

TITLE 460: OKLAHOMA DEPARTMENT OF MINES
CHAPTER 1: OKLAHOMA MINING COMMISSION

Effective January 2017



This is not the official version of the Oklahoma Administrative Code, however the text of these rules is the same as the text on file in the Office of Administrative Rules. Official rules are available from the Office of Administrative Rules of the Oklahoma Secretary of State. This document was prepared by the Oklahoma Department of Mines as a convenience to the reader, and is not a copy of the official Title 460 of the Oklahoma Administrative Code.

CHAPTER 1. OKLAHOMA MINING COMMISSION

Subchapter	Section
1. General Provisions	460:1-1-1
3. Operational Procedures	460:1-3-1
5. Duties and Powers	460:1-5-1
7. Oklahoma Miners Training Institute	460:1-7-1
9. Rules	460:1-9-1
11. Hearings and Hearing Procedures	460:1-11-1

[Authority: 45 O.S., §§ 1 et seq.; 75 O.S., §§ 250 et seq.]
 [Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

Section	Purpose
460:1-1-1.	Purpose
460:1-1-2.	Statutory citations
460:1-1-3.	Definitions

460:1-1-1. Purpose

The rules, regulations and modes of procedure contained in this chapter are adopted to implement 45 O.S. (1981) Sections 1 et seq., as amended, establishing the Oklahoma Mining Commission (Commission) as "the policy-determining agency for the Department of Mines" and setting out powers and duties of the Commission. Chapter 1 is adopted pursuant to the provisions of the APA, 75 O.S. Sections 250 et seq. and Sections 301 et seq.; in compliance with the Oklahoma Open Meeting Act, 25 O.S. Sections 301 et seq. and the Oklahoma Open Records Act, 51 O.S. Sections 24A.1 et seq.

460:1-1-2. Statutory citations

All citations to statutes in the rules of this Chapter refer to the most recent codification of the statute.

460:1-1-3. Definitions

The following terms shall be construed to have the meaning defined herein, otherwise words and phrases shall be given a fair and reasonable interpretation of meaning in accordance with the ordinary professional community meaning or common, ordinary and everyday accepted meaning attributed to such words and phrases. The following words or terms when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

"**APA**" means the Oklahoma Administrative procedures Act (75 O.S. Sections 250 et seq., Sections 301 et seq.).

"**Chairman**" means Chairman of the Oklahoma Mining Commission.

"**Commission**" means the Oklahoma Mining Commission.

"**Department**" means the Oklahoma Department of Mines unless otherwise specified.

"**Director**" means the Director of the Oklahoma Department of Mines.

"**Executive Session**" means any session held by the Commission only for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual, salaried public officer or employee, or for the purpose of confidential communications between the Commission and its attorney as provided in the Oklahoma Open Meetings Act (25 O.S. Section 307).

"**Government**" or "**Governmental**" means the government of this State, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

"**Meeting**" means the conducting of business of the Commission by a majority of its members being personally together.

"**MSHA**" means the Federal Mine Safety and Health Administration.

"**New business**" means any matter not known about or which could not have been reasonably foreseen prior to the time of posting of the agenda for any meeting.

"**OMTI**" means the Oklahoma Miner Training Institute as established by law.

"**Order**" means any lawful order issued by the Commission or any Hearing Examiner of the Commission which is binding upon the party or parties to whom it is directed and which may be enforced when final through the exercise of the Commission's power.

"**OSM**" means the federal Office of Surface Mining.

"**Party**" means any person or agency named, participating, or properly seeking and entitled to participate in any proceeding before the Commission.

"**Regular meeting**" means the meeting at which regular business of the Commission is conducted.

"**Regulations**" means the interpretation of any rule or order of the Commission for regulation of the Oklahoma Mining Industry; a regulating principle.

"**Rules**" means any Commission statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy or prescribes the procedure or practice requirements of the Commission.

"**Special meetings**" means any meeting of the Commission other than regular meetings.

"**State**" means the State of Oklahoma.

