

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

Oregon Water Resources Department		690
Agency and Division Name	Administrative Rules	
Chapter Number		
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FILING CAPTION

Amend rules to implement Or Laws 2021, ch610; Or Laws 2019, ch142; Or Laws 2019, ch626; and Or Laws 2022, ch52; restore rule inadvertently deleted; internal rule constituency.

Last Date and Time for Public Comment: [May 3, 2023]

April 27, 2023	3:00-5:00 PM	NMOB 124, 725 Summer St. NE, Salem, OR 97301
Laura Hartt		

Hearing Date	Time	Address
Hearings Officer		

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

ADOPT:

690-215-0200

AMEND:

690-190-0005; 690-190-0010; 690-190-0100; 690-190-0200; 690-200-0021; 690-200-0050; 690-200 (Figure 200-1); 690-200 (Figure 200-7); 690-205-0005; 690-205-0010; 690-205-0020; 690-205-0025; 690-205-0045; 690-205-0175; 690-205-0200; 690-205-0205; 690-205-0210; 690-210-0150; 690-225 (Division Title); 690-225 (Table 225-1); 690-225 (Table 225-2); 690-225-0020; 690-225-0030; 690-225-0110; 690-240 (Table 240-3); 690-240-0006; 690-240-0010; 690-240-0026; ~~690-240-0040~~; 690-240-0060; 690-240-0065; 690-240-0070; 690-240-0210; 690-240-0340; 690-240-0375; 690-240-0385; OAR 690-240-0395; 690-240-0580; 690-240-0640; 690-260-0030; 690-260-0040; 690-260-0060

REPEAL:

N/A

RULE SUMMARY:

Include a summary for each rule included in this filing.

AMEND: OAR 690-190-0005(2)

Rule Summary: Amends rule applicability to conform with statute (Or Laws 2021, ch 610) by clarifying that the exempt use groundwater recording requirements apply to well constructors as well as to landowners.

AMEND: OAR 690-190-0010(8)

Rule Summary: Amends rule definition to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626) by defining who is considered a water supply well constructor for purposes of these rules.

AMEND: OAR 690-190-0100

Rule Summary: Amends rule to conform with statute (Or Laws 2021, ch 610) by adding a recording requirement for well constructors to submit an exempt use map and fee within 30 days of well completion; clarifies map requirements.

AMEND: OAR 690-190-0200

Rule Summary: Amends rule to conform with statute (Or Laws 2021, ch 610) by adding requirements for OWRD to notify well constructors of exempt use requirements that have not been met within 120 days; clarifies how enforcement proceedings will occur for exempt use map and fee violations; clarifies violation magnitude.

AMEND: OAR 690-200-0021(2)

Rule Summary: Amends rule for clarity consistency with start card and well report data requirements by adding a requirement for latitude and longitude for special standards, along with a requirement for information about original well construction for alteration or abandonment work to allow OWRD staff to make informed decisions concerning requests for deviation from minimum well construction standards.

AMEND: OAR 690-200-0050(67), (68), (112), & (113)

Rule Summary: Amends rule to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626) by modifying definitions associated with licensed well constructors.

AMEND: Figure 200-1

Rule Summary: Amends figure by replacing outdated figure.

AMEND: Figure 200-7

Rule Summary: Amends figures by replacing figure for clarity.

AMEND: OAR 690-205-0005

Rule Summary: Amends rule grammatically language for clarity.

AMEND: OAR 690-205-0010(1)

Rule Summary: Amends rule to conform with statute (Or Laws 2021, ch 610) regarding water supply well constructor license examination requirements and adds clarity for license applicants.

AMEND: OAR 690-205-0020

Rule Summary: Amends rule name to add temporary authorization for water supply well construction to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626); amends rule requirements regarding water supply well construction licensing to conform with statute (Or Laws 2021, ch 610); amends rule to add temporary authorization for water supply well construction licensing requirements to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626); amend rules grammatically.

AMEND: OAR 690-205-0025

Rule Summary: Amends rule grammatically language for clarity.

