



Program Delegation Rulemaking Advisory Committee

Meeting Agenda

August 7, 2020 9:00 a.m.

Live audio-conference meeting

Audio streamed via the [Internet](#)

I. Call Meeting to Order

II. Public Comment

The division is taking extra precautions for public meetings given concerns regarding the Coronavirus/COVID-19, and is evaluating each meeting on a case by case basis. Committee members and appropriate staff will be connected by “GoToMeeting.” Because of these unusual circumstances, the division is taking steps to ensure an opportunity for written testimony and remote oral testimony for the public will occur. Send your written testimony or request to provide oral public testimony to Laura.L.Burns@oregon.gov as soon as possible. Requests to submit oral testimony for this meeting have a cutoff date of August 6, 2020, at noon. (*Additional instructions are at the end of the agenda*).

III. Review of Draft Rules

IV. Adjournment

For more information, please contact Policy and Technical Services manager Alana Cox at 503-373-7613 or alana.cox@oregon.gov

Temporary instruction for submitting public comment

- Please submit written testimony or request to make oral testimony no later than noon on August 6, 2020 by email to Laura.L.Burns@oregon.gov
- Include your name and the organization you represent (if any).
- List the agenda item to which your comments are related (if any).
- Please include all related material.
- Expect an email acknowledging that your testimony has been received and will be presented to the committee.
- If you do not receive confirmation of your testimony within one business day or by 8:30 a.m. on the date of the committee meeting, please resubmit your testimony.

**Agenda
Item
III.**

State of Oregon

Building Codes Division

August 7, 2020

To: Program Delegation Rulemaking Advisory Committee

From: Alana Cox, manager, Policy and Technical Services

Subject: Discussion of Draft Program Delegation Rules

Included in your packet for review are draft rules to address the legal issues identified by the Attorney General. To aid in facilitation of the discussion, the key components of the rules are listed below and broken into four general topic areas. Committee members will be asked whether they would like to speak on each of the four areas. Committee members and members of the public are also invited to submit written testimony.

After receiving feedback from the committee, the division will file notice with the Secretary of State and hold a public hearing, which will provide additional opportunities for feedback.

Topic 1- Building Official Employment

- Each municipality must directly employ a building official, or combine with other municipalities in the employment of a building official.
 - See OAR 918-020-0015(2), 918-020-0090(1)(m), 918-020-0095(1)(e)
- Municipalities may combine in the appointment of a single building official as long as they do not exceed three adjacent counties.
 - See OAR 918-020-0090(1)(n), 918-020-0095(1)(f)
- The appointed building official, alone or in combination with another directly employed person, must have:
 - A valid A-level structural inspector certification or A-level plans examiner certification issued by the division, and:
 - Five or more years of experience performing A-level structural inspections;
 - Five or more years of experience performing A-level structural plan reviews; or
 - A bachelor's or graduate degree in structural or civil engineering.
 - See OAR 918-020-0090(1)(m), 918-020-095(1)(e)

Topic 2- Conflicts of Interest and Third Party Requirements

- Municipalities may not pay contractors based on a percentage of permit or plan review fees.
 - *See OAR 918-020-0090(1)(o), 918-020-0095(1)(g)*
- Additional conflict of interest requirement for building officials, plan reviewers, and inspectors.
 - *See OAR 918-030-XXXX*
- Updated errors and omissions insurance requirements for inspection businesses.
 - *See OAR 918-090-0110(2)(h)*

Topic 3- Process

- In addition to certification, a building official must be registered to work for a municipality (or group of municipalities). The municipality and building official will submit a form to BCD to register the building official for the municipality, showing they meet necessary requirements. The registration will be renewed yearly with the annual data request form.
 - *See OAR 918-020-0015(2), 918-020-XXX1, 918-020-0090(1)(L)*
- All municipalities will apply for renewal of their programs by January 1, 2021, unless they request and receive an extension. Renewal will include initial building official registration.
 - *See OAR 918-020-XXX2*
- Municipalities will return to their four year renewal cycles based on their groupings (so for some municipalities, the initial renewal will last a year, others two years, etc. until everyone is back on four year cycles).
 - *See OAR 918-020-0180*

Topic 4- Fiscal Impact

Under this topic the division would like to specifically solicit feedback about the potential fiscal impact of these rules. The division would also like feedback on whether the draft rules will have a significant adverse fiscal impact on small businesses, and if so, what recommendations there are for mitigating those impacts. *See ORS 183.333(3), 183.540*

Program Delegation – Draft Rules
Draft for Rulemaking Advisory Committee

Adopt: 918-020-XXX1, 918-020-XXX2, 918-030-XXXX

Amend: 918-020-0015, 918-020-0090, 918-020-0095, 918-020-0105, 918-020-0180; 918-090-0110, 918-098-1015

Repeal: 918-020-0070, 918-020-0080

918-020-0015

Definitions

As used in OAR 918, division 20, terms are defined as follows unless context requires otherwise:

(1) “Building Official Registration” means an authorization granted by the division to allow an individual who holds a Building Official Certification pursuant to OAR 918-098-1025, and is employed and formally appointed as Building Official by a municipality authorized to administer and enforce a building program under ORS 455.148 or 455.150, to lawfully administer and enforce the building program for that municipality.

