

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 5
Proposed for Adoption During 2024

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") 785:5 by amending OAC 785:5-1-9 to reflect increased cost of labor to review dam safety construction applications. 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.

Persons or entities that submit an application for construction, repair, or modification of a dam and those with existing dams will be affected by the proposed rule amendments.

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

The State's taxpayers will benefit through a reduction of general appropriations required for the administration of dam construction applications and ongoing oversight of dam hazard potential. All citizens of the State and dam owners will benefit from a more timely review of applications to rehabilitate dam structures to ensure that those dams are safe.

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.

The probable economic impacts should be relatively minor, based on the proposed amount of increase in OAC Section 785:5-1-9. The fees for an *Application to Construct, Enlarge, or Modify a Dam and/or Spillway* (hereinafter "application") are based on the estimated cost of construction as reported in the application. The application fee for dams for which construction cost is less than \$200,000, the fee would be \$1,000; fees for applications with a cost between \$200,000 and \$12,000,000 would be 0.5% of estimated cost, not to exceed \$6,000; and applications with an estimated cost of \$12,000,000 and greater, would have a fee of five hundredths of a percent (0.05%) of estimated cost, with no maximum fee applied.

To estimate the financial impact of these fee changes, the difference in current and proposed fees were examined for all dam construction applications that were received by the Board

between 1/1/2022 and 9/30/2023. For the applications examined with construction cost less than \$200,000, the \$1,000 fee was on average 1.3% of total construction cost. Of all applications examined, 42% fell into this category. For dams costing between \$200,000 to \$1 million, the application fee is unchanged by this amendment; 38% of the applications examined would not have been affected. For dams costing between \$1 and \$12 million, the proposed fee would cost up to an additional \$1,000 and would be 0.5% or less of the reported construction cost; 12% of applications received would have been affected by this change with the average fee being 0.25% of cost. For dam construction estimates between \$12 and \$20 million, the proposed fee would cost an additional \$1,000 to \$5,000; of the applications examined 8% fall into this category with the fee proposed to be set at 0.05% of construction cost.

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.

With respect to the fee increases in the proposed changes to OAC Section 785:5-1-9, no extraordinary costs to the agency are anticipated. No other state agency will be required to assist in implementing or enforcing the fees. Increase in revenues from proposed dam safety application fees are expected to be approximately \$15,000 annually.

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 Section 785:5-1-9. In general, political subdivisions are not charged with the implementation or enforcement of the proposed rules; therefore, no general economic impact is anticipated for these entities.

However, political subdivisions that own or maintain would be required to submit fees under the proposed changes to OAC Section 785:5-1-9. State statutes provide that other state agencies or state institutions are exempt from fee requirements.

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 fees in OAC Section 785:5-1-9 are not expected to have an adverse economic impact on small business. Dam safety fees are unlikely to have an adverse economic effect on small business within the meaning of the Oklahoma Small Business Regulatory Flexibility Act.

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.

Compliance with proposed dam safety fee schedules under OAC Section 785:5-1-9 pose a minimal cost to applicants and dam owners. Expected revenues will allow the OWRB to administer statutory requirements at a reduced cost to all taxpayers, putting a greater percentage of the cost on the applicant. There are no less costly, nonregulatory, or less intrusive methods for achieving the purpose of the proposed changes.

The proposed fees to OAC Section 785:5-1-9 Dam Safety application fees are calculated to offset the use of agency resources associated with administering these activities so as to not require additional appropriated funds from the legislature.

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.

With respect to the proposed changes to OAC Section 785:5-1-9, to the extent that inadequate administration of dam safety may cause an increased risk to downstream landowner's health and safety should a dam fail due to lack of dam construction oversight.

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

As indicated in item I above, if the proposed changes in OAC Section 785:5-1-9 are not implemented the dam safety program will not be able to properly review the construction documents or hazard verifications and the potential of adverse consequences to the public health, safety, and environment are possible.

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 15, 2023, by Yohanes Sugeng, Chief, Engineering and Planning Division, Oklahoma Water Resources Board.