

UNOFFICIAL

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 1. ORGANIZATION AND PROCEDURE OF OKLAHOMA WATER
RESOURCES BOARD**

Introduction:

This document contains permanent amendments to Chapter 1 adopted by the Oklahoma Water Resources Board that are effective as of September 14, 2018. Also, this document was prepared by Oklahoma Water Resources Board staff as a convenience to the reader, and is not a copy of the official Title 785 of the Oklahoma Administrative Code. The rules in the official Oklahoma Administrative Code control if there are any discrepancies between the Code and this document.

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[**Authority:** 82 O.S., Sections 1020.16 and 1085.2]

SUBCHAPTER 1. GENERAL PROVISIONS

SECTION

785:1-1-1. Purpose

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785:1-1-1. Purpose

The purpose of the rules in this Chapter are to set forth basic organizational rules of the Oklahoma Water Resources Board, including details of its structure, procedures on how rules can be amended and how declaratory rulings can be requested, and details about records of the agency.

785:1-1-2. Definitions

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

"**APA**" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§301 et seq., as amended.

"**Board**" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Complaint" means any written or verbal concern expressed by any person that alleges site specific problems relating to matters under the Board's jurisdiction and for which a reply is expected, provided a complaint shall not include a protest of an application or other matters relating to an application presented to the Board by interested parties during the proceedings on the application.

"Executive Director" means the Executive Director of the Oklahoma Water Resources Board.

"Person" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Response" means the determination of the course of action to be taken by the Board in addressing a complaint.

"Resolution" means the finding that appropriate administrative, jurisdictional, and/or legal remedies have been completed to the extent possible by the Board.

785:1-1-3. Use of words, terms and phrases

(a) The words, terms and phrases used within the rules of this Chapter shall be given the meaning and definition provided under the relevant statutory provisions generally contained in Oklahoma Statutes, Title 82 and as may be substantially provided within any other rule or regulations herein. In instances of ambiguity, words and phrases not otherwise defined by rule, regulations or statute, 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.

(b) Words expressed in the singular form may be interpreted and applied, in context, in plural form and words expressed in plural form may be interpreted and applied, in context, in singular form.

SUBCHAPTER 3. ORGANIZATION, MEETINGS AND COMPREHENSIVE WATER PLAN

SECTION

- 785:1-3-1. Origin, composition and operations of the Board
- 785:1-3-2. Purpose of the Board
- 785:1-3-3. Offices of the Board
- 785:1-3-4. Seal of the Board
- 785:1-3-5. Meetings of the Board
- 785:1-3-6. Oklahoma Comprehensive Water Plan

785:1-3-1. Origin, composition and operations of the Board

(a) **Origin and composition.** The Oklahoma Water Resources Board was created as a seven-member Board by an Act of the Twenty-Sixth Oklahoma Legislature in 1957. By an Act of the Second Session of the Thirty-Third Legislature in 1972, a nine-member Board was created, one member being appointed from each of the Congressional Districts of the State, and three members appointed at large. At all times the membership shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, irrigational, municipal, rural residential, agricultural, and soil conservation work, but no more

than two (2) members may be selected representing any one of the major types of water use. A chairman, vice-chairman, and secretary shall be elected annually, provided that no person shall serve as chairman for more than two consecutive years.

(b) **Operations of Board.** The Executive Director, appointed by the Board, manages the day-to-day operations and staff members of the Board. Four divisions of the Board, each supervised by a Division Chief, have been established as follows: Planning and Management Division, Financial Assistance Division, Water Quality Programs Division and Administrative Services Division. The public may obtain information or make submissions or requests by contacting the appropriate Division staff in person, in writing or by telephone. Other rules may also be applicable to obtain information or make submissions or requests. The Board retains final authority over all matters before the agency unless otherwise provided by law. Agenda items for all meetings of the Board are processed through the appropriate Division and approved for placement on the agenda by the Executive Director in consultation with the Chairman.