SUBCHAPTER 3. OPERATIONAL PROCEDURES

Section

460:1-3-1.	Appointment, tenure and status
460:1-3-2.	Location
460:1-3-3.	Meetings
460:1-3-4.	Funding
460:1-3-5.	Officers
460:1-3-6.	Public inspection of documents
460:1-3-7.	Annual audits

460:1-3-1. Appointment, tenure and status

The organization of the Commission is declared to be that as enumerated in 45 O.S. Section 1, as amended, or as may otherwise be established by law.

- (1) The Commission, is comprised of nine (9) members, appointed by the Governor and subject to approval by the Senate, for seven (7) year staggered terms.
- (2) The Commission shall constitute a body corporate of the State of Oklahoma with the authority to exercise all powers conferred upon it by, but not limited to 45 O.S. Section 1(A) as amended.
- (3) Each member shall be a qualified elector of the State.
- (4) The nine member Commission shall consist of persons with varied backgrounds; at least one in engineering or geology; one in labor or worker's safety; one in agriculture or soil conservation; one in transportation; one in economic development or banking; one in public utilities; one in natural resources; and two at large.

460:1-3-2. Location

The Commission shall maintain at its offices in Oklahoma City, Oklahoma, all papers, records, and data necessary to the operation of the Commission. All official communications should be addressed to the Chairman of the Oklahoma Mining Commission, 2915 North Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106, or to the Director of the Oklahoma Department of Mines, 2915 North Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106.

[Source: Amended at 31 Ok Reg 2081, eff 9-12-14]

460:1-3-3. Meetings

- (a) All meetings shall be conducted in compliance with The Oklahoma Open Meeting Act (25 O.S. Sections 301 et seq. as amended).
- (b) Before December 15 of each calendar year the Commission shall schedule, in writing, specific dates, including time and place, for the following year's regular meetings and file same with the Secretary of State. No less than six regular meetings of the Commission shall be held annually. Five (5) members must be present to constitute a quorum and a majority vote of those present shall be necessary to act upon and decide any motion before the Commission. In the absence of a quorum at any regular or special meeting those members of

the Commission in attendance shall recess such meeting to any later date.

(c) Special Meetings may be called by the Chairman as permitted by law.

(d) A minute record shall be made of all proceedings before the Commission. The minute record shall show members present and absent, matters considered, actions taken, and the vote of each member on any motion. The minutes shall also reflect the manner and time of notice required by the Oklahoma Open Meeting Law.

(e) The following shall be the order of business at the Commission meeting:

- (1) Minutes of previous meeting
- (2) Administrative matters
- (3) Financial statements of the Commission
- (4) Old Business
- (5) New Business
- (6) Interested visitors heard
- (7) Adjournment
- (8) Executive Session, if requested and approved by a majority of the Commission members present.
- (9) Open Session to announce any decisions made in Executive Session and adjourn.

460:1-3-4. Funding

Funding for the Oklahoma Mining Commission's activities shall be derived from funds appropriated to the Department of Mines for operating expenses. Funds required for any third party studies called for by a majority vote of the Commission members shall come from contributions by the mining and related industries, the general public and foundations, as well as those funds made available by the Department of Mines.

460:1-3-5. Officers

The Commission shall annually select from among its members a Chairman, Vice-Chairman and Secretary. The Chairman and members of the Commission shall receive no salary, but will receive expenses necessarily incurred in the performance of their duties in accordance with laws pertaining to state employees. The Vice-Chairman shall, in the absence of the Chairman, fulfill all responsibilities of the Chairman. When circumstances require it, he shall serve as Chairman until a Chairman is elected.

460:1-3-6. Public inspection of documents

In compliance with Oklahoma Open Records Act (51 O.S. Sections 24A.1 et seq.) records of the Commission including, but not limited to, rules, regulations, orders and resolutions that make up the policy of the Commission and interpret and guide in the understanding and implementation of the Commission's policies will be available at the Commission's office for public inspection and copying during normal business hours. All records copied or searched shall be kept in the order found and shall be put back in the files as such. The cost of such copies and research will be those established by the Director of the Department.

460:1-3-7. Annual audits

Annual financial audits of the Department's fiscal year shall be reported to the Commission at a regularly scheduled meeting or special meeting, if necessary, by March of the following fiscal year. The Department Director and staff shall submit a comprehensive report including the Audit Findings and Comments of the outside auditing firm or agency, which shall include at least a report of the appropriations, expenditures and receipts in each of the established funds. An annual audit of the Department's physical properties shall be reported to the Commission within 60 to 90 days after the end of a fiscal year.