AMEND: OAR 690-205-0045

Rule Summary: Amends rule by removing outdated rule implementation date.

AMEND: OAR 690-205-0175(4)

Rule Summary: Amends rule by adding signature requirement for clarity.

AMEND: OAR 690-205-0200

Rule Summary: Amends rule regarding information required on start cards for water supply well construction to conform with statute (Or Laws 2021, ch 610).

AMEND: OAR 690-205-0205

Rule Summary: Amends rule regarding start card reporting requirements for water supply well construction to conform with statute (Or Laws 2021, ch 610).

AMEND: OAR 690-205-0210

Rule Summary: Amends rule regarding water supply well reporting requirements to conform with statute (Or Laws 2021, ch 610).

AMEND: OAR 690-210-0150

Rule Summary: Amends rule regarding well sealing requirements for clarity.

ADOPT: OAR 690-215-0200

Rule Summary: Restores rule deleted due to clerical error inadvertently. No changes have been made to the original language.

AMEND: OAR 690-225

Rule Summary: Amends Division Title from “ENFORCEMENT (FIGURE 225-1)” to “ENFORCEMENT: Table 225-1.”

AMEND: Table 225-1

Rule Summary: Amends table so that it is consistent with requirements in ORS 537.762, ORS 537.545, and with proposed rule changes in OAR 690-190, 690-205, and 690-225.

AMEND: Table 225-2

Rule Summary: Updates existing table with a newer version for clarity. No data changes have been made to the table.

AMEND: OAR 690-225-0020(1)

Rule Summary: Amends rule to capture full scope of work performed by licensed well constructors and for consistency with other rule divisions governing well construction and with ORS 537.

AMEND: OAR 690-225-0030(1)

Rule Summary: Amends rule to capture full scope of work performed by licensed well constructors and for consistency with other rule divisions governing well construction and with ORS 537

AMEND: OAR 690-225-0110

Rule Summary: Amends rule by increasing lowest civil penalty amounts for both minor violations and major violations to be consistent with penalties for other than well constructors, as authorized by ORS 537.9922. Also adding civil penalties for well constructors for violations of ORS 537.545(5), as authorized by ORS 536.900.

AMEND: Table 240-3

Rule Summary: Amends table so that it is consistent with requirements in ORS 537.762 and with proposed rule changes in OAR 690-240.

AMEND: OAR 690-240-0006(2)

Rule Summary: Amends rule by adding information requirements for monitoring well special standard requests. This information is required in order to make informed decisions in regard to proper monitoring well abandonment processes and procedures as described in OAR 690-240-0510.

AMEND: OAR 690-240-0010(49), (50), (51), (85), and (86)

Rule Summary: Amends rule to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626) by modifying well constructor license definitions; updates definition of “monitoring well drilling machine” for consistency with definitions in water supply well rules.

AMEND: OAR 690-240-0026

Rule Summary: Deletes reference to Appendix 240-1, which was removed during a prior rulemaking and no longer exists.

~~AMEND: OAR 690-240-0040(1)~~

~~Rule Summary: Amends rule by removing 18 foot minimum depth requirement for closed loop ground source heat pump borings for consistency with other well construction rules.—~~

AMEND: OAR 690-240-0060(2)

Rule Summary: Amends rule so that it correctly identifies information that will be provided on well constructors license examination, consistent with ORS 537.750.

AMEND: OAR 690-240-0065

Rule Summary: Amends rule name to add temporary authorization for monitoring well construction licensing to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626); amends rule to conform with statute (Or Laws 2019, ch 142; Or Laws 2019, ch 626) by adding temporary licensing requirements for monitoring well construction; modifies experience requirement for clarity.

AMEND: OAR 690-240-0070

Rule Summary: Amends rule grammatically.

AMEND: OAR 690-240-0210

Rule Summary: Amends rule by removing outdated rule implementation date.

AMEND: OAR 690-240-0340

Rule Summary: Amends rule by adding signature requirement for clarity.