785:1-3-2. Purpose of the Board

It is the purpose of the Board to determine and administer rights to the use of waters of the State; develop long-range plans to encourage the conservation, development and utilization of the water resources of the State; coordinate local, state, and federal water activities within the State; and to establish and administer standards of quality for the prevention, control, and abatement of pollution of the waters of the State.

785:1-3-3. Offices of the Board

The principal office of the Board shall be located in Oklahoma City, Oklahoma. Additional branch offices may be located at Tulsa, McAlester, Woodward and Lawton, Oklahoma or such other Oklahoma towns and cities as the Board may deem necessary and proper to carry out its duties and responsibilities.

785:1-3-4. Seal of the Board

The Seal of the Board shall be a circle, 1.7 inches in diameter, in the center of which shall be a five-pointed star measuring .9 inch from point to opposite point, and the words "Oklahoma Water Resources Board" circularly arranged about the inner edge of said circle.

785:1-3-5. Meetings of the Board

(a) **Regular meetings; voting.** Regular meetings of the Board shall be held on the second Tuesday of each month unless otherwise directed by the Board. 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 Board. An abstention shall not be deemed to be a vote. A pass shall allow the member to cast his vote after the other votes, except that of the Chair or Vice-Chair as the case may be, are cast. No action can be approved or disapproved except by affirmative or negative vote of a majority of those present. Meetings may be canceled due to inclement weather or other good cause.

(b) **Special or emergency meetings.** Special or emergency meetings may be called by the Chairman as provided by law.

(c) **Meetings shall be open.** All meetings of the Board shall be open public meetings and notices thereof shall be given as required by the Oklahoma Open Meeting Act (25 O.S. 1981,

§§301 et seq., as amended). Executive sessions may be held as authorized by the Oklahoma Open Meeting Act.

(d) **Minutes of the Board.** A minute record shall be made of all proceedings before the Board. 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 Open Meeting Law.

(e) **Conduct of meetings.** The Chairman shall preside over Board meetings. In the absence of the Chairman, the Vice-Chairman shall preside. The Secretary shall attest the signature of the Chairman or Vice-Chairman as the case may be on documents executed at the meetings. In the absence of the Secretary, an Acting Secretary shall be appointed by the Chairman or Vice-Chairman as the case may be for the meeting from which the Secretary is absent.

785:1-3-6. Oklahoma Comprehensive Water Plan

(a) Under the provisions of 82 O.S. 1981, §§1086.1 and 1086.2, the Board has promulgated, adopted and approved the "Oklahoma Comprehensive Water Plan", Board publication 94 dated April 1, 1980. Pursuant to House Concurrent Resolution No. 1004 approved and adopted by the Thirty-Eighth Oklahoma Legislature, First Regular Session, 1981, the "Plan" has been received, approved and adopted, in principle, by the Oklahoma Legislature.

(b) As provided and contemplated by law, the Plan is a general guide to be utilized in providing for and matching the future water needs and supplies of the State of Oklahoma and adoption of the Plan shall not be deemed to preclude the implementation of alternatives consistent with the basic and overall goals and objectives set forth in the Plan.

(c) The Board shall proceed in the performance of its water resource management, administration and planning efforts and activities in such a manner as shall be consistent with and in furtherance of the basic and overall goals, objectives, policies and recommendations set forth in the Plan.

(d) Under House Bill 2036 of the Second Session of the Forty-Third Legislature, the Board shall prepare decennial updates of the Plan, with the first decennial update to be prepared and submitted to the Legislature no later than September 1, 1995, and updates thereafter prepared and likewise submitted no later than September 1 of the fifth year following the taking of the Federal Decennial Census.

