

TITLE 208. EDGE FUND POLICY BOARD

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SUBCHAPTER 1. GENERAL PROVISIONS

208:1-1-1. Purpose

(a) The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act. [75 O.S., §§ 250 *et seq.*] The State of Oklahoma has created a trust fund for Economic Development Generating Excellence known as the EDGE Fund. The EDGE Fund is an instrumentality of the State created pursuant to 62 O.S. (2006 Supplement), Sections 47 and 52. Section 47 creates the trust fund and designates a Board of Investors to manage and invest the trust fund assets. Section 52 creates an EDGE Fund Policy Board, which is responsible for expending the available funds according to the statutory directives. The instant rules, regulations, policies and procedures have been adopted for the purpose of implementing and administering the duties and responsibilities of the EDGE Fund Policy Board (the “Policy Board” or “Board”), as provided by law.

(b) The rules of this Chapter are adopted for the purpose of simplifying procedure, avoiding unnecessary delays, minimizing expenses and facilitating the administration of the Policy Board. To that end, these rules shall be given fair and impartial construction. The rules shall be cumulative to the Administrative Procedures Act of the State of Oklahoma as amended now and hereafter.

(c) The rules of this Chapter shall be known as the General Rules for the EDGE Fund Policy Board and shall govern formal proceedings of the Board.

(d) Informal proceedings may be held by agreement between the Board, or its agents and any interested party.

(e) The provisions herein contained are severable and the repeal, amendment or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining provisions of the rules of this Chapter.

208:1-1-2. Vision and mission statement

The rules of the Policy Board have been framed to effectuate achievement of the vision and missions of the EDGE Fund. [62 O.S. 2006, 52]

(1) **Vision.** Oklahoma has created the EDGE Fund to be one of the nation's largest public funds dedicated to the development and commercialization of applied research. Investment in Oklahoma's knowledge infrastructure is essential to long-term growth. Research development, commercialization and entrepreneurialship will draw capital to Oklahoma, create more high-paying jobs, expand and diversify its economy, and provide greater prosperity for generations of Oklahomans to come.

(2) **Mission Statement.** The EDGE Fund uses available funds to increase public and private applied research and development, technology transfer and technology commercialization in Oklahoma. By its size, the EDGE Fund is intended to make impactful investments through grants, loans, contributions and other applications.

208:1-1-3. Definitions

In addition to terms defined in 74 O.S. 2002, §5060.4, the following terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

“**Applicant**” means the Person submitting the Application.

“**Application**” means the proposal submitted to the Policy Board and all completed forms required by the Solicitation.

“**Contractor**” means the Person that is awarded a Policy Board contract.

“**Executive Director**” means the person employed in such capacity by the Policy Board.

“**OCAST**” means the Oklahoma Center for the Advancement of Science and Technology.

“**Person**” means and include (i) an individual, (ii) a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, or an unincorporated organization, which may be formed either for-profit or not-for-profit, or (iii) an institution or governmental entity (or any department, agency or political subdivision thereof).

“**Solicitation**” means a request for proposals or letter of intent containing the detailed information required by the Policy Board.

208:1-1-4. Eligibility

The Solicitation will define Persons eligible for funding. Eligible applicants for funding may include the following Persons:

- (1) private or public Oklahoma institutions of higher education,
- (2) non-profit research foundations or other non-profit organizations, and
- (3) private enterprises.

208:1-1-5. Programs and projects criteria

The Policy Board funds those projects and programs that satisfy one or more of the following criteria. A project or program must:

- (1) expand directly the number of researchers, technicians, support services and associated business activity within Oklahoma,
- (2) have a high potential to result in the formation and growth of advanced technology companies in Oklahoma,
- (3) have a high potential to improve the health status and quality of life for Oklahomans, or
- (4) leverage of additional federal research grants and/or privately funded and sponsored research in Oklahoma research institutions. [62 O.S. 2006, §52.A (2)]

SUBCHAPTER 3. BOARD OPERATIONS

208:1-3-1. Authority and operation

(a) **Authority of the Board.** The Policy Board is responsible for implementing the provisions of its authorizing legislation, as enumerated in 62 O.S. 2006, §52. The Board may exercise its official powers at any location in the State of Oklahoma.