AMEND: OAR 690-240-0375

Rule Summary: Amends rule regarding by adding information required on start cards for monitoring well construction requirements to conform with statute (Or Laws 2021, ch 610).

AMEND: OAR 690-240-0385

Rule Summary: Amends rule regarding by adding information and data start card reporting requirements for monitoring well construction to conform with statute (Or Laws 2021, ch 610).

AMEND: OAR 690-240-0395

Rule Summary: Amends rule regarding monitoring well reporting by adding information and data requirements to conform with statute (Or Laws 2021, ch 610); amends ~~Modifies certain rule language for clarity.~~

AMEND: OAR 690-240-0580

Rule Summary: Amends rule to capture full scope of work performed by licensed well constructors and for consistency with other rule divisions governing well construction and with ORS 537.

AMEND: OAR 690-240-0640

Rule Summary: Amends rule by increasing lowest civil penalty amounts for both minor violations and major violations to be consistent with penalties for other than well constructors, as authorized by ORS 537.92~~92~~.

AMEND: OAR 690-260-0030

Rule Summary: Amends rule regarding notice of violation requirements to conform with statute (Or Laws 2022, ch 52).

AMEND: OAR 690-260-0040(1)

Rule Summary: Amends rule regarding Class III violation classification to conform with statute (Or Laws 2021, ch 610).

AMEND: OAR 690-260-0060(3)

Rule Summary: Amends rule regarding notice of violation requirements to conform with statute (Or Laws 2022, ch 52).

See attached for full rule text.

STATEMENT OF NEED AND FISCAL IMPACT.

Need for Rule(s):

With the passage of Oregon Laws 2021, chapter 610, and associated amendments to Oregon Revised Statute (ORS) 536.090, 536.750, 536.900, 537.545, and 537.747 to 537.795, the Oregon Water Resources Department (OWRD) has determined rulemaking is required to align current Oregon Administrative Rules (OARs) with Oregon statute.

With the passage of Oregon Laws 2019, chapter 142, sections 1-3 and Oregon Laws 2019, chapter 626, sections 1 and 2, OWRD has determined rulemaking is required to align current OARs with Oregon law.

With the passage of Oregon Laws 2022, chapter 52, creating new provisions, amending ORS 536.900 and 537.990, and prescribing an effective date, OWRD has determined rulemaking is required to align current OARs with Oregon law.

With the inadvertent deletion of OAR 690-215-0200, OWRD has determined rulemaking is required to restore the rule to align current OARs with Oregon statute. OWRD also has determined additional rulemaking is needed for grammatical and clarification purposes.

The rule divisions requiring amendment are the following: OAR 690-190 relating to Exempt Groundwater Use Recording Requirements; OAR 690-200 relating to Water Supply Well Construction Standards (Introduction, General Standards and Definitions); OAR 690-205 relating to Water Supply Well Construction (Standards; Licensing); OAR 690-210 relating to Well Construction Standards; OAR 690-215 relating to Maintenance, Repair and Deepening of Water Supply Wells; OAR 690-225 relating to Enforcement; OAR 690-240 relating to Construction, Maintenance, Alteration, Conversion and Abandonment of Monitoring Wells, Geotechnical Holes and Other Holes in Oregon; and OAR 690-260 relating to Civil Penalty Assessment for Other Than Well Constructors.

The proposed amendments to the rules add new well construction licensing requirements, increase start card fees, require the e-filing of documents, move the exempt use map and fee requirements from the landowner to the driller, and require additional notice and information on start cards and well reports. The proposed amendments will establish two-year reciprocity for spouses of active-duty military members who are well drillers in good standing in another state. The proposed amendments will increase civil penalties nominally for the first time since 1986 and align ~~the amount~~ with existing civil penalties for related Class III minor violations. The proposed amendments also extend the timeframe for issuing Notices of Violation from 5 calendar days to 10 business days after the violation is discovered.

This rulemaking will ensure that OWRD's rules are consistent with existing law. This rulemaking also will ensure consistent application of the law and provide well drillers with timely assurance they are meeting current well construction standards.