(2) “Directly Employed” means the person employed is subject to the provisions of ORS 316.162 to 316.221 and has completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

For the purpose of these rules, (3) "Full-service program" means a building inspection program that assumes administration and enforcement of all of the specialty code programs listed in ORS 455.148(1).

(4) “Reporting Period” means a four-year period during which each municipality administers and enforces a building inspection program.

Stat. Auth.: ORS 455.148 & 455.150

Stats. Implemented: ORS 455.148 & 455.150

Hist.: BCD 16-2002, f. & cert. ef. 7-1-02

OAR 918-020-XXX1 (new)

Building Official Registration

(1) To become registered as a building official for a municipality:

(a) The applicant must hold a valid and active Building Official Certification pursuant to OAR 918-098-1025;

(b) The applicant and an individual with hiring authority for the municipality must submit a completed form as prescribed by the division, and must include with the form evidence satisfactory to the division that:

(A) The applicant:

(i) Is directly employed by the municipality, and appointed as building official of that municipality;

or

(ii) Has a bona fide offer of direct employment by and appointment as building official for the municipality, effective upon completion of the registration; and

(B) The municipality has verified that the applicant, alone or in combination with another individual directly employed by the municipality’s building department, meets the requirements set forth in OAR 918-020-0190(1)(m).

(2) The registration pursuant to section (1) of this rule ceases to be valid if:

(a) The registrant no longer holds a valid Building Official Certification;

(b) The registrant is no longer the directly employed and appointed building official for the municipality; or

(c) The registrant, alone or in combination with a directly employed employee of the municipality, no longer qualifies to be the building official under paragraph (1)(b)(B) of this rule.

(3) To become registered as a building official for more than one municipality:

(a) The applicant must hold a valid, active Building Official Certification pursuant to OAR 918-098-1025;

(b) The applicant must hold a valid, active Building Official Registration pursuant to sections (1) and (2) of this rule; and

(c) The applicant and an individual or public body with appointing authority for each additional municipality must provide the division with:

(A) A copy of a fully executed intergovernmental agreement between the employer municipality from sections (1) and (2) of this rule and each additional municipality, agreeing to share the appointment and services of the applicant as building official;

(B) Documentation that the applicant has been appointed as building official of each additional municipality or shall be appointed as building official of each additional municipality, contingent upon division approval of additional registration as building official for that additional municipality; and

(C) Documentation that the applicant, alone or in combination with an individual directly employed by each additional municipality's building department, meets the requirements set forth in OAR 918-020-0090(1)(m)(A) and (B).

(d) All municipalities which share the services of a building official must be within a geographic area that does not exceed three adjacent counties.

(4) Registration pursuant to section (3) of this rule ceases to be valid if:

(a) The registrant no longer holds a valid Building Official Certification;

(b) The registrant is no longer the directly employed by the original employer municipality;

(c) The registrant is no longer appointed as building official by all municipalities included in the registration;

(d) Any relevant intergovernmental agreement is terminated, expired, or invalid; or

(e) The registrant, alone or in combination with a directly employed individual of the relevant municipality, no longer qualifies to be the building official under paragraph (1)(b)(B) of this rule for all municipalities named in the registration.

(5) To maintain the registration as the registered building official for a municipality, the building official and municipality must renew the registration by July 1 of each year with a completed data request form pursuant to OAR 918-020-0090(L).

918-020-0070 (repeal)

Purpose and Scope

~~(1) OAR 918, division 020 interprets and applies ORS 455.148 to 455.210.. ORS 455.148 and 455.150 authorize the department to adopt rules to adjust time periods for administration of building inspection programs to allow for variations in the needs of the department and participants. ORS 455.148 and 455.150 authorize the department to adopt rules regulating municipal administration and enforcement of building inspection programs including, but not limited to:~~

~~(a) Creating building inspection program application and amendment requirements and procedures;~~

~~(b) Granting or denying applications for building inspection program authority and amendments;~~

~~(c) Reviewing procedures and program operations of municipalities;~~

~~(d) Creating standards for efficient, effective, timely and acceptable building inspection programs;~~