SUBCHAPTER 5. RULES

SECTION

- 785:1-5-1. Purpose and use of rules
- 785:1-5-2. Rules cumulative
- 785:1-5-3. Amending of rules or Standards by Board
- 785:1-5-4. Petition requesting promulgation, amendment or repeal of a rule or Standard by others
- 785:1-5-5. Petition for declaratory rulings
- 785:1-5-6. Requirements for declaratory ruling petitions

785:1-5-1. Purpose and use of rules

(a) The rules, regulations, and modes of procedure contained in this Title are adopted pursuant to 82 O.S. 1981. §1085.2(7) and other authorizing provisions, and contain revisions of the rules

and regulations adopted in 1985 (OWRB Publication No. 126). They are adopted to simplify procedure, avoid delays, save expense, and facilitate the implementation and administration of the State's water laws.

(b) The rules in this Title shall be given a fair and impartial construction and under no circumstances shall they be constructed to deprive, limit or restrict Board powers, duties and jurisdiction otherwise provided by law.

785:1-5-2. Rules cumulative

Nothing within the rules in this Title shall be construed or applied to affect the validity or enforceability of any additional requirements, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to transactions, conduct and facilities addressed herein. The rules in this Title are cumulative and supplemental to all other applicable rules and regulations authorized by law.

785:1-5-3. Amending of rules or Standards by Board

(a) These rules and regulations may, from time to time, be expanded, amended or repealed by the Board pursuant to the Oklahoma APA.

(b) Oklahoma's Water Quality Standards (Standards) are considered to be "rules" of the Board adopted through its "rulemaking" process under the APA, the special requirements in other applicable State statutes and the requirements of the federal Clean Water Act and U.S. Environmental Protection Agency regulations thereunder. The Board follows such requirements in amending or revising the Standards. The Standards include beneficial use designations for various waters of the state and criteria to protect such uses. In amending or revising beneficial use designations, in conjunction with other amendments or revisions or separately, the following shall also apply:

- (1) If the Board makes a preliminary determination that a previously adopted beneficial use designation for any waters of the state was based on inaccurate, incomplete or insufficient data, information, or studies, and that said designation should be modified, the Board shall, as soon as practical, propose a modification to the use designated.
 - (A) Notice of said proposed modification shall be given in accordance with the requirements of the APA and other applicable laws or regulations.
 - (B) Data, information or studies to support said modification shall be made available for public review at least thirty (30) days prior to the public hearing.
 - (C) Written and oral comments and additional data, information or studies in support of or in opposition to the proposed modification may be presented by any person at the public hearing.
- (2) The Board may adopt the proposed modification if:
 - (A) The data, information or studies upon which the proposed modification is based was not available to the Board when it designated the beneficial use, or
 - (B) The data, information or studies upon which the proposed modification is based was not considered by the Board when it designated the beneficial use, and
 - (C) The proposed modification will not lower the water quality.
- (3) If the Board adopts the proposed modification, a summary of the reasons therefor shall be made part of the Board's records regarding such modification.

785:1-5-4. Petition requesting promulgation, amendment or repeal of a rule or Standard by others

(a) Any interested person may petition the Board requesting the promulgation, amendment, or repeal of a Board rule or water quality standard, provided, in submitting such petition, the following requirements shall apply:

(1) All petitions must be submitted in typewritten or legible printed form.

(2) All petitions must clearly identify the person submitting such petition and must include a statement reflecting the interest of the person in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person."

(3) All petitions must clearly state that the petition is for promulgation of a new rule or standard, for the amendment of an existing rule or standard or for the repeal of an existing rule or standard, or, separately, any combination of the above. In the instance of a requested amendment to an existing rule(s) or standard(s), a complete text of the existing rule(s) or standard(s) requested for amendment must be submitted reflecting the existing rule(s) or standard(s) language requested for change or deletion and/or such language as may be added. In the instance of a requested repeal of any rule(s) or standard(s), the petition must state the complete rule(s) or standard(s) requested for repeal.

