

Report to the Legislative Assembly 2020 Annual Rulemaking Report

February 2021



Executive Summary

TO: Oregon Legislative Assembly

FROM: Andrew Stolfi, Director

RE: 2020 Rulemaking Activities

House Bill 4106 (2016 legislative session) asks state agencies to report annually on permanent and temporary rulemaking actions. In 2020, the cumulative rulemaking activities within the Department of Consumer and Business Services adopted, amended, suspended or repealed a total of 112 rules. The department processed 30 temporary rulemakings that adopted, amended, or suspended a total of 41 rules. The following is a synopsis of the department's