

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 155. OKLAHOMA SUPPLIER DIVERSITY INITIATIVE

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- 150:155-1-1. Purpose and authority [NEW]
- 150:155-1-2. Definitions [NEW]
- 150:155-1-3. Eligible entities [NEW]
- 150:155-1-4. Applications; contents [NEW]
- 150:155-1-5. Length of certification; renewal and revocation [NEW]
- 150:155-1-6. Administrative hearings [NEW]
- 150:155-1-7. Additional information; on-site inspections [NEW]
- 150:155-1-8. List of certified entities [NEW]

AUTHORITY:

74 O.S. §85.45j.11; The legislation establishing the Oklahoma Department of Commerce 74 O.S. §5001 et. seq.

ADOPTION:

November 1, 2021

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2022, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

This rule is necessary because a compelling public interest requires an emergency rule and imminent peril exists to the preservation of public welfare. Adoption of these rules provides the mechanism for diverse business enterprises to register with the Oklahoma Department of Commerce as a Diverse Business Enterprise. This allows these Oklahoma businesses to become more visible for economic opportunities involving state and private contracting opportunities. As this is a new program, if these emergency rules were not enacted, Oklahoma businesses could not take advantage of this new statutory program until permanent rules were enacted in the Spring of 2022.

GIST/ANALYSIS:

This action establishes the application process for the Oklahoma Supplier Diversity Initiative located at 74 O.S.

§85.45j.11. It also clarifies criteria for participation in the program.

CONTACT PERSON:

B. Joshua McGoldrick, General Counsel and Chief of Staff, Oklahoma Department of Commerce, 900 N. Stiles Avenue, Oklahoma City, OK, 73104, 405-815-5153, josh.mcgoldrick@okcommerce.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

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.

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.

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.

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 to provide any documentation the Department deems reasonable to determine if a business is an Eligible Entity.

(d) Along with the application form, applicants will include photocopies of all necessary documentation as well as a signed, notarized affidavit stating that the business is an Eligible Entity.

(e) Incomplete or improperly completed applications may be returned to the applicant without further consideration.

(f) Within a reasonable time of having received a qualifying application and all supporting documents, the Department may issue a letter to a qualifying company notifying them that they are certified as a Diverse Business Enterprise and informing them of the length of their certification.

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 a business has an event that causes them to no longer meet the criteria of an Eligible Entity, they are to notify the Department in writing of this change in status 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.

150:155-1-6. Administrative hearings

(a) Any applicant who believes that it has been aggrieved by the denial of a request for 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.

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.

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.

ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of new Chapter 155, Oklahoma Supplier Diversity Initiative, which was adopted by The Oklahoma Department of Commerce on November 1, 2021 under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et. seq.

I, the undersigned, do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.

A handwritten signature in black ink, appearing to read 'B. Joshua McGoldrick', written over a horizontal line.

B. Joshua McGoldrick, Attestation Officer
General Counsel and Chief of Staff
Oklahoma Department of Commerce
December 2, 2021