SUBCHAPTER 5. DUTIES AND POWERS

Section

460:1-5-1.	Authority
460:1-5-2.	Duties and powers defined

460:1-5-1. Authority

In the exercise of all powers and the performance of all duties provided in this Chapter, the Commission shall comply with the procedures set forth in the APA and the rules and regulations of this Chapter.

460:1-5-2. Duties and powers defined

The Commission has the following powers and duties as set forth by this Chapter:

- (1) To advise, consult and cooperate with other agencies of this State, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the Oklahoma mining industry;
- (2) To serve as the Department of Mines liaison to the general public by communicating and enhancing the Department's goals and accomplishments;
- (3) To approve, renew and finalize agreements or contracts for services and contracts concerning faculty, facilities and personnel for the operation of OMTI. Said agreements or contracts shall be signed by the Chairman of the Commission;
- (4) To approve all new rules and regulations pertaining to the Department of Mines;
- (5) To prescribe rules and regulations for the Commission and to make such Orders as it may deem necessary or expedient in the performance of its duties;
- (6) To accept and administer grants from the federal government and from other sources, public or private, for carrying out any functions of the Commission;
- (7) To conduct studies, investigations, research and demonstrations relating to the health and safety of persons employed in mines as it may deem advisable and necessary in the public interest;
- (8) To require the Director to review underground mining plan specifications and other relative data and to make

recommendations to the Commission as to the approval or denial of such plans;

(9) To advise the Director on all matters affecting mining;

(10) To review and approve all budgets, administrative procedures and operations of the Department and advise the Department concerning its compliance with applicable laws and regulations;

(11) With the assistance and advice of the State Auditor and Inspector, to require adequate and reasonably uniform accounting and auditing procedures which shall be used by the Department;

(12) To issue, revoke, modify or deny certificates of competency for OMTI graduates under such conditions, which includes the graduates' compliance with all other state, federal, and local permitting and licensing requirements, as the Commission may prescribe;

(13) To approve the appointment by the Director of a miner certification advisory council or other such advisory council as may be required to accomplish government functions including, but not limited to:

(A) Administering examinations for certificates of competency relating to underground mining issued by the Oklahoma Mining Commission;

(B) Providing the Commission with results of examinations and making recommendations as to each OMTI graduate's ability to perform his duties;

(C) Assisting the Commission with the issuance of certificates of competency;

(D) Making recommendations as to the type of training required for certification;

(E) Making recommendations on ways to improve the health and safety of miners.

(14) Require an annual review of safety procedures and plans in place throughout the state's mining industry. These procedures and plans are to be on file at the Department's office.

[Source: Amended at 18 Ok Reg 3198, eff 7-26-01]

SUBCHAPTER 7. OKLAHOMA MINERS TRAINING INSTITUTE

Section

460:1-7-1.	Operational authority
460:1-7-1.	Operational authority
460:1-7-2.	Director
460:1-7-3.	Liaison

460:1-7-1.¹ Operational authority

(a) The Oklahoma Mining Training Institute (OMTI) shall operate under the control and advise of the Oklahoma Mining Commission. The Commission shall establish and approve curriculum standards for all courses taught at OMTI. The Commission shall ensure that all courses taught at OMTI will meet current MSHA and OSM standards and that all graduates

receiving certificates of competency have complied with all state, federal, and local permitting and licensing requirements.