~~(e) Creating standards for justifying building inspection program fees adopted by a municipality; and~~

~~(f) Creating standards to determine whether a county or department building inspection program is economically impaired in its ability to reasonably continue providing the program or part of the program throughout the county, if another municipality is allowed to provide a building inspection program or part of a building inspection program within the same county.~~

~~(2) The purpose of these rules is to encourage municipalities to assume responsibility for the administration and enforcement of building inspection programs to the fullest possible extent. Each~~

~~municipality is responsible for developing an independent operating plan that describes the manner in which the municipality will administer and enforce its building inspection program. Municipalities are encouraged to develop operating plans that meet the identified needs of their individual communities. The intent of the division is to cooperate with municipalities to obtain and maintain authority to administer and enforce efficient, effective, timely and acceptable building inspection programs.~~

~~(3) For the purpose of these rules, "reporting period" means a four year period during which a municipality administers and enforces a building inspection program pursuant to an approved operating plan.~~

~~Stat. Auth.: ORS 455.030~~

~~Stats. Implemented: ORS 455.148, 455.150 & 455.210~~

~~Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 29-2002, f. & cert. ef. 10-1-02~~

918-020-0080

Delegation of Building Inspection Programs

~~The division and every municipality that administers and enforces a building inspection program or desires to assume responsibility to administer and enforce a building inspection program shall prepare an operating plan describing the manner in which the municipality or the division will do so. The operating plan shall establish specific processes and goals, consistent with the program standards described in ORS 455.153 and OAR 918-020-0090.~~

~~Stat. Auth.: ORS 455.030~~

~~Stats. Implemented: ORS 455.150~~

~~Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 16-2002, f. & cert. ef. 7-1-02~~

918-020-0090

Program Standards

Every municipality that administers and enforces an approved building inspection program must establish and maintain the minimum standards, policies, and procedures set forth in this section **and must develop and maintain an operating plan consistent with these rules and ORS 455.148, 455.150, and 455.153.**

(1) Administrative Standards. A building inspection program must:

(a) Provide adequate funds, equipment, and other resources necessary to administer and enforce the building inspection program in conformance with ~~an approved~~ **its** operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers, and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

- (e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;
- (f) Make its operating plan available to the public;
- (g) Establish a process to receive public inquiries, comments, and complaints;
- (h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review, and inspections;
- (i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;
- (j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates;
- (k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent;

(L)(4) Return a completed data request form by July 1 of each year to and as provided by the division annually, to include renewal of the Building Official Registration pursuant to OAR 918-020-XXX1; and

~~(m) Execute a memorandum of agreement with and as approved by the division for initial building inspection program approval and assumption, for building program expansion approval and assumption, and thereafter when seeking approval to renew a program under OAR 918-020-0105.~~

(m) Directly employ a Building Official who is registered pursuant to OAR 918-020-XXX1 and alone, or in combination with another direct employee of the building department, meets the following qualifications:

(A) Holds a valid certificate as an A-level structural inspector or A-level structural plans examiner issued by the department; and

(B) Has:

(i) Five or more years of experience performing A-level structural inspections under an appropriate certification;

(ii) Five or more years of experience performing A-level structural plan reviews under an appropriate certification; or

(iii) A bachelor's degree or graduate degree in structural or civil engineering.

(n) Two or more municipalities may combine in the appointment of a single building official who is directly employed by only one of those municipalities, for the purposes of administering a building inspection program within their communities, provided that the municipalities are contained within a geographic area that does not exceed three adjacent counties and that every municipality otherwise complies with subsection (1)(m) of this rule.

(o) When providing compensation to inspectors or plan reviewers who are not employees of the municipality, or when providing compensation to inspection companies, provide such compensation in a manner that is reflective of the amount of work or services provided, and shall not provide compensation based on a percentage of permit or plan review fees, or any other model that acts as a commission.

(2) Permitting Standards. A building inspection program must:

- (a) Provide at least one office within its jurisdictional boundary where permits may be purchased;
- (b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;
- (c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;
- (d) Set reasonable time periods within which the municipality will:
 - (A) Advise permit applicants whether an application is complete or requires additional information; and
 - (B) Generally issue a permit after an application has been submitted and approved.