(b) **Policies of the Board.** All bylaws, procedures or other written statements of policy or interpretations formulated, adopted or used by the Board shall be available at the principal office during regular business hours.

(c) **Availability of records.** All final orders, decisions and opinions and all forms, applications and instructions related to or necessary for gaining access to the Policy Board's operations included in agency data bases and public files, and other services of the agency shall be made available at the principal office during regular business hours. Copies of all official records not protected from disclosure by law shall be available for inspection in accordance with the Oklahoma Open Records Act, at the principal office during regular business hours. Copies of such records may be made and the expense of such copies shall be paid by the person requesting said copies. Fees for such copies shall be in accordance with a fee schedule established by the Executive Director of the Policy Board.

(d) **Office location; hours.** The principal office of the Policy Board is c/o OCAST, 755 Research Parkway, Suite 110, Oklahoma City, Oklahoma, 73104, unless otherwise designated by the Board. Unless otherwise designated by the Executive Director of the Policy Board, office hours shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday inclusive, excepting legal holidays established by statute or by executive order.

(e) **Policy Board Governance.**

(1) **Number and composition.** The Policy Board is composed of seven members, as follows:

(A) Four individuals who serve as senior officers of an Oklahoma business or financial company having knowledge of the Oklahoma economy and the potential to advance to a technology-based economy; the

Governor appoints two of these individuals and the President Pro Tempore of the Senate and Speaker of the House of Representatives appoint one each;

(B) One scientist, engineer or officer of a technology-based Oklahoma company or public or private research institution appointed by the President Pro Tempore of the Senate;

(C) One attorney licensed to practice law in Oklahoma, who has experience with start-up companies and business practices appointed by the Governor; and

(D) One venture capitalist with experience in the commercialization of technology and investment in technology-based companies appointed by the Speaker of the House of Representatives. [62 O.S. 2006, §52.B]

(2) **Service.** The members of the Policy Board shall serve at the pleasure of their appointing authorities. The Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives may make appointments to the Board from a list of names meeting one or more of the criteria provided in this subsection. The Department of Commerce shall develop the list in consultation with the largest statewide organization representing commerce and industry and the two largest metropolitan organizations representing commerce and industry. Each person recommended by each of the two largest metropolitan organizations representing commerce and industry shall be residents of the metropolitan area represented by the organization that makes the recommendation for inclusion of such person on the list. Each person recommended by the largest statewide organization representing commerce and industry shall be a resident of an area other than the metropolitan areas represented by the two largest metropolitan organizations representing commerce and industry. The list shall be maintained in a manner to provide that at least one qualified person is eligible for appointment to each and every position to which appointments may be made. [62 O.S. 2006, §52.B] The appointing authorities shall select appointees from the list submitted to serve on the Policy Board. [62 O.S. 2006, §52.B]

(3) **No Board compensation; reimbursement.** The members of the Policy Board shall receive no salary for serving on the Policy Board. All members shall receive necessary travel expenses for the performance of their duties from the Office of the Governor in accordance with the provisions of the State Travel Reimbursement Act. [62 O.S. 2006, §52.C]

(4) **Board Chair.** The Governor shall select a chair and a vice-chair, who shall preside over meetings in the absence of the chair, and any other officers, provided that no member shall serve as chair for more than two (2) consecutive years. [62 O.S. 2006, §52.D]

(5) **Quarterly meetings.** The Board of Directors shall meet at least once each calendar quarter and at other times upon call by the Board Chair, or the Executive Director or upon written request by a majority of the members of the Board. [62 O.S. 2006, §52.D]