(4) All petitions must clearly and separately state the submitted basis, reason, ground or justification for each requested rule promulgation, amendment or repeal. Any and all supporting documents, records, statistics, studies or information must be submitted with the petition, and, the legal authority for such requested action, where deemed necessary or appropriate, shall be submitted by the petitioning person unless otherwise ordered by the hearing examiner.

(5) All petitions must be duly signed and endorsed by all petitioning persons, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

(b) All petitions requesting the promulgation, amendment or repeal of any Board rule or standard, as herein provided, shall be referred to a hearing examiner for review and consideration. The hearing examiner shall initially determine if the submitted petition is in adequate and proper form pursuant to (a) of this Section. If determined to be in proper and adequate form, the hearing examiner shall thereupon make a recommendation whether the petition should be granted or denied, in whole or in part. Before making any such recommendation, the requesting person shall be allowed reasonable opportunity to submit to the hearing examiner argument, written and/or oral, in support of the petition. In making its recommendation on the petition, the hearing examiner may, in his or her discretion, refer the request to staff for additional review, consideration and comment prior to a recommendation thereon by the hearing examiner.

(c) The written recommendations of the hearing examiner shall be submitted to the Board for its consideration. No further argument on the petition shall be allowed unless otherwise determined by the Board.

(d) Should any petition be granted by the Board, in whole or in part, the petition as granted shall separately or in conjunction with other amendments proposed by the Board become subject of proceedings under the APA and other applicable laws for the adoption of such rule or standard

promulgation, amendment or repeal. A determination by the Board to grant a petition shall not be binding on the Board in considering the adoption of the rule or standard subject of the petition.

785:1-5-5. Petition for declaratory rulings

Any interested party may petition the Board requesting a declaratory ruling as to the applicability of any Board rule or Board Order.

785:1-5-6. Requirements for declaratory ruling petitions

Petitions for declaratory rulings shall be subject to the following requirements:

- (1) All petitions must be submitted in writing and must contain a complete statement of the nature of the interest of the person submitting the request; a complete statement of the basis for the request and reasons why a Board declaratory ruling is necessary or appropriate; a concise statement of the question presented for declaratory ruling; and, a summary of the position or opinion of the requesting party with respect to the question presented.
- (2) No declaratory rulings shall be utilized or made in an attempt to resolve disputed issues or questions of fact.
- (3) No declaratory rulings shall be made where the question presented involves a matter subject of pending applications, administrative hearings or litigation or generally scheduled for determination by means other than through a declaratory ruling by the Board.
- (4) All petitions for declaratory ruling shall be acted upon by the Board. It shall, however, be the responsibility of Board staff to initially review and consider all petitions requesting a declaratory ruling and to prepare and make a recommendation to the Board regarding final Board action and disposition on such petitions. The petitioning party shall be given notification of the recommended action and disposition prior to the matter of the petition being presented to the Board for its action and at the Board meeting, the petitioning party may appear and be heard concerning the action and disposition recommended.

SUBCHAPTER 7. BOARD RECORDS

Section

- 785:1-7-1. Records shall be public
785:1-7-2. Copies and certification of Board records

785:1-7-1. Records shall be public

- (a) All official files and records of the Board, except for files and records required or allowed by law or regulation to be confidential or privileged, shall be public records open to inspection under reasonable circumstances at any reasonable time during business hours by any person. No records shall be taken from the Board's office.
- (b) Any information or materials filed with the Board and not per se confidential or privileged by law or regulation but with respect to which confidentiality or privilege is to be claimed by the person filing same must be asserted and substantiated as being confidential or privileged at the

time of filing. Absent such assertion and substantiation, such information or materials shall be recognized and treated by the Board as being public.

785:1-7-2. Copies and certification of Board records

(a) Copies of official records of the Board may be made and certified by the Executive Director or Assistant Director of the Board or their designees. Uncertified copies of Board records may be made by any Board employee. The expense of document search, copying and/or certifying records shall be borne by the party requesting same in accordance with the fee schedule contained in Chapter 5 herein. Certified copies of any records or papers on file in the office of the Board shall be evidence equally with the originals thereof and when introduced as evidence shall have the same validity as the originals.