Documents Relied Upon, and where they are available:

[Or Laws 2022, ch 52.](#)

[Or Laws 2021, ch 610.](#)

[Or Laws 2019, ch 142.](#)

[Or Laws 2019, ch 626.](#)

Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in this state:

OWRD held a Rules Advisory Committee with community input that included representatives from Oregon's Tribal communities, environmental and social justice organizations, community colleges, and small businesses. During this engagement OWRD received no feedback demonstrating a negative impact to racial equity throughout the State. The rulemaking will modernize the well construction program by clarifying drilling requirements and enhancing the electronic filing system. These features should provide greater certainty, improve access to information, increase department responsiveness, and streamline compliance with licensing and fee requirements, benefitting low-income areas.

Fiscal and Economic Impact:

As discussed below, the economic and fiscal impacts associated with this rulemaking stem primarily from implementation of Or Laws 2021, ch 610, and are a not a result of the rulemaking per se. The exception is the increase in civil penalties, which is authorized by ORS 537.992.

Recording Fees: Prior to the passage of Or Laws 2021, ch 610, the landowner, or owner of land on which a well is drilled, was responsible for submitting the exempt use map and recording fee (\$300). Or Laws 2021, ch 610 amends ORS 537.545 to shift responsibility for submission of the exempt use map and recording fee to the water supply well constructor licensed under ORS 537.747 or to the landowner if the landowner is permitted under ORS 537.753(4) to construct a well. The proposed changes to the Division 190 rules implement the new statutory requirements. Under these new requirements, a water supply well constructor may incur additional costs associated with the preparation and submission of the exempt use map and recording fee. Because the landowner was previously responsible for paying these fees, and because it is anticipated that water supply well constructors will pass the exempt use map and recording fee the landowner as part of the cost of services, the fiscal impact to the landowner should remain relatively unchanged relative to fiscal impacts predating Or Laws 2021, ch 610. However, water supply well constructors may incur additional costs associated with administration of collecting and submitting the exempt use registration fee. There also may be tax implications associated with increased gross revenue because of collecting the fee from landowners.

Prior to Or Laws 2021, ch 610, one ODWR staff member was dedicated to collecting the exempt use fee and map from landowners. With the amended Division 190 rules, ODWR staff can shift focus away from following up with landowners to other duties that better serve well owners and drillers. The improved OWRD efficiency should result in intangible economic benefits to those awaiting approval to proceed with well construction activities.

Licensing Proficiency Requirements: With passage of Or Laws 2021, ch 610, applicants for a monitoring well or water supply well constructor's license must provide OWRD with evidence of welding proficiency to obtain a license. Welding proficiency may be demonstrated by providing OWRD with (a) a copy of an American Welding Society D1.1 structural welding certificate for steel with a test in the 2G horizontal position; (b) a copy of an official transcript or other official written documentation from a community college that demonstrates a passing grade in an arc welding training course; (c) official written documentation from a university, welding school, trade school, technical institute, or nationally recognized welding organization that demonstrates that the applicant has received a passing grade in an arc welding training course or has otherwise completed professional welding training; or (d) written documentation from a certified welding instructor or inspector, providing proof that the applicant has successfully completed arc welding tests to demonstrate proficiency at welding steel casing joints as required in OAR 690-210-0200.

~~completing an arc welding training course from a community college, receiving a professional welding certification, passing a welding proficiency test, or otherwise completing professional welding training.~~

The estimated cost of demonstrating proficiency is as follows:

- approximately \$250 for AWS D1.1 testing and certification;
- approximately \$300 to \$2,400 for successful completion of an arc welding course at a community college.
This range is based on a survey of 17 Oregon community colleges offering the course and includes the cost

of tuition for the arc welding course, tuition for any prerequisite courses, lab and student fees, books, tools, and equipment, where those costs were provided; or

