financing;

(E) The total number of jobs projected upon completion of and within two (2) years after completion of the Tourism Attraction Project, which may include the number of jobs by the eligible company and any tenants of the Tourism Attraction Project;

(F) Five (5) year history of attendance at Tourism Attraction Project, if an expansion;

(G) Ten (10) year attendance projections, both in-state and out-of-state visitors;

(H) Months of operation of the Tourism Attraction Project or components thereof;

(I) Proposed marketing plans and budget to be used during the first five (5) year period that the Tourism Attraction Project is operating, including specific information regarding out-of-state visitor advertising;

(J) Value of Oklahoma tangible property, which includes both real and personal property, before and after completion of the Tourism Attraction Project;

(K) Ten (10) year estimated payroll of the Tourism Attraction Project, which may include any tenants of the Tourism Attraction Project;

(L) Estimated State sales tax liability of Tourism Attraction Project for the first ten (10) fiscal years of operation; and

(M) Estimated ten (10) year additional revenue generation for the community;

(3) Provide the name, phone number, email address, and contact person for the following service providers to the Tourism Attraction Project:

(A) Contractor;

(B) Attorney;
(C) Bank; and
(D) Accountant.

[**Source:** Transferred from 725:15-33-11 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:165-1-5. Final Approval

The Director shall provide his/her final approval required by the Act based upon:

(1) The eligible company's satisfaction of statutory requirements of the Act;
(2) The findings of the consultant's report required by the Act; and
(3) The application submitted to the Director under Section 11 of this administrative regulation, and written and oral communications with the eligible company.

[**Source:** Transferred from 725:15-33-12 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141)]

150:165-1-6. Application Form

(a) The Oklahoma Department of Commerce shall make an application form in accordance with the Act and Administrative Rules contained in Subchapter 33.
(b) A copy of the form of application may be inspected, copied or obtained at the Oklahoma Department of Commerce during regular business hours and may be made available at the Oklahoma Department of Commerce website.

[**Source:** Transferred from 725:15-33-13 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141); Amended at 39 Ok Reg 880, eff 9-11-22]

150:165-1-7. Appeals

An applicant may appeal the denial of final approval by the Executive Director's designee to the Executive Director. The decision by the Executive Director shall be a Final Agency Decision, which the applicant may further appeal pursuant to provisions of 75 O.S., Section 309 et seq..

[**Source:** Transferred from 725:15-33-14 by SB 949 (2021), eff 11-1-21 (Editor's Notice published at 39 Ok Reg 141)]

CHAPTER 170. OKLAHOMA STRATEGIC INDUSTRIAL DEVELOPMENT ENHANCEMENT TAX CREDIT

[**Authority:** 74 O.S. §§ 5001 et seq.; 68 O.S. § 2357.105]
[**Source:** Codified 8-11-23]

150:170-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Strategic Industrial Development Enhancement Tax Credit Act program at the Oklahoma Department of Commerce.

[**Source:** Added at 40 Ok Reg 887, eff 8-11-23]

150:170-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, and the terms defined in 68 O.S. § 2357.105, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Economic development organization" means an organization acting to promote economic development and can act as a project sponsor. These include but are not limited to, Chambers of Commerce, Regional Economic Development entities, and Main Street organizations. All economic development organizations must be organized under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C..

"Economic development zone" means any zone, including Enterprise Zones, state and federal Opportunity Zones, identified for economic development.

"Eligible entity" means an incorporated business entity that is located in the state with a qualifying project in a qualifying project location that receives an allocation of tax credits for qualified economic development and qualified initial infrastructure expenditures. The business entity must be incorporated in any state but must be located in the state to satisfy this definition.

"Qualified industrial park" means an industrial park in counties with less than 100,000 people which is owned, managed, or operated by cities, independent entities, or economic development authorities. A city or economic development authority that owns, manages, or operates the industrial park may also apply on behalf of the industrial park as the project sponsor.

[**Source:** Added at 40 Ok Reg 887, eff 8-11-23]

150:170-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all entities interested in the Oklahoma Strategic Industrial Development Enhancement Tax Credit 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.

(1) The Department will make available upon request application forms and application guidelines.
(2) The forms and guidelines will provide threshold criteria 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) After the Department's evaluation and review of the application are completed, the Department shall provide an approval letter for eligible expenditures and qualifying projects prior to the commencement of the project.

(c) After the Department's evaluation and review of eligible expenditures and qualifying project status is completed, the Department shall forward certification of verification to the Oklahoma Tax Commission for the issuance of the project tax credit amount that may be claimed or assigned. The certificate of verification shall satisfy all requirements of the Oklahoma Tax Commission pertaining to the eligibility of the eligible taxpayer claiming the credit.

(d) The Department shall forward a complete copy of the submitted application to the Oklahoma Tax Commission upon request.

(e) Applications shall be reviewed quarterly and tax credits shall be allocated to qualifying applicants that have the highest net benefit to the state. Entities submitting incomplete applications shall have fifteen (15) business days to cure its application before it is rejected for other applications that have been submitted.

[**Source:** Added at 40 Ok Reg 887, eff 8-11-23]

150:170-1-4. Population determination

For the purpose of determining the population of counties with less than 100,000 people, the 2020 Decennial Census shall be used.