(6) **Regular and special meetings.** All regular and special meetings of the Board shall be held at the principal business offices of the Policy Board, or at such other locations within the State of Oklahoma, as may be determined by the

Board from time to time. Meetings of the Board and of committees created or overseen by the Board are subject to the Open Meetings Act [25 O.S. 2006 §301 et seq.], and the Open Records Act [51 O.S. 2006 §24A.1-29]. Executive Sessions may be held to discuss personnel matters and confidential proprietary information submitted to or compiled by the Board, as determined by the Board or its committees. [62 O.S. 2006, §52.E]

(7) **Quorum; vacancies.** A majority of the members of the Policy Board shall constitute a quorum to transact business. All actions will be taken by a majority vote of the quorum present. Tie votes shall be considered non-majority. Members of the Board shall not vote by proxy. No vacancy shall impair the right of the remaining members to exercise all of the powers of the Policy Board. Any vacancy in a position shall be filled by the appointing authority in the manner prescribed by subsections (a) and (b) of this section. [62 O.S. 2006, §52.D]

(8) **Agenda items.** Items requested to be included on the agenda should be submitted to the Chair of the Board at the business office of the Policy Board, no later than ten days before a regularly scheduled meeting, three days before any special meeting, or 24 hours before any emergency meeting of the Board.

(9) **Executive Director.** The Policy Board may employ an Executive Director, who shall serve at the pleasure of the Policy Board. [62 O.S. 2006, §52.D]

(10) **Committees of the Board.** The Policy Board may designate one or more committees of the Board by a vote of a majority of the directors then in office. The committees may be standing or ad hoc.

(f) **OCAST administrative assistance.** Oklahoma Center for the Advancement of Science and Technology (OCAST) shall provide administrative, planning, and other assistance to the Policy Board, including the preparation of an annual report from each to the Governor, President Pro Tempore of the Senate and Speaker of the House on the status of the EDGE Fund and impact of funded projects and programs. OCAST shall employ one full-time-equivalent employee to provide staff assistance to the Policy Board and its Executive Director for the purposes of implementing this subsection. Subject to the availability of funding, the Executive Director, pursuant to a request from and approval by the Policy Board, may employ additional full-time-equivalent employees. In no event shall more than 1.0% of the total assets of the EDGE Fund be expended annually for administrative expenses associated with the EDGE Fund and the Policy Board. [62 O.S. 2006, §52 (I)]

(g) **Conflict of interest.** If a member of the Policy Board, officer, agent or employee of the Policy Board has any direct or any indirect interest in any approval contract or agreement upon which the member, officer, agent or employee may be called upon to act or vote, the Board member, officer, agent or employee shall disclose the same to the secretary of the Board prior to the taking of final action by the Board concerning such contract or agreement and shall so disclose the nature and extent of such interest and the acquisition thereof, which disclosure shall be publicly acknowledged by the board and entered upon the minutes of the Board. A Board member, officer, agent or employee who holds such an interest shall refrain from any further official involvement in regard to any such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other board members, officers, agents or employees concerning said contract or agreement. Any member of any advisory

committee, panel, or contract review committee of the Policy Board shall be deemed, for purposes of these conflict of interest provisions, an agent of the Policy Board. Any disclosure by a person serving on any committee or panel of the Policy Board shall be deemed made, when made to the chair or secretary of such committee or panel, but in any event shall promptly thereafter be forwarded to the Secretary of the Board.

(h) **Reports, audits and reviews.**

(1) **Rules and procedures.** With assistance from OCAST, the Policy Board shall:

(A) Promulgate rules and develop procedures and protocols for establishing technical advisory panels, selection review criteria and competition criteria; and

(B) Develop procedures to account for funds and to measure the progress of projects and deliverables. [62 O.S. 2007 §52 (L)].