- (b) The Commission shall ensure the following:
- (1) All blasting certifications be conducted by OMTI.
 - (2) All original certifications for state supervisor cards shall be issued only by OMTI.
- (c) The Commission may approve re-certification training for the Oklahoma State Surface Supervisor's card through outside contractors or private instructors, if the following guidelines are met:
- (1) A resume, including experience and education, must be submitted on each instructor utilized to the Commission for review.
 - (2) Training plans must be submitted that include, at a minimum, an outline of the topics to be addressed and a list of the instruction aids that will be utilized during class. The training outline must address the Surface Safety Standards requirements in Title 45 of the Oklahoma Statutes.
 - (3) A copy of the resume and training plan of each instructor must be filed, accompanied by a letter of request for Certification of Recognition, with the Oklahoma Department of Mines (ODM) and OMTI for review.
 - (A) The ODM and OMTI review shall determine whether the program offered is consistent with the OMTI's program and that the program adequately emphasizes the State of Oklahoma Safety Standards.
 - (B) After the review, OMTI and ODM shall submit a recommendation to the Commission for approval or disapproval for the program's accreditation.
 - (C) Once a complete application is filed, the review, the recommendation, and the issuance of the Certificate Recognition shall be completed within a ninety (90) day time-period.
 - (D) Once training is completed, a notification of re-certification for each individual shall be submitted to OMTI for action, on forms developed by OMTI. OMTI shall then issue the re-certification for authentication of the training received and the card issued shall identify the contractor or private instructor who provided the training.
 - (E) The Commission's approval for the re-certification training of the Oklahoma State Surface Supervisor's card by any outside contractors or private instructors shall be for a one (1) year approval period only.
 - (4) All existing and established time frames for re-certification, every two years, are not altered by the approval of outside contractors or private instructors pursuant to this section.
 - (5) Approval for supervisor re-certification shall not be given to any training facilities or training by individuals affiliated with, or employed by, any permitted operation within the State of Oklahoma.

[Source: Amended at 18 Ok Reg 3198, eff 7-26-01; Amended at 23 Ok Reg 3056, eff 7-27-06; Amended at 31 Ok Reg 2082, eff 9-12-14¹]

EDITOR'S NOTE: ¹ The agency promulgated two versions of this Section (460:1-7-1) with the same effective date in 2014. See also 460:1-7-1, post.

460:1-7-1.¹ Operational authority

- (a) The Oklahoma Mining Training Institute (OMTI) shall operate under the control and advice of the Oklahoma Mining Commission. The Commission shall establish and approve curriculum standards for all courses taught at OMTI. The Commission shall ensure that all courses taught at OMTI will meet current MSHA and OSM standards and that all graduates receiving certificates of competency have complied with all state, federal, and local permitting and licensing requirements.
- (b) The Commission shall ensure the following:
- (1) All blasting certifications be conducted by OMTI.
 - (2) All original certification for state supervisor cards shall be issued only by OMTI.
- (c) The Commission may approve re-certification training for the Oklahoma State Surface Supervisor's card through outside contractors or private instructors, if the following guidelines are met:
- (1) A resume, including experience and education, must be submitted on each instructor utilized to the Commission for review.
 - (2) Training plans must be submitted that include, at a minimum, an outline of the topics to be addressed and a list of the instruction aids that will be utilized during class. The training outline must address the Surface Safety Standards requirements in Title 45 of the Oklahoma Statutes.
 - (3) A copy of the resume and training plan of each instructor must be filed, accompanied by a letter of request for Certification of Recognition, with the Oklahoma Department of Mines (ODM) and OMTI for review.
 - (A) The ODM and OMTI review shall determine whether the program offered is consistent with the OMTI's program and that the program adequately emphasizes the State of Oklahoma Safety Standards.
 - (B) After the review, OMTI and ODM shall submit a recommendation to the Commission for approval or disapproval of the program's accreditation.
 - (C) Once a complete application is filed, the review, the recommendation, and the issuance of the Certificate of Recognition shall be completed within a ninety (90) day time-period.
 - (D) Once training is completed, a notification of recertification for each individual shall be submitted to OMTI for action, on forms developed by OMTI. OMTI shall then issue the re-certification for authentication of the training received and the card issued shall identify the contractor or private instructor who provided the training.
 - (E) The Commission's approval for the recertification training of the Oklahoma State Surface Supervisor's card by any outside contractors or private instructors shall be for a one (1) year approval period only.
 - (4) All existing and established time frames for recertification, every two years, are not altered by the approval of outside contractors or private instructors pursuant to this Section.
- (d) If training is administered by an instructor other than at OMTI, the instructor shall notify OMTI of each employee that

has received such training and other information as required by the Director of OMTI. It shall be unlawful for any instructor or student to falsify training records.