- (e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits, and minor labels;
 - (f) Provide a means to receive permit applications **electronically or** via facsimile; and
 - (g) Require proof of licensing, registration, and certification of any person who proposes to engage in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701 prior to issuing any permit.
- (3) Plan Review Standards. A building inspection program must:
- (a) Establish policies and procedures for its plan review process to:
 - (A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;
 - (B) Make available checklists or other materials at each permitting office it operates that reasonably apprises persons of the information required to constitute a complete permit application or set of plans;
 - (C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" is defined by the division, taking into consideration the regional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction must also inform the applicant of the time period in which the plan review will generally be completed;
 - (D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process may not allow a project to proceed beyond the level of approval authorized by the building official. The process must:
 - (i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. ~~Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell, or any other part of a building or structure.~~
 - (ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and
 - (iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.
 - (E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;
 - (F) Verify for those architects and engineers requesting the use of alternative one- and two-family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner. This process must require the building official to:
 - (i) Establish policies and procedures in their operating plan for this process;
 - (ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one- and two-family dwellings; and
 - (iii) Establish an appropriate fee for processing plans submitted under this rule.
 - (G) Establish a process for plan review if non-certified individuals review permit applications under OAR 918-098-1010;
 - (b) Employ or contract with a person licensed, registered, or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;
 - (c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations, and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;
 - (d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and
 - (e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds

10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" must:

(a) Comply with the requirements for prescriptive construction under the Oregon Residential Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling Installation Specialty Code and the requirements in OAR chapter 918, division 500; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following are considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the division or municipality or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule is deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program must:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site **or provide a copy electronically**;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations, and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors must require proof of compliance with the licensing, permitting, registration, and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693, and 701. Inspectors must report any violation of a licensing, permitting, registration, or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program must establish in its operating plan:

- (a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;
 - (b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.
 - (c) Policies and procedures to implement their compliance program;
 - (d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and
 - (e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in 455.156 and 455.895.
- (10) Electrical Programs. Municipalities that administer and enforce an electrical program must demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.355, 455.030, 455.062, 455.148, 455.150, 455.156, 455.467, 455.469

Stats. Implemented: ORS 455.062, 455.148, 455.150, 455.156, 455.467, 455.469

Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 7-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; BCD 9-2013, f. 12-16-13, cert. ef. 1-1-14; BCD 13-2014(Temp), f. & cert. ef. 11-14-14 thru 5-12-15; BCD 4-2015(Temp), f. & cert. ef. 5-12-15 thru 11-1-15; BCD 9-2015(Temp), f. 10-30-15, cert. ef. 11-1-15 thru 1-1-16; BCD 11-2015, f. 12-11-15, cert. ef. 1-1-16; BCD 8-2018(Temp), f. & cert. ef. 4-23-18 thru 10-19-18; BCD 27-2018(Temp), f. 10-18-18, cert. ef. 10-20-18 thru 4-17-19; BCD 3-2019(Temp), f. 4-15-19, cert. ef. 4-18-19 thru 10-14-19

918-020-0095

Program Assumption Procedures

(1) Assumption of building inspection programs shall be approved only under ORS Chapters 455 and 479 and these rules, for municipalities meeting the following minimum standards. Municipalities requesting to assume new programs or additional parts of a program must provide a full-service program as described in ORS Chapter 455. The municipality shall prepare an assumption plan demonstrating its ability to:

- (a) Administer the program for at least four years;
- (b) Maintain or improve upon service levels presently provided to the area, including identifying proposed staffing, service contracts and intergovernmental agreements for at least the first two years;
- (c) Operate a program that is financially feasible for at least two years without unduly increasing short-term and long-term costs of services to the public, in the areas administered by the municipality. Information showing how the program will be financially feasible shall include an estimate of anticipated revenues and expenditures, the assumptions on which the estimates are based, and an explanation of how losses, if any, will be funded; and
- (d) Transition the program from the previous service provider including developing a method for:
 - (A) Transferring responsibility for existing buildings, open plan reviews, permits and inspections and corresponding revenues for completion of outstanding work;
 - (B) Transferring any pending enforcement actions;
 - (C) Informing contractors and others of the change of inspecting jurisdictions, jurisdictional boundaries and requirements for plan review, permits and inspections; and
 - (D) Transferring any affected employees consistent with ORS 236.605.
- (e) Directly employ a Building Official who is registered pursuant to OAR 918-020-XXX1 and**

alone, or in combination with another direct employee of the building department, meets the following qualifications:

(A) Holds a valid certificate as an A-level structural inspector or A-level structural plans examiner issued by the department; and

(B) Has:

(i) Five or more years of experience performing A-level structural plan reviews under an appropriate certification;

(ii) Five or more years of experience performing A-level structural inspections under an appropriate certification; or

(iii) A bachelor's degree or graduate degree in structural or civil engineering.

(f) Two or more municipalities may combine in the appointment of a single building official who is directly employed by only one of those municipalities, for the purposes of administering a building inspection program within their communities, provided that the municipalities are contained within a geographic area that does not exceed three adjacent counties and that every municipality otherwise complies with subsection (1)(e) of this rule.