(2) **Annual report.** The Board shall submit an annual report no later than November 1 to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives that shall include a description of the accomplishments and activities of the EDGE Fund and the Policy Board for the prior fiscal year. The annual report may account for the ways in which the need, mission and programs of the Policy Board have been carried out, including a review of the Policy Board's operations and transactions according to the objective measures set forth in the business plan. The report may recommend specific changes in the activities of the Policy Board that are necessary to better carry out its need and mission. The report may include elements the Board identifies as hampering the state's economic progress and recommendations for changes.

(3) **Annual audit.** The Policy Board shall submit annually to an independent audit in accordance with generally accepted accounting principles that shall examine, among other things, actions governed by the Policy Board's administrative policies and procedures.

(4) **Project audits.** The projects and funds of the EDGE Fund shall be subject to audit by the State Auditor and Inspector. [62 O.S. 2006, §52.M]

208:1-3-2. Procedures for adoption, amendment and repeal of rules

(a) **The Board.** The Board may adopt, amend or repeal a rule of its own initiative, and may adopt, amend or repeal a rule at the request or recommendation of the Executive Director or one of its duly appointed advisory committees. The Board may, of its own motion, conduct hearings on proposed new rules, amendments or repeal of rules.

(b) **Interested parties.** Any interested person may petition the Board, requesting the adoption, amendment, or repeal of a rule. All such petitions shall be in writing, and be filed with the Chair of the Board at the principal office. The petition shall include the name and address of the petitioning party and shall state clearly and concisely all matters pertaining to the requested action and the reasons for the request.

(c) **Hearings.** The time and location of hearings shall be stated in the notice as required under the Oklahoma Open Meetings Act and shall be conducted in accordance with the Administrative Procedures Act. Any person who is interested or affected by proposed

actions may appear at the hearing. An appearance may be made individually, by an attorney, or by an authorized agent.

(d) **Final action.** Before the adoption, amendment or repeal of a rule, the Board shall afford any interested Person a reasonable opportunity to submit data, views and arguments either oral or written. If the rule under consideration affects the substantive rights of any person, the Board shall grant any person or entity a reasonable opportunity to participate in an oral hearing if requested in writing by the person or entity. The Board shall, in the exercise of its sound discretion, determine whether the proposed action affects any such substantive rights. The Board shall inform the requesting person of its decision in writing. Should the Board find the immediate adoption of a rule is necessary, the Board shall initiate rule promulgation procedures pursuant to the Oklahoma Administrative Procedures Act.

208:1-3-3. Requests for declaratory rulings

Any interested person or entity may petition the Board for a declaratory order as to the applicability of any rule of the Board.

(1) **Petition requirements.** The petition shall identify the rule questioned, the date on which such rule became effective, and shall set forth the contents of the rule. The petition shall contain a brief statement of the issue or issues raised, by the rule that caused such a request to be made and a statement of the petitioner's personal interest in the ruling of the Board and how a ruling of the Board would affect those interests.

(2) **Receipt of petition.** Upon receipt of the petition for declaratory ruling the Board shall consider the petition and within a reasonable time following receipt thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter contained in the petition.

208:1-3-4. Appeals

Persons or entities desiring to petition the Board for administrative review of a final order, award or determination regarding the application of the Policy Board's rules, policies or procedures, shall submit such petition in writing to the Chair of the Board at the principal offices of the Policy Board. All petitions shall be filed with the Board within 30 days of the final order, award or determination or as provided by the Administrative Procedures Act.

(1) **Petition requirements.** The petition must include the following:

(A) The name, address and organizational affiliation, if any, of the petitioner and the name and title of any representative or agent filing the petition of appeal.

(B) A clear and concise statement of the grievance(s) or complaint(s), citing the specific rules or procedures at issue causing such an appeal to be requested and a statement of the petitioner's interests in the appeal and how a determination of the Board would affect those interests.

(2) **Receipt of petition.** Upon receipt of the petition, the Chair may designate an administrative employee or officer to review the petition and make recommendations to the Board.