(b) The Board shall furnish copies of records as promptly as practicable upon request received in the office of the Board where the subject records are kept.

SUBCHAPTER 9. TIME PERIODS FOR PERMIT AND LICENSE ISSUANCE AND DENIAL

Section

- 785:1-9-1. Time period for permit and license issuance or denial
- 785:1-9-2. Permit and license applications subject to rule
- 785:1-9-3. Extension of time period allowed, written reasons
- 785:1-9-4. Resolve individual proceeding in accordance with rules and statutes

785:1-9-1. Time period for permit and license issuance or denial

Any permit, license and certification for an activity regulated by the Board, as described in 785:1-9-2, shall be issued or denied within six (6) months after the Board receives an application or notice of completion therefor which is deemed complete by the Board, unless the time is extended as provided in 785:1-9-3.

785:1-9-2. Permit and license applications subject to rule

Permit and license applications subject to this subchapter include the following:

- (1) Application for permits and licenses considered under Chapter 15 on Weather Modification;
- (2) Applications for permits to appropriate stream water and notices of completion of works considered under Chapter 20 on Appropriation of Stream Water;
- (3) Applications for approval of plans and specifications to construct, enlarge, alter, remove or repair a dam and notices of completion of works considered under Chapter 25 on Dams and Reservoirs;
- (4) Applications to use groundwater considered under Chapter 30 on Taking and Use of Groundwater;
- (5) Applications for licenses and certifications considered under Chapter 35 on Well Driller and Pump Installer Licensing;
- (6) Applications for development permits considered under Chapter 55 on Development on State Owned or Operated Property Within Floodplain;
- (7) Applications for renewal or modification of permits, licenses or certifications listed in paragraphs (1) through (6) of this section.

785:1-9-3. Extension of time period allowed, written reasons

(a) The time period set forth in 785:1-9-1 shall only be extended by agreement with the applicant for the license or permit or *if circumstances beyond the Board's control prevent the Board from meeting* [27A: 11] the time period set forth in 785:1-9-1.

(b) *If the Board fails to issue or deny a permit or license within the required time period set forth in 785:1-9-1 because of circumstances outside of the Board's control, the Board upon request shall state in writing the reasons such licensing or permitting is not ready for issuance or denial* [27A:11].

785:1-9-4. Resolve individual proceeding in accordance with rules and statutes

Any...matter before the Board requiring an individual proceeding shall be resolved in accordance with this Title of the rules and any applicable statutes [27A:11].

SUBCHAPTER 11. COMPLAINTS AND COMPLAINT RESOLUTION**SECTION**

785:1-11-1. Complaint evaluation and resolution procedures

785:1-11-1. Complaint evaluation and resolution procedures

(a) Upon receipt, each complaint will be logged in by Division and on a central filing system established at the Board. The Chief or Chief's designee of the respective Division shall be immediately advised of the complaint. If the concern presented clearly involves the jurisdictional area of responsibility of another state environmental agency, the Board's staff receiving the written or verbal concern may immediately provide the person expressing the concern contact information for the other state environmental agency, and no further action on the concern will be required by Board's staff.

(b) The Division Chief or Chief's designee shall determine the appropriate courses of action to further investigate the facts underlying the complaint. Such actions may include an on-site field investigation, telephone calls, written correspondence, etc. After gathering such facts as necessary and appropriate, the Division Chief or Chief's designee shall review pertinent law and rules, in consultation with the Office of General Counsel, the Assistant Director and/or Executive Director, if necessary, to prepare a response the Board may be able to pursue to resolve the complaint or whether the matter should be referred to another environmental regulatory agency.

(c) The Board will notify the complainant by telephone or in writing of the status of the complaint within two (2) working days of receipt of the complaint. A complaint status report form shall also be prepared and forwarded to the Oklahoma Conservation Commission.