(g) When providing compensation to inspectors or plan reviewers who are not employees of the municipality, or when providing compensation to inspection companies, provide such compensation in a manner that is reflective of the amount of work or services provided, and shall not provide compensation based on a percentage of permit or plan review fees, or any other model that acts as a commission.

(2) A municipality requesting to administer and enforce a new full-service building inspection program under ORS 455.148, or part of a building inspection program to become full-service under ORS 455.148 and 455.150 shall, by October 1:

(a) Submit a completed division program request form describing the specialty codes the municipality intends to administer effective July 1 of the following year, and provide the following:

(A) An assumption plan as required in ORS 455.148 and Section (1) of this rule;

(B) An operating plan as described in OAR 918-020-0090;

(C) A schedule, including the date, time, place and subject matter, of any proposed meetings of public or advisory bodies, where public comments will be received concerning their proposal to assume a full-service program or part of a program;

(D) Evidence of compliance with the notice and consultation requirements of this section; and

(E) When a municipality reapplies to assume administration of a program that was previously revoked, the application shall include an explanation of how past deficiencies were corrected and how they will be prevented in the future, and it shall meet the requirements of ORS 455.148 and 455.150 including timelines and full-service coverage.

(b) Consult with the jurisdiction from whom the program will be assumed, to:

(A) Notify them of the intent to assume the program;

(B) Discuss with them any impacts on their existing program;

(C) Attempt to resolve any negative impacts; and

(D) Attempt to reach agreement on the method of providing services in the area.

(3) Upon receipt of an application for program assumption from a municipality, the division shall, by October 15, notify in writing all persons on the division maintained interested party mailing list.

(4) Objections to proposed program assumptions, including or related to, claims of economic impairment by the division or the municipality potentially losing the program, shall be received within 30 days of notice and shall include:

(a) An explanation of the objection to the proposed program assumption;

(b) Identification of the required program standard that is believed not to be met; and

(c) When related to economic impairment, the information provided shall include projected impact on the existing building inspection program revenues, expenses, and staffing levels and the ability to continue carrying out remaining portions of the affected program.

(5) When reviewing the objections, the division shall consider the criteria established in ORS 455.152 and whether the objections relate to the ability of the municipality to effectively carry out the program and meet the required standards of applicable statutes and rules.

(6) The municipality requesting administration of a program shall confirm its intent to proceed with its application and submit final information to the division by January 1.

(7) By April 1 the division shall approve or deny the request. A request may be denied when the municipality failed to meet any of the standards and timelines for assumption set forth in ORS Chapters 455 and 479 and the rules adopted thereunder, or when a claim of economic impairment is not resolved to the satisfaction of the director.

(8) Municipalities approved to assume programs may do so effective July 1.

(9) By September 1, the municipality shall submit a final approved copy of all applicable ordinances and fee schedules.

Stat. Auth.: ORS 455.148, 455.150, 455.152, 479.855

Stats. Implemented: ORS 455.148, 455.150, 455.152, 479.855

Hist.: BCD 16-2002, f. & cert. ef. 7-1-02; BCD 12-2016(Temp), f. & cert. ef. 9-29-16 thru 3-27-17; Administrative correction, 6-5-17; BCD 8-2018(Temp), f. & cert. ef. 4-23-18 thru 10-19-18; BCD 27-2018(Temp), f. 10-18-18, cert. ef. 10-20-18 thru 4-17-19; BCD 3-2019(Temp), f. 4-15-19, cert. ef. 4-18-19 thru 10-14-19

918-020-XXX2(New)

2021 Program Renewal Process

(1) Notwithstanding OAR 918-020-0105, municipalities administering existing programs, upon notification from the division, shall submit completed division forms describing the following by January 1, 2021:

(a) The specialty codes the municipality will administer and enforce beginning July 1, 2021;

(b) The municipality's operating plan; and

(c) A completed valid building official registration pursuant to OAR 918-020-XXX1.

(2) Requests to extend the January 1, 2021 deadline as authorized in ORS 455.148(4) and 455.150(4) shall be filed with the division no later than December 21, 2020. Extensions under this section shall not be granted beyond March 1, 2021.

918-020-0105

Renewal of Existing Programs

(1) Existing programs may continue to administer full-service or partial programs as permitted by ORS Chapter 455. Any municipality requesting to assume an additional program shall do so in accordance with ORS Chapter 455 and these rules.