(3) **Oral arguments/hearings.** If the petition is referred to the Board for administrative review, the Board may, in its discretion, review petitions with or without oral argument from the petitioner and render a decision within a reasonable time. Should the Board determine that a hearing is necessary, it shall conduct such hearing in accordance with the Oklahoma Administrative Procedures Act. Hearings shall be open to the public, unless otherwise provided by law or ordered by the Board. The Board shall issue decisions resulting from such hearings in writing to all parties to the petition or their duly authorized agents or representatives within 60 days of the date of the hearing.

SUBCHAPTER 5. FUND OPERATIONS

208:1-5-1. EDGE Fund

(a) **Statutory authority.** The EDGE Fund is a legislatively created trust fund for furthering the mission and purpose of the EDGE Fund. The Policy Board may expend funds from the EDGE Fund trust that are certified as available by the Board of Investors. [62 O.S. 2006, §§47 and 52].

(b) **Vision and mission.** In fulfilling the EDGE Fund's vision and mission, the Policy Board will provide for its designated projects and programs as it deems appropriate, which may include:

- (1) matching funds for applied research,
- (2) funds for proof of concept,
- (3) funds for purchasing equipment or applied research, and
- (4) seed capital including, but not limited to, capital for the OCAST Seed Capital Revolving Fund. [62 O.S. 2006, §52(A)]

(c) **Funding terms**

(1) **Funding awards.** The Policy Board shall promulgate rules and develop timelines governing the review of funding proposals. The Policy Board may set special requirements or limitations on the funding awards and those requirements or limitations shall be included in the funding specifications and published in the Policy Board's funding solicitations.

(2) **Allocations.** The Policy Board may establish the amount of funding to be allocated to its areas of focus for each fiscal year.

(3) **Submission periods.** The Policy Board shall establish the dates of the application submission period or periods for each fiscal year and announce the dates in the solicitation.

(4) **Preference to cooperative proposals.** In considering funding proposals, the Policy Board shall give preference to cooperative proposals that include researchers from multiple institutions, including higher education, nonprofit research institutions, and private enterprise. [62 O.S. 2006, §52 (K)]

(5) **Types of awards.** To the fullest extent permitted by law, the Policy Board may award the funding through grants, loans, contributions, investments, contracts or other agreed forms and subject to such terms and conditions, all as it deems appropriate in fulfilling the EDGE Fund's vision and mission.

(6) **Possible supplementary funding.** The Policy Board may elect to provide supplementary funding for existing programs including, but not limited to, the

Oklahoma Health Research program, the Oklahoma Applied Research Support program, or such other programs as it may deem are necessary to advance the technology-based economy in Oklahoma. [62 O.S. 2006, §52.G]

(7) **Cooperative agreements with OCAST.** The Policy Board may enter into cooperative agreements with OCAST to provide assistance in program development, due diligence, project selection, administration and management of research and technology development programs, or any combination of the foregoing. [62 O.S. 2006, §52.H]

(8) **Contract periods.** The length of a contract shall not be less than one year. The maximum contract period shall be established by the Policy Board.

(9) **Additional funding terms.** The Policy Board may establish additional funding terms, which it would announce in the solicitation.

(10) **Confidentiality.** The Policy Board will make every reasonable effort to maintain the confidentiality of information submitted to or compiled by the Board. Any information submitted to or compiled by the Policy Board with respect to the marketing plans, financial statements, trade secrets, research concepts, methods or products, or any other proprietary information of persons, firms, associations, partnerships, agencies, corporations, institutions of higher education, nonprofit research institutions or other entities shall be confidential, except to the extent that the person or entity providing such information or the subject of such information consents to disclosure; provided, however, there shall be no guarantee that such information will remain confidential. [62 O.S. 2006, §52.E]

208:1-5-2. Technical advisory panel

The Policy Board shall establish an Advisory Committee, whose members shall have such expertise as the Board deems necessary or appropriate for fulfilling the EDGE Fund's vision and mission. The Committee acts in an advisory capacity to the Policy Board and its Executive Director and staff in the development of program specifications, organization and evaluation of proposals and peer reviews, awarding of contracts and on-going evaluation of contract performance.

