

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC Title 785 Chapter 20
Proposed for Adoption During 2025

A. A BRIEF DESCRIPTION OF THE PURPOSE OF THE PROPOSED RULES.

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing or is considering promulgation of amended or new rules in Oklahoma Administrative Code ("OAC") 785:20 as follows:

OAC 785:20-1-3 is proposed to be amended to add language authorizing the Executive Director of the OWRB to issue cease and desist orders.

OAC 785:20-3-2(a) is proposed to be amended to strike out the water right application in the rule. This action would allow OWRB staff to make simplifications or enhancements to the application without legislative approval.

OAC 785:20-3-9(d) is proposed to be amended to provide six (6) months of application processing time that starts after the applicant is last instructed by the Board as opposed to when the Board is last contacted by the applicant.

OAC 785:20-7-1(e)(1) is proposed to be amended to add language clarifying that 90-day provisional temporary permits may be renewable for up to three (3) times for the oil and natural gas industry.

OAC 785:20-9-5(a)(2) is proposed to be amended to ensure that an owner of more than one stream water permit at a specific location for the same purpose applies water use to the older permit first. Currently written, the rule is a loophole, allowing a stream water permit holder to tie its seniority to all its permits that withdraw from the same diversion point.

OAC 785:20-9-5(a)(4) is an addition that provides water right holders an opportunity to explain any nonuse of stream water allocated by the permit and for the same to be taken before the Board for approval.

OAC 785:20 Appendix A is proposed to be taken out of rule, allowing OWRB the flexibility to simplify the application or enhance as needed.

Other amendments may be considered or proposed as a result of public comments.

B. A DESCRIPTION OF THE CLASSES OF PERSONS WHO MOST LIKELY WILL BE AFFECTED BY THE PROPOSED RULES, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF THE PROPOSED RULES, AND ANY INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES.

There are no classes of persons anticipated to be negatively affected by the proposed changes in OAC 785:20-1-3, OAC 785:20-3-2(a), OAC 785:20-7-1(e)(1), OAC 785:20-9-5(a)(4), and the removal of Appendix A.

Regarding OAC 785:20-9-5(a)(2), the proposed amendment would affect stream water right holders with multiple permits from a single diversion point. Currently, the rules allow a user

to ‘stack’ stream water permits on top of each other and use the older permit as a priority for all permits. Amending the language would entail the permit holder to report water use according to the oldest priority date first. The costs incurred by water right holders should be minimal as permit holders adequately plan based on the priority dates of their permits.

For OAC 785:20-3-9(d) the proposed amendment would affect non-responsive applicants in requiring that application corrections be completed within six (6) months after last instructed by the Board.

C. A DESCRIPTION OF THE CLASSES OF PERSONS WHO WILL BENEFIT FROM THE PROPOSED RULES.

For OAC 785:20-1-3, domestic users and stream water permit holders would benefit from the Executive Director of the OWRB’s power to more immediately address water use that is unauthorized or continued use that will damage rights of prior appropriators.

OAC 785:20-3-2(a) and the removal of Appendix A would benefit OWRB staff by allowing simplifications to the permit application, potentially cutting down application processing time and benefitting the applicant by allowing them a shorter timeframe between submitting an application and putting the water to beneficial use.

For OAC 785:20-3-9(d), would benefit OWRB staff by decreasing the time spent on processing perpetually inadequate applications. This also benefits responsive applicants by allowing OWRB staff to spend more time reviewing their applications.

For OAC 785:20-7-1(e)(1), the oil and natural gas industry will benefit by allowing the Executive Director of the OWRB to approve up to four (4) consecutive 90-day provisional temporary permits in situations where long term use of water is unnecessary.

For OAC 785:20-9-5(a)(2), permit holders that are senior and negatively affected by the loophole language would be allowed to use their senior allocated water and not be curtailed by water allocated under a junior stream water right.

For OAC 785:20-9-5(a)(4), permit holders will benefit by being provided a Board record of excused non-use of stream water.

D. A DESCRIPTION OF THE PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULES UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS, INCLUDING A LISTING OF ALL FEE CHANGES AND, WHENEVER POSSIBLE, A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE.

There are no economic impacts anticipated with the changes in OAC 785:20-1-3, OAC 785:20-3-2(a), OAC 785:20-9-5(a)(4), and the removal of Appendix A.

For OAC 785:20-3-9(d), the economic impact would be if an applicant does not initiate further proceedings for six (6) months after last instructed by the Board that the application shall be deemed withdrawn and the filing fee forfeited.