(2) Depending on the respective reporting period outlined in OAR 918-020-0180 municipalities administering existing programs upon notification shall submit the following to the division by January 1:

(a) A completed division form describing the specialty codes the municipality will continue to administer and enforce beginning July 1 of the next reporting period;

(b) A list of current staff, including contract providers, and their applicable certifications;

(c) An updated copy of the municipality's operating plan as described in OAR 918-020-0090; and

(d) A narrative describing any changes to the plan.

(e) A statement verifying that the municipality directly employs a building official, alone or in combination with another directly employed employee of the building department, who meets the requirements set forth in OAR 918-020-0190(1)(m).

(3) Requests to extend the January 1 date as authorized in ORS 455.148(4) and 455.150(4) shall be filed with the division no later than December 21.

Stat. Auth.: ORS 455.148, 455.150

Stats. Implemented: ORS 455.148, 455.150

Hist.: BCD 16-2002, f. & cert. ef. 7-1-02; BCD 8-2018(Temp

p), f. & cert. ef. 4-23-18 thru 10-19-18; BCD 27-2018(Temp), f. 10-18-18, cert. ef. 10-20-18 thru 4-17-19; BCD 3-2019(Temp), f. 4-15-19, cert. ef. 4-18-19 thru 10-14-19

918-020-0180

Reporting Periods

(1) All municipalities administering and enforcing a building inspection program on July 1, ~~1997~~**2021**, shall have four-year reporting periods. The division shall divide the municipalities administering and enforcing building inspection programs into four separate reporting groups identified as Group One, Group Two, Group Three and Group Four. Each reporting group shall contain approximately one quarter (25 percent) of the municipalities administering and enforcing building inspection programs on July 1, ~~1997~~**2021**. Reporting periods for each group shall begin on July 1 of the first year and shall end on June 30 of the fourth year, except as provided by Sections (2) to (5) of this rule.

(2) The first reporting period for municipalities in Group One shall start on July 1, ~~1997~~**2021**, and end on June 30, ~~1998~~**2022**. All subsequent reporting periods shall be four years. ~~Municipalities in Group One shall submit a program administration request form but not be required to submit a second operating plan until after the division has completed a general review of the municipal building inspection program following the conclusion of the first reporting period.~~

(3) The first reporting period for municipalities in Group Two shall start on July 1, ~~1997~~**2021**, and end on June 30, ~~1999~~**2023**. All subsequent reporting periods shall be for four years.

(4) The first reporting period for municipalities in Group Three shall start on July 1, ~~1997~~**2021**, and end on June 30, ~~2000~~**2024**. All subsequent reporting periods shall be for four years.

(5) The first reporting period for municipalities in Group Four shall start on July 1, ~~1997~~**2021**, and end on June 30, ~~2001~~**2025**. All subsequent reporting periods shall be for four years.

(6) The first reporting period for municipalities authorized to administer and enforce new building inspection programs shall start July 1 of the first year the municipality is authorized to administer and enforce a new building inspection program and shall end on June 30 of the fourth year. All subsequent reporting periods shall be for four years.

(7) A municipality that amends an existing building inspection program through the assumption of a new code program shall not alter its reporting period.

(8) All municipalities enforcing building inspection programs shall amend their operating plan within 30 days when changes occur and submit a copy of the amended operating plan to the division **make the plan available to the public.**

OAR 918-030-XXXX(New)

Conflict of Interest

A person, regardless of how employed or contracted for, who is licensed or certified to perform plan review, building inspection services, or building official services for a municipality is, in addition to any other requirements or prohibitions in these rules, prohibited from taking any action or making any decision or recommendation that would be to the private pecuniary benefit of the person or the person's relative or any business with which the person or a relative of the person is associated, or to the pecuniary detriment of any person or any business with whom the person or the person's relative or any business with which the person or a relative of the person is in competition. The official compensation package as determined by the public body the person serves is not included in this prohibition.

Stat. Auth.: ORS 455.030

Stats. Implemented: ORS 455.150

Hist.: New

918-090-0110

Business Registration Application Requirements

(1) Applicants for a plan review and inspection business registration shall submit an application on division-supplied forms and a \$50 application fee. The applicant shall also pay a registration fee based on \$60 per hour for review and approval of the application and quality control manual up to an amount not to exceed \$300.