- approximately \$400 to \$1,300 for arc welding instruction and testing through a private party or institution. This range is derived from discussions with instructors from Albany Weld School, Baker Technical Institute, and R&S Welding Mentors. These discussions revealed that the ultimate cost will vary, because demonstration of proficiency may require from one to eight hours of evaluation, training, and certification, depending on the applicant's prior welding experience. Also, the license applicant may incur additional fees if tools and other equipment are not provided by the instructor. In determining the cost of compliance, OWRD conferred with Klamath Community College, private trainers as well as Baker Technical Institute, Central Oregon Community College, and High Desert Education Service District. Based on discussions, OWRD has determined that the cost of compliance with the welding proficiency requirement will be between \$400-\$1,000. These discussions also revealed that the ultimate cost is highly variable because demonstration of proficiency may require from . . . Also, the license applicant may incur additional fees if tools and other equipment are not provided by the instructor, and is dependent on the cost of the certifier, educator, or inspector performing the confirming the welding proficiency training.

Additional costs for employers may arise if the license applicant's employer is paying for the applicant's time while obtaining welding proficiency.

Civil Penalties: ORS 536.900 authorizes OWRD to assess civil penalties for violations of ORS 537.545 relating to exempt use map and recording fee submissions. These violations can occur when either a well constructor fails to submit the exempt use map and recording fee, or when a landowner drilling their own well fails to submit the exempt use map and recording fee. Under the Division 190 rules, violation of the exempt use map and recording fee requirements are considered Class III Minor violations.

ORS 537.992 authorizes OWRD to impose penalties on well drillers for violations of ORS 537.747 to 537.795 and 537.992, capping penalties at \$1,000 for major violations and \$250 for minor violations. Currently, Division 225 and Division 240 rules impose a \$25 minimum civil penalty for Minor violations and a \$50 minimum civil penalty for Major violations on water supply and monitoring well drillers. These nominal amounts were set in 1986. However, Division 260 rules, which apply to landowners and other responsible parties, impose a \$50 minimum civil penalty for Class III Minor violations and a \$200 minimum civil penalty for Class III Major violations.

The rule amendment would raise the civil penalties in Divisions 225 and 240 for Minor violations to \$50 and Major violations to \$200 to align with the civil penalties in the existing Division 260 rules. Given inflation rates, this is still a nominal amount and not likely to increase fiscal impacts on violators appreciably.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The rules are likely to economically affect applicants applying for a water supply or monitoring well driller's license. There is no anticipated economic effect on OWRD, other state agencies, or units of local government.

(2)(a) Estimate the number and type of small businesses subject to the rule(s).

OWRD estimates there are approximately 100 water supply well constructors with drilling businesses in Oregon who may be responsible for submitting the exempt use map and recording fee because of the new submittal requirements. The number of landowners who are permitted under ORS 537.753(4) to construct a well but who may also be small businesses owners subject to the rules is unknown.

(2)(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s).

Because the water supply well constructor already is required to submit the well report, the additional administrative costs associated with preparing and submitting the exempt use map and recording fee should be minimal.

Additionally, if the water supply well constructor decides to pass along these added costs to the landowner as part of

the cost of services, the water supply well constructor may not incur any administrative cost to comply with these rules. If the exempt use map and recording fee are prepared and submitted by the landowner permitted under ORS 537.753(4) to construct a well, the administrative costs will be consistent with the current status quo and will not result in additional fiscal impact to the landowner.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The estimated cost is minimal; the rules do not require small businesses to obtain professional services, equipment, supplies, labor, or other administrative abilities to comply with the exempt use map and fee requirements. ODWR's current E-File system has been modified to allow the creation of the required map and allow the registration fee to be electronically submitted at the same time as filing the well report. If the well driller chooses to submit the well report on paper, the exempt use registration map and fee just need to be included. The only increase in cost would be the time associated with mapping the location of the new well on a tax assessor map and writing the check to be included with the well report.

Describe how small businesses were involved in the development of these rule(s)?

The Rules Advisory Committee included members representing small businesses most likely to be affected by this rulemaking, including drillers, pump installers, farmers, and consultants.

Was an Administrative Rule Advisory Committee consulted? Yes or No? Yes