



# Five Year Rule Review 2025

## The purpose of the review

[ORS 183.405](#) of the Oregon Administrative Procedures Act requires that agencies review newly adopted rules within five years after adoption. This document conducts the 2025 five year review that looks back at the rules adopted in 2020.

## Legal requirements

The statute requires agencies to review new rules to determine whether:

- The rule had the intended effect
- The agency over- or underestimated the rule's anticipated fiscal impact
- Subsequent changes in the law required the agency to amend or repeal the rule
- There is a continued need for the rule

Agencies are only required to use available information to conduct this review.

If the agency appointed an advisory committee in developing the rule, the agency must provide the committee members a copy of the review.

## Exemptions

Rules are exempt from this review if they:

- Consist only of the repeal of or an amendment to an existing rule
- Are adopted to implement court orders or to settle civil proceedings
- Only adopt federal laws or rules by reference
- Implement legislatively approved fee changes
- Only correct omissions or errors

## Distribution of the review

OWRD's Agency Rules Coordinator:

- Provides a copy of this review to OWRD's Leadership Team
- Provides a copy of this review to rules advisory committee members
- Posts a copy of the review on OWRD's rulemaking website

- Preserves a copy of the review in OWRD's electronic rulemaking archives
- Submits a copy to the Oregon Secretary of State

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## Rules subject to this review

### Division 20 Dam Safety

**Adopted date:** June 24, 2020

**Rule numbers:** 690-020-0024, 690-020-0026, 690-020-0028, 690-020-0068, 690-020-0140, 690-020-0160, 690-020-0180, 690-020-0260, 690-020-0310, 690-020-0340, 690-020-0420, 690-020-0460, 690-020-0600

**Reviewer:** Danielle Gonzalez (Policy Section Manager), Margo Mashkovskaya (Rules Coordinator), Tony Janicek (State Engineer and Dam Safety Program Manager)

#### Rule Summary

This rulemaking adopted the following rules to OAR 690, division 20:

690-020-0024 Describes Department statutory authorities for regulation, intergovernmental coordination, accepting monies, limited actions on federal dams, and accepting reports.

690-020-0026 Describes annual Dam Safety Program fees.

690-020-0028, Describes preliminary plan submittal information for new dams or those pursuing dam heightening.

690-020-0068 Describes minimum elements needed in Operations and Maintenance manuals submitted with design information for new dams or those pursuing dam heightening, to allow Department review and approval.

690-020-0140 Provides the process the Water Resources Department will use to determine approval of Dam modification plans.

690-020-0160 Describes requirements for owner submittals and department reviews of plans to remove certain dams, including necessary documentation, supervision and inspection.

690-020-0180 Requirement of owners to Provide Contact and Transfer of Title Information.

690-020-0260 Describes Department's Dam inspection process, including requirement to provide an inspection document to the Dam owner.

690-020-0310: Requirement to Address Maintenance Actions Need for High or Significant Hazard Dams. Describes process for identification, communication and evaluation of Dam maintenance actions required by the Department, including possible imposition of civil penalties.

690-020-0340 Specifies process for determination of potentially unsafe and unsafe conditions at a Dam. Requires specific process for Department to issue proposed and final orders if the cooperative plan is not followed, or the Dam becomes unsafe.

690-020-0420 Describes Departments actions in an emergency at a Dam rated High or Significant Hazard.

690-020-0460 Implements provisions to notify Dam owners of potential non-compliance. Provides procedures for issuance of proposed final orders, hearings, and final orders

690-020-0600 Provides criteria for issuance of civil penalties as authorized by Statute.

### Was a Rules Advisory Committee used?

Yes. Members included Chris Bahner (West Consulting Engineers), Corbey Boatwright (Boatwright Engineering), Mary Ann Cooper (Oregon Farm Bureau), Tim Gross (City of Newport, Public Works Director), Gerry Heslin (Cornforth Consulting Engineers), Robert Klein (McMinnville Water and Light), Peggy Lynch (League of Women Voters), Jim McCarthy (WaterWatch of Oregon), Genice Rabe (Private Dam Owner), Tracy Rutten (League of Oregon Cities), April Snell (Oregon Water Resources Congress), Wayne Stinson (Douglas County Emergency Management).