(2) Application for plan review and inspection business registration shall include at least the following:

(a) Applicant name, address, telephone number, fax number and, if available, e-mail address;

(b) Type of business (individual, partnership or corporation);

(c) Names and titles of principals, officers, directors, major shareholders or other responsible agents;

(d) Names and titles of all managers and supervisors of plan reviewers and inspectors;

(e) Names and certification and license numbers of all plan reviewers, plans examiners and inspectors whether employed or under contract;

(f) Names of the municipalities with which the registrant intends to contract, the scope of work intended to be performed under the contract and, if this information is not available, the geographical areas in which the registrant intends to work;

(g) Proof of general liability insurance of at least \$1 million or its equivalent, including but not limited to the name of the insurance company, the amount for which insured, the policy number, expiration date and the current business address and phone number of the insurance company's agent;

(h) Proof of "errors and omissions" liability insurance or its equivalent, of at least ~~\$1,500,000~~\$500,000 per occurrence, with an aggregate limit of at least ~~\$1,500,000~~\$500,000 per policy year, including but not limited to, the name of the insurance company, the amount for which insured, the policy number and expiration, and the current business address and phone number of the insurance company's agent. In lieu of errors and omission insurance required by this rule, businesses contracting directly with a municipality to provide specialty code inspections and plan reviews, may be covered by the municipality's insurance. When this option is used, the business shall submit sufficient information for the division to determine the errors and omissions insurance is covered by all municipalities for which the person or business is working; and

(i) Provide a quality control manual complying with OAR 918-090-0300 for division approval describing operating procedures and the process to ensure all applicable code provisions will be enforced as required by these rules.

(3) Business registrations shall be renewed on a two-year cycle, beginning March 1, 2002, on a division-approved form. Businesses shall submit a \$100 renewal fee. Applicants shall also submit:

(a) Proof of all insurance required in Section (2) of this rule; and

(b) Any changes in the original registration application and quality control manual.

(4) The division shall approve or deny any completed application for plan review and inspection business registration within 60 days of receipt.

(5) Persons denied registration may appeal this decision to the director and request contested case procedures under ORS Chapter 183.

Stat. Auth: ORS 455.457 & 455.461

Stats. Implemented: ORS 455.457 & 455.461

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 8-2018(Temp), f. & cert. ef. 4-23-18 thru 10-19-18; BCD 10-2018(Temp), Suspends BCD 8-2018(Temp), f. & cert. ef. 5-18-18 thru 10-19-18

918-098-1015

Scope of Work Allowed for Persons with an Oregon Inspector Certification and Oregon Code Certifications

Persons who possess a valid Oregon Inspector Certification and a valid Oregon Code Certification may perform inspections and plan reviews based on the class designated on their certificate. The classes, other than electrical and plumbing inspector classifications found in OAR 918-281-0020 and 918-695-0400, are:

(1) Building Official. **An individual** ~~Persons who is both~~ certified **and validly registered** as an Oregon Building Official may oversee ~~jurisdictions'~~ administration and enforcement of the state building code for those specialty codes assumed by the jurisdiction **or jurisdictions which have lawfully appointed the individual as Building Official** pursuant to ORS 455.148 or 455.150. Building officials may not perform plan reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(2) Fire and Life Safety. Persons certified as fire and life safety plans examiners may review construction plans for compliance with the fire and life safety plan review provisions of the Oregon Structural Specialty Code and the Oregon Fire Code for any structure regulated by the Oregon Structural Specialty Code.

(3) A-Level.

(a) Persons certified as A-level structural plans examiners may:

(A) Review construction plans for compliance with the provisions of the Oregon Structural Specialty Code and Oregon Fire Code for all work regulated by the Oregon Structural Specialty Code, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) Review construction plans for work that falls within the B-level structural plans examiner classification.

(b) Persons certified as A-level structural inspectors:

(A) Conduct construction inspections of all work regulated by the Oregon Structural Specialty Code; and

(B) Conduct inspections of work that falls within the B-level structural inspector classification.

(c) Persons certified as A-level mechanical inspectors may:

(A) Conduct construction inspections and may review construction plans for all work regulated by the Oregon Mechanical Specialty Code; and

(B) Conduct inspections and review construction plans for work that falls within the B-level mechanical inspector classification.

(4) B-Level.

(a) Persons certified as B-level structural plans examiners may review construction plans for compliance with the provisions of the Oregon Structural Specialty Code and Oregon Fire Code for work regulated by the Oregon Structural Specialty Code, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(b) Persons certified as B-level structural inspectors may conduct construction inspections of work regulated by the Oregon Structural Specialty Code, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