[**Source:** Added at 40 Ok Reg 887, eff 8-11-23]

CHAPTER 175. PREP INFRASTRUCTURE PROGRAM RULES

[**Authority:** HB 1019; 74 O.S §§ 5001 et seq.; 62 O.S. § 256]
[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]

SUBCHAPTER 1. PREP INFRASTRUCTURE PROJECTS PROGRAM

150:175-1-1. Purpose

The PREP Infrastructure Projects Program ("PREP" or "the program") is designed to provide rules and program information for the Progressing Rural Economic Prosperity Fund created in Enrolled House Bill No. 4456 of the 2nd Session of the 58th Oklahoma Legislature, the sum of Twenty-nine Million Nine Hundred Fifty Thousand Dollars ($29,950,000.00) or so much thereof as may be necessary to fund facility upgrades, including electric, water, natural gas, sewer, fiber, site access and land remediation at industrial parks, airparks, and ports in counties not receiving funding from the Pandemic Relief Primary Source Revolving Fund or Pandemic Relief Secondary Source Revolving Fund, both created by Enrolled House Bill No. 1021 of the 2nd Extraordinary Session of the 58th Oklahoma Legislature, provided that the Department distributes such funds evenly amongst the congressional districts of the state so as to provide statewide economic impact.

[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]

150:175-1-2. Definitions

The following words and terms, when used in this Subchapter have the following meanings, unless the context clearly indicates otherwise:

"Applicant(s)" means communities or organizations responsible for applying for PREP funds on sites designated by the State Legislature.

"Department" means the Oklahoma Department of Commerce.

"Project(s)" means economic development infrastructure that support sites or surrounding communities identified by State Legislature.

[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]

150:175-1-3. Eligibility requirements

(a) Eligible projects: Projects are economic development infrastructure design, development, and construction that supports sites or surrounding communities in the creation of nationally marketable industrial sites. The PREP applicant must:

(1) Be located in Oklahoma;

(2) Agreeing to enter into a written agreement with the Department;

(3) Be in compliance with applicable Oklahoma and federal tax laws; and

(4) If applicant is awarded PREP funds, register as a state supplier via the Oklahoma Management and Enterprise Services (OMES). This step is not required until the applicant has been given a tentative award notification from the Department.

(b) Ineligible projects: A project as defined in these rules and the following requirements must be met or the projects are ineligible for PREP:

(1) The Department shall distribute such funds evenly amongst the congressional districts of the state so as to provide statewide economic impact;

(2) Applicants or Projects that do not meet the definition of "eligible project"; and

(3) Applicants or Projects the Department deems as not creating a feasibly marketable site in compliance with the intent of the legislative funding.

[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]

150:175-1-4. The award

Amount of award:

(1) The Department shall distribute such funds evenly amongst the congressional districts of the state so as to provide statewide economic impact.

(2) The Department may distribute larger awards to larger Projects to complete infrastructure projects to complete certain sites as the Department deems appropriate.

(3) The Department is allowed to keep two (2) percent from each project awarded for administrative cost.

[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]

150:175-1-5. Use of funds and reporting requirements

(a) Permissible uses of funds:

(1) Awards received through this program are intended to install industrial infrastructure into sites designated by the Legislature.

(2) Projects using PREP funds must create economic development infrastructure that support sites or surrounding communities.

(3) Funds impermissibly used shall be repaid by the applicant to the State within thirty (30) days of a written request for repayment transmitted to the applicant by the State.

(b) Reporting requirements:

(1) Applicants that receive funds from the program are required to keep specific records of all expenses for which the funds were used, for a period of seven (7) years. Upon request, the applicant or project shall provide access to these records to the State of Oklahoma, its agencies, agents, directors, and/or any party that has contracted with the State for the exclusive purposes of evaluating or ensuring compliance with PREP program requirements.

(2) At their own expense, the applicant shall prepare photocopies or upload documents to OKGrants or other portal used by the Department of all required documents and deliver said documents to the State or any of the aforementioned parties upon written request within a reasonable time of the request.
(3) In the event that the applicant ceases operations as an entity or of the project during this seven (7) year period, the applicant must provide photocopies or electronic photocopies of these records to the Executive Director of ODOC within thirty (30) days of ceasing operations.
(4) Failure to abide by any reporting requirement shall require the applicant to repay PREP funds to the State of Oklahoma within thirty (30) days of a written request for repayment.

[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]

150:175-1-6. The application; submittal of application documents

(a) Transmittal of documents and receipt:

(1) Applicants shall review all requirements in the authorizing legislation related to PREP as well as the requirements listed in this document before applying for funds. Applicants must be able to submit documents via the required online portal and must be able to utilize the required login procedures as prescribed by the OKGrants online grant management system or any system utilized by the Department.

(2) Required Documents to be submitted by the applicant Nonprofit to the OKGrants online portal or any system utilized by the Department.

(b) Applicants shall submit an application packet consisting of the following documents and attestations in the OKGrants online portal or any system utilized by the Department:

(1) Scope of work including details of the project as well as the timeline for completion;

(2) Budget for the project including Construction, Professional, and Non-Construction costs;

(3) Maps of the project include overview of site, dimension and locations of improvements, and locations of utilities, water areas, and existing infrastructure. Mapping must include a site outline with indication of Contiguous Developable Area;

(4) An assessment of the economic performance created by the investment of infrastructure funding;

(5) Attestation that the applicant is in compliance with both federal and Oklahoma tax laws;

(c) An applicant shall only submit one application to the OKGrants online portal or any system utilized by the Department. Violation of this rule by submission of multiple applications to may cause the applicant to be denied participation in the program by the Department.

(d) Failure to complete the required online application and attach all of the required documents may cause the application not to be deemed received by the Department.

[**Source:** Added at 41 Ok Reg, Number 22, effective 8-12-24]