[Source: Amended at 18 Ok Reg 3198, eff 7-26-01; Amended at 23 Ok Reg 3056, eff 7-27-06; Amended at 31 Ok Reg 2081, eff 9-12-14¹]

EDITOR'S NOTE: ¹ The agency promulgated two versions of this Section (460:1-7-1) with the same effective date in 2014. See also 460:1-7-1, ante.

460:1-7-2. Director

The Commission shall approve the appointment by the Regents of Eastern Oklahoma State College of a Director for OMTI. The Director for OMTI shall report all OMTI business directly to the Commission.

460:1-7-3. Liaison

The Commission shall appoint and approve a person within the Department of Mines or the Commission or any other qualified designee to serve as a liaison between the Commission and OMTI. The liaison shall represent the interest of the Commission to OMTI, MSHA and OSM in all matters concerning OMTI.

SUBCHAPTER 9. RULES

Section

460:1-9-1.	Purpose
460:1-9-2.	Amending the rules
460:1-9-3.	Petitions for declaratory rulings

460:1-9-1. Purpose

The rules and regulations found in this Chapter are intended to define the scope of authority of the Commission as established by law. Under no circumstances shall they be construed to deprive, limit or restrict the powers, duties or jurisdiction of the Commission as provided by law. Should any section or parts of the rules of this Chapter be determined to be invalid for any reason such determination shall have no force or effect upon the remaining sections or parts of the rules.

460:1-9-2. Amending the rules

The rules of this Chapter may from time to time be expanded, amended, or repealed by the Commission as authorized by law.

460:1-9-3. Petitions for declaratory rulings

Any person may file a request for a declaratory ruling by the Commission as to the application or enforcement of any rule, regulation or statute to a given set of circumstances.

(1) Such requests shall be in writing, signed by the person seeking the ruling, state the rule, regulation or statute involved and contain a brief and concise statement of facts to which the ruling shall apply. Requests shall be submitted to the Commission at its office. The Commission will consider the request at its next regular or special meeting

unless the question has been resolved by prior ruling of the Commission, in which event the petitioner shall be promptly notified of the prior ruling.

(2) The Commission may defer action or hold such requests in its agenda pending any investigation or hearing which the Commission might conduct. The Commission shall issue the requested rulings promptly upon the determination thereof or send an explanation to the petitioner stating why a ruling will not be issued. Unless a ruling states otherwise, rulings contemplated herein shall constitute precedent for the purpose of the Commission's application and enforcement of its rules, regulations and statutes unless revoked or overruled by the Commission or the Courts. Such rulings shall be indexed by statute, section or rule number and shall be available for inspection by members of the public at the Commission office. With respect to indexed rulings, the Commission may delete nonessential or repetitive information and may edit any ruling to protect proprietary or confidential information.

SUBCHAPTER 11. HEARINGS AND HEARING PROCEDURES

Section

460:1-11-1.	Conduct of hearings
460:1-11-2.	Laws governing hearings
460:1-11-3.	Complaints
460:1-11-4.	Certificates of competency
460:1-11-5.	Formal hearings

460:1-11-1. Conduct of hearings

Hearings may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers and duties conferred or imposed upon the Commission by law.

460:1-11-2. Laws governing hearings

All hearings shall be held in accordance with the governing and applicable provisions of Title 45 of the Oklahoma Statutes, the APA and the rules of this Chapter.

460:1-11-3. Complaints

(a) Any person or the Commission on its own motion may file a complaint alleging misconduct or violation of any order of the Commission. All complaints must be in writing signed under oath by the person filing the complaint or the personal representative of such person, and shall be filed with the Commission with a statement of charges incorporated within.

(b) Written notice of the complaint shall be given to the alleged violator along with notice that an investigative committee, comprised of members of the Commission or a person designated by the Commission and appointed by the Chairman, will investigate the allegations and determine if there is probable cause to believe that such misconduct or violation has occurred. The committee may, in its discretion, afford the

alleged violator an opportunity to be heard in the course of the investigation.

(c) The written notice of the complaint issued by the Commission may be served either personally or by mailing a copy by registered mail directed to the affected party at his last-known address as shown by the files or records of the Commission. Proof of such service shall be filed in the Office of the Commission. Any notice, order or other instrument issued by the Commission will be served in this manner.