### Did the rule achieve the intended effect?

Yes. The rules were established in response to legislation on dam safety modernization and regarding Emergency Action Plans for high-hazard dams, codified in ORS 540.443-491, and 540.995. The adopted rules ensure dams are designed and maintained to reduce the risk of failure and are more protective of human health.

### Did the agency over- or underestimate the rule's fiscal impact?

OWRD accurately anticipated the fiscal impact of the rules for state agencies, local governments, members of the public, and small businesses. However, the Department underestimated its own enforcement-related costs.

Existing dam safety rules, including those adopted in 2020, establish the Department's authority to enforce requirements for dams that pose a risk to life and property. When the fiscal impact analysis was prepared, the Department could not accurately project enforcement costs because those costs vary based on the scope of corrective actions and the size of individual dams. Enforcement activities began in 2021 under this authority, and the Department will continue to track and evaluate costs as implementation progresses.

**Do subsequent changes in the law require the agency to amend or repeal the rule?**

No subsequent changes in the law require the agency to amend or repeal the rules.

**Is there a continued need for the rule?**

Yes. The rules are necessary to maintain and implement the Department's Dam Safety program in a way that is protective of public safety and in accordance with the requirements of the departments granted legislative authority and maintains transparent expectations for Dam owners and operators.

## Division 522 Deschutes Basin Water Management

**Adopted date:** 05/22/2020

**Rule numbers:** OAR 690-522-0025, OAR 690-522-0060

**Reviewer:** Danielle Gonzalez (Policy Section Manager), Margo Mashkovskaya (Rules Coordinator), Sarah Henderson (Flow Restoration Coordinator)

### Summary

690-522-0025 Defines terms used in OAR chapter 690, division 522 including Department, Mitigation Credit, Mitigation Obligation, Mitigation project, Mitigation water.

OAR 690-522-0060 outlines a new process, which allows mitigation project owners to work through the Department to change mitigation water developed under a specific mitigation project into mitigation credits. Mitigation credits awarded under this process are assigned to the original mitigation obligation under an existing permit or certificate, after which the project owner may utilize other existing rules to re-assign and satisfy other mitigation obligations within the Deschutes Basin.

### Was a Rules Advisory Committee used?

Yes, members included Adam Sussman (Central Oregon Cities), Jake Obrist (City of La Pine), Regan Desmond (Clyde Snow, LLC), Bob Brunoe (Confederated Tribes of Warm Springs), Danette Faucera (Department of Fish and Wildlife), Leslie Clark (Deschutes Basin Board of Control), Gen Hubert (Deschutes River Conservancy), Kimberly Priestly (Water Watch of Oregon).

### Did the rule have the intended effect?

Pursuant to ORS 540.155, the Department must conduct a five-year review of the Deschutes Basin Groundwater Mitigation Program. The most recent review was completed in 2021 and is publicly available on the [program page](#). The review concluded that the program generally functions well and meets its key objectives. The five-year rule review and the five-year program review are separate processes that do not occur concurrently. A comprehensive evaluation of the rule's intended effects will take place during the next scheduled program review and publication in 2026. Until then, the Department relies on the 2021 findings, which indicate that the program is operating as intended.

### Did the agency over- or underestimate the rule's fiscal impact?

OWRD accurately anticipated the fiscal impact of the rules and has not had to make any adjustment.

### Do subsequent changes in the law require the agency to amend or repeal the rule?

No subsequent changes in the law require the agency to amend or repeal the rules.

### Is there a continued need for these rules?

Yes, these rules are used in conjunction with the Deschutes Basin Groundwater Mitigation

Rules in Division 505, and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules in Division 521. Division 522 clarifies how the Department counts new, reduced, cancelled and partially cancelled groundwater permits under the allocation cap and allows unused permanent mitigation credits to be reassigned. The rules also allow a mitigation project to provide direct mitigation for a specific groundwater application.