For OAC 785:20-7-1(e)(1), the economic impact on the oil and natural gas industry will be beneficial as it will allow the Executive Director of the OWRB to approve up to four (4) consecutive 90-day provisional temporary permits in situations where long term use of water is

unnecessary. The oil and natural gas industry should save time and money by not having to move diversion points every ninety (90) days to procure a new source of water.

Economic impacts regarding the proposed change in OAC 785:20-9-5(a)(2) are anticipated to be minimal and potentially only effect those entities or persons with one diversion point for multiple permits.

E. THE PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A PROJECTED NET LOSS OR GAIN IN STATE REVENUES IF IT CAN BE PROJECTED BY THE AGENCY.

OAC 785:20-3-2(a), OAC 785:20-9-5(a)(2), and the removal of Appendix A would not incur cost to the OWRB or any other agency.

For OAC 785:20-1-3, potential costs incurred would be for administrative hearings that are required to be held.

For OAC 785:20-3-9(d), would not incur cost to the OWRB or any other agency. Benefits would be reduction in processing time of applications and a reduction in the time spent tracking progress on perpetually incomplete applications.

For OAC 785:20-7-1(e)(1), the cost to the OWRB would be minimal. A benefit to OWRB staff would be in not having to process prospective long-term applications that would have likely been necessary if 90-day provisional temporary applications could not be renewed for the oil and natural gas industry. Long term applications require significantly more review time than 90-day provisional temporary applications.

For OAC 785:20-9-5(a)(4), potential costs incurred are estimated to be minimal and may entail an increase to the cost of the annual water use report mailout and staff time in constructing monthly Board meeting packets.

F. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES WILL HAVE AN ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR REQUIRE THEIR COOPERATION IN IMPLEMENTING OR ENFORCING THE RULES.

No persons or entities are likely to be impacted by the proposed changes to OAC 785:20-1-3, OAC 785:20-3-2(a), OAC 785:20-3-9(d), OAC 785:20-7-1(e)(1), OAC 785:20-9-5(a)(4), and the removal of Appendix A.

Changes to OAC 785:20-9-5(a)(2) may impact municipalities or entities who have not adequately managed their water rights, including implementing a long-term strategic water plan. Relying on senior permits to hold a priority date for all of an entity's permits is not an adequate plan. Changes to this rule would put responsibility on those effected to coordinate with other users in the watershed.

G. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES MAY HAVE AN ADVERSE ECONOMIC EFFECT ON SMALL BUSINESS AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

The proposed changes in OAC 785:20-1-3, OAC 785:20-3-2(a), OAC 785:20-7-1(e)(1), OAC 785:20-9-5(a)(2), OAC 785:20-9-5(a)(4), and the removal of Appendix A are not expected to have an adverse impact on small businesses.

For OAC 785:20-3-9(d), the adverse economic effect on small business would be if an applicant is a small business and does not initiate further proceedings for six (6) months after last instructed by the Board that the application shall be deemed withdrawn and the filing fee forfeited.

H. AN EXPLANATION OF THE MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE COSTS AND A DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULES.

There are no compliance costs anticipated for the changes in OAC 785:20-1-3, OAC 785:20-3-2(a), OAC 785:20-3-9(d), OAC 785:20-7-1(e)(1), OAC 785:20-9-5(a)(2), OAC 785:20-9-5(a)(4), and the removal of Appendix A.

I. A DETERMINATION OF THE EFFECT OF THE PROPOSED RULES ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT AND, IF THE PROPOSED RULES ARE DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULES WILL REDUCE THE RISK.

OAC 785:20-3-2(a), OAC 785:20-3-9(d), OAC 785:20-7-1(e)(1), OAC 785:20-9-5(a)(4), and the removal of Appendix A have no effect on the public health, safety, and environment.

OAC 785:20-9-5(a)(2) closes a reporting loophole and may reduce a risk for stream water permits that supply water to the public.

OAC 785:20-1-3, may reduce risks to public health, safety, and environment by more immediately preventing unauthorized use of water.

J. A DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULES ARE NOT IMPLEMENTED.

There are no detrimental effects anticipated for the changes in OAC 785:20-1-3, OAC 785:20-3-2(a), OAC 785:20-3-9(d), OAC 785:20-7-1(e)(1), OAC 785:20-9-5(a)(2), OAC 785:20-9-5(a)(4), and the removal of Appendix A.

K. THE DATE THE RULE IMPACT STATEMENT WAS PREPARED AND IF MODIFIED, THE DATE MODIFIED:

This rule impact statement was reviewed and approved on November 14, 2024 by Christopher R. Neel, Chief, Water Rights Administration Division, Oklahoma Water Resources Board.