(d) The investigative committee or the designated person shall deliver a written report to the Commission which shall include a summary of the evidence considered, the conclusions of fact, and a recommendation as to further action to be taken in the matter. The report will serve as the basis for the Commission's determination in the matter. The determination of the Commission shall be delivered to the parties involved with notice contained therein that a formal hearing may be requested pursuant to Section 460:1-11-5 of the Chapter, 45 O.S. (1981) Section 1 et seq., as amended, and the APA (75 O.S., Section 301 et seq.).

460:1-11-4. Certificates of competency

(a) If, in a complaint alleging violation of a certificate of competency, the Commission finds that public health, safety, or welfare imperatively requires emergency action, the Commission may order a summary suspension of said certificate pending proceedings for revocation. Said findings must be incorporated in the order. Except for summary suspension, the Commission may issue a disciplinary order revoking the certificate of competency only after a formal hearing. Grounds for denial, revocation, refusal to renew, or summary suspension of a certificate of competency include:

- (1) Fraud, deception or misrepresentation in applying for a certificate of competency or in taking the examination;
- (2) Noncompliance with statutory requirements or the governing rules and regulations;
- (3) Violating any other jurisdiction's mining laws, requirements or rules and regulations;
- (4) Mental impairment;
- (5) Gross incompetence, including failure to use due diligence and proper restraint in the course of performance;
- (6) Dishonest practice;
- (7) Nonpayment of fees will result in automatic revocation;
- (8) Unauthorized or misuse of seal, including the sealing, dating and signing of any documents.

460:1-11-5. Formal hearings

Any formal hearing shall comply with the following:

(1) The Commission shall schedule a hearing before a Hearing Examiner or the Commission as a whole and due and proper notice of such hearing shall be given to all parties. Once a hearing has been scheduled the Chairman of the Commission may for sufficient cause postpone or

reschedule a hearing provided that notice, either actual or constructive, of the rescheduled hearing date shall be given to all parties in the case. All such requests shall be in writing and in the case of an emergency said request shall be submitted in writing within three working days after the continuance request is requested.

(2) In the case of a proceeding conducted by the Commission, the Chairman or his designee shall preside. Designated counsel shall advise the Chair as to rulings on questions of law where such rulings are required or requested.

(3) All hearings shall be public except that upon motion of either party witnesses may be excluded from the hearing room when such witness is not testifying. A court reporter shall be present to record the proceedings on behalf of the Commission. Any party appealing the finding of the Commission or any other interested party desiring a copy of the transcript of the proceedings may purchase same from the reporter.

(4) Hearings shall be held at the main offices of the Oklahoma Department of Mines in Oklahoma City or at such other location as may be designated by the Commission.

(5) All parties to the complaint may present his or her own evidence or may present such through his or her counsel.

(6) The order of procedure shall be as follows:

- (A) Recitation of the statement of charges as found in the complaint by the person presiding;
- (B) Opening statement by the Applicant;
- (C) Opening statement by the Respondent;
- (D) Presentation of the Applicant's case followed by cross-examination and questioning by the Hearing Examiner or Chairman of the Commission or his designee presiding over the hearing;
- (E) Respondent's presentation followed by cross-examination and questioning by the Hearing Examiner or presiding Chairman;
- (F) Closing arguments by the Applicant;
- (G) Closing arguments by the Respondent.

(7) If the case be heard by the Commission as a whole, the Commission shall deliberate and render a decision with confirmation of such decision in writing in the form of an Order distributed to all parties by mail. In the case of a hearing conducted by a Hearing Examiner, a recommended Order containing necessary findings of fact and conclusions of law shall be prepared by the Hearing Examiner to be considered by members of the Commission at a future meeting. All parties will be furnished copies of the recommended Order and notified as to the date the recommendation will be considered by the Commission for adoption. At the same time, notice will also be given to the parties that written exceptions or arguments, if any, should be submitted on or before a designated date pursuant to 75 O.S. Section 311. Upon adoption of the Order by the Commission as a whole, the adopted Order shall be distributed to all parties.