(d) During the pendency of the fact-finding investigation or of the preparation of the response for action or remedies, the Board shall continue to update the complainant of the status of the complaint at least once a month or such other frequency as determined necessary.

(e) After completion of the fact-finding investigation and of the preparation of the recommended response, a written report, approved by the Division Chief or the Chief's designee and if necessary by the Assistant Director or Executive Director, of the same shall be forwarded to the complainant. If the recommended action or remedy includes the initiation of litigation, the

matter shall be presented to the Board for consideration of staff's recommendation unless the Assistant Director or Executive Director determines that an emergency exists necessitating the initiation of litigation without prior approval of the Board. In such case, the matter will be presented to the Board at its next meeting for ratification of the action taken.

(f) The Board shall mail a written report of the resolution of the complaint to the complainant within seven (7) working days. A complaint status report shall also be prepared and forwarded to the Oklahoma Conservation Commission.

SUBCHAPTER 13. DROUGHT RESPONSES

Section

- 785:1-13-1. Purpose
- 785:1-13-2. Responses to drought
- 785:1-13-3. Authority of Drought Committee in drought conditions

785:1-13-1. Purpose

The purpose of this subchapter is to set forth the intent and policies of the Board in responding to drought conditions declared to exist by the Governor.

785:1-13-2. Responses to drought

When the Governor declares, through proclamation, declaration, executive order or otherwise, that a drought emergency or disaster exists, the Board may respond to the drought condition, including but not limited to the following ways:

- (1) Expedite the processing of applications for financial assistance for water resource projects that are intended to relieve drought conditions and specifically waive particular rules as necessary;
- (2) Expedite the processing of applications for permits to use water;
- (3) Coordinate with other state and federal agencies, including but not limited to the United States Army Corps of Engineers and the Oklahoma Department of Civil Emergency Management, to gather and disseminate information related to raw and treated water availability and drought conditions;
- (4) Establish a Drought Relief Grant Account of the Water Resources Fund and direct funds received from state and federal agencies for drought relief into that account; and
- (5) Utilize emergency drought funding from federal agencies and other sources for projects to relieve drought conditions. Except as specified below, applications for such funding may be submitted by eligible entities as defined by law, including but not limited to counties, municipalities and rural water districts. Applicants for drought relief funding shall provide at least fifteen percent (15%) match funding. Additional consideration shall be given to projects that will benefit the most people for the least amount of funds.

Priorities will be given for project purposes in the following order:

- (A) Human consumption, including but not limited to projects for public water supply and domestic use by extending public water supply intake structures into reservoir areas to reach water, acquiring tanks, tankers, temporary lines, pumps and appurtenant equipment by purchase or lease, or providing funding for eligible entities to acquire the same to transport water;

- (B) Agriculture and farm supply, including but not limited to projects to provide water for domestic farm animals by pasture taps from public water supply sources and for construction of public water loading structures;
- (C) Projects to increase storage capacity in reservoirs, farm ponds and gully plugs from applications submitted by Boards of County Commissioners; and
- (D) Fire protection.

785:1-13-3. Authority of Drought Committee in drought conditions

- (a) Scope. This section shall apply during drought emergencies or disasters declared to exist by the Governor.
- (b) Use of funds; agreements. The Board or the Drought Committee of the Board may approve use of funding that may be available for drought relief projects to address water needs for human consumption and to enter agreements with other federal and state agencies and other entities as necessary for such purposes. Reports of all such agreements entered into by the Drought Committee shall be presented to the full Board. In addition to funds that may be available in the Drought Relief Grant Account, the Board or its Drought Committee may approve use of up to \$300,000.00 during any single drought emergency or disaster from the Emergency Grant Account of the Water Resources Fund established by Section 1085.39 of Title 82 of the Oklahoma Statutes to fund drought relief projects of eligible entities to address water needs for human consumption.