- (c) Persons certified as B-level mechanical inspectors may conduct construction inspections of work regulated by the Oregon Mechanical Specialty Code, except:
 - (A) Work in structures required to receive a state fire and life safety plan review; and
 - (B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.
- (d) Persons certified as B-level structural plans examiners, B-level structural inspectors, or B-level mechanical inspectors:
 - (A) May qualify to be certified to review construction plans or conduct inspections of structures regulated by the Oregon Residential Specialty Code; and
 - (B) May not be authorized to review construction plans or conduct inspections of structures that are outside the B-level classification without first obtaining the appropriate certification.
- (5) One and two family dwelling or residential.
 - (a) Persons certified as one and two family dwelling or residential:
 - (A) Structural inspectors may conduct construction inspections of structural and mechanical work regulated by the Oregon Residential Specialty Code; and
 - (i) Manufactured structures and manufactured structure accessory buildings and structures under the Oregon Manufactured Dwelling Installation Specialty Code;
 - (ii) The provisions of OAR chapter 918, division 500;
 - (iii) The Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282; and
 - (iv) Plan review and inspection of manufactured dwelling parks, recreational parks, organizational camps, and picnic parks.
 - (B) Mechanical inspectors may conduct inspections for mechanical work regulated by the Oregon Residential Specialty Code; and
 - (i) Manufactured dwellings under the Oregon Manufactured Dwelling Installation Specialty Code;
 - (ii) The provisions of OAR chapter 918, division 500;
 - (iii) The Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282; and
 - (iv) Plan review and inspection of manufactured dwelling parks, recreational parks, organizational camps, and picnic parks.
 - (C) Plumbing inspectors may conduct inspections for plumbing work regulated by the Oregon Residential Specialty Code; and
 - (i) Manufactured dwellings under the Oregon Manufactured Dwelling Installation Specialty Code;
 - (ii) The provisions of OAR chapter 918, division 500;
 - (iii) The Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282;
 - (iv) Plan review and inspection of manufactured dwelling parks, recreational parks, organizational camps, and picnic parks; and
 - (v) Any portion of a solar water heating system installation up to 180 gallons of storage tank capacity.
 - (D) Electrical inspectors may conduct inspections for electrical work regulated by the Oregon Residential Specialty Code; and
 - (i) The Oregon Manufactured Dwelling Installation Specialty Code;
 - (ii) The provisions of OAR chapter 918, division 500;
 - (iii) The Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282;
 - (iv) Plan review and inspection of manufactured dwelling parks, recreational parks, organizational camps, and picnic parks; and
 - (v) Any portion of a solar PV installation up to 25 Kw.
 - (b) Persons certified as a one-and-two family dwelling plans examiners may review construction plans for compliance with provisions of the Oregon Residential Specialty Code; and
 - (i) Structures under the Oregon Manufactured Dwelling Installation Specialty Code;
 - (ii) The provisions of OAR chapter 918, division 500;
 - (iii) The Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282; and
 - (iv) Plan review and inspection of manufactured dwelling parks, recreational parks, organizational camps, and picnic parks.

- (c) Persons certified as a one and two family dwelling or residential inspectors and plans examiners may not be authorized to review construction plans or conduct inspections of either A-level or B-level structures without the required commercial A-level or B-level certification.
- (d) See OAR 918-098-1325 for additional requirements of one and two family dwelling residential inspectors and plans examiners performing manufactured dwelling alteration inspections or plan reviews.
- (e) See OAR 918-098-1330 for additional requirements of one and two family dwelling residential inspectors performing manufactured structure accessory structure or accessory building inspections.
- (6) Specialized Solar Photo-Voltaic. Persons certified as a Specialized Solar PV inspector may conduct inspections of the structural and electrical systems for solar PV installations up to 25 Kw that follow the “prescriptive installation” provisions in section 3111.5 of the Oregon Structural Specialty Code.
- (7) Plumbing inspectors certified under OAR 918-695-0400 may, in addition to any other authority, inspect any portion of a solar water heating system installation up to 180 gallons of storage tank capacity. This rule does not apply to limited or special plumbing inspectors.
- (8) Electrical inspectors certified under OAR 918-281-0020 may, in addition to any other authority, inspect any portion of a solar PV installation up to 25 Kw.

DRAFT

183.333 Policy statement; public involvement in development of policy and drafting of rules; advisory committees. (1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.

(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committee's recommendations on compliance with ORS 183.540.

(4) An agency shall consider an advisory committee's recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) An agency may appoint the Small Business Rules Advisory Committee established in ORS 183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

(7) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding.

(8) If an agency is required by law to appoint an advisory committee under this section, the agency may not appoint an officer, employee or other agent of the agency to serve as a member of the advisory committee. [2003 c.749 §4; 2005 c.807 §4; 2013 c.273 §1; 2018 c.20 §3]

183.540 Reduction of economic impact on small business. If the statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) shows that a rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

- (1) Establishing differing compliance or reporting requirements or time tables for small business;
- (2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- (3) Utilizing objective criteria for standards;
- (4) Exempting small businesses from any or all requirements of the rule; or
- (5) Otherwise establishing less intrusive or less costly alternatives applicable to small business. [1981 c.755 §4; 2003 c.749 §7; 2005 c.807 §6]