208:1-5-3. Areas of interest

The Policy Board shall review annually areas of research and commercialization emphasis, with consideration given to the strategic strengths of Oklahoma's research infrastructure.

208:1-5-4. Funding leverage

The Policy Board shall attempt to leverage the research dollars of the EDGE Fund through collaboration with the following entities:

- (1) OCAST;
- (2) Oklahoma State Regents for Higher Education;
- (3) Oklahoma Experimental Program to Stimulate Competitive Research;
- (4) Oklahoma Department of Commerce;
- (5) Oklahoma Capital Investment Board;

- (6) any private, not-for-profit corporation created pursuant to §5060.26 of Title 74 of the Oklahoma Statutes; and
- (7) any not-for-profit organization that is a contractor of OCAST pursuant to Sections 5060.20a and 5060.20b of Title 74 of the Oklahoma Statutes. [62 O.S. 2006, §52(J)]

208:1-5-5. Funding limitations

Expenditures from the EDGE Fund shall be subject to the following requirements and limitations:

- (1) at least 25% of the monies available for distribution in any fiscal year shall be allotted to support technology transfer and technology commercialization; and
- (2) no more than 20% of the monies available for distribution in any fiscal year shall be used for the purchase of equipment pursuant to proviso (a). [62 O.S. 2006, §52(F)]

208:1-5-6. Notification process

(a) **Announcements of solicitations.** The Policy Board may announce funding solicitations through any means reasonably calculated to disseminate notice to possible funding applicants. The Board shall provide written notice through a direct communication of solicitations to the following:

- (1) **Higher Education.** Solicitations shall be sent to the institutional official or officials as designated by the president of each institution listed in the Oklahoma Higher Education Directory.
- (2) **Nonprofit Research Foundations.** Solicitations shall be sent to officials designated by the heads of non-profit research organizations.
- (3) **Previous Applicants.** Solicitations shall be sent to all persons who have applied to the program in the previous three years.
- (4) **Requestors.** Solicitations shall be sent to all persons who contact the Policy Board and request a solicitation.

(b) **Public announcements posted.** The Policy Board will post public announcements of funding competitions at its principal office and the Oklahoma Department of Commerce at least 30 days before the application submission date.

(c) **Website announcements.** The Policy Board will announce funding competitions on its website at least 30 days before the application submission date.

(d) **Electronic notification.** Whenever these rules require notice or communication, the Policy Board may satisfy the requirement by any form of communication that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form. The form of communication includes e-mail, website or other Internet-based communications, and facsimile transmissions.

208:1-5-7. Application process

Applicants will apply for funding through the Policy Board's solicitation. Solicitations shall be available at the Policy Board principal office. No application fee shall be required. The application submission date or dates will be listed in the

solicitation. Requirements for application completion and submission will be specified in the solicitation.

208:1-5-8. Review process

Applications shall be reviewed initially to determine compliance with the solicitation requirements. If the application complies with the solicitation requirements, the applications will be reviewed and evaluated by the Policy Board, which may act through its Executive Director, its staff, the Advisory Committee or a combination of these. No applicant will receive funding unless and until approved by the Policy Board.

208:1-5-9. Contractor audits and records

(a) **Records and accounts.** The Contractor shall maintain records and accounts that properly document and account for the source and application of all project funds and all such records and accounts shall be made available on demand by the Policy Board for inspection and use in carrying out its responsibilities for administration of the funds.

(b) **Access and examination.** The Contractor shall, as the Policy Board deems necessary, permit authorized representatives of the Policy Board and the State of Oklahoma to have full access to and the right to fully examine all records and accounts.

(c) **Audits.** The Contractor shall comply with the audit policy of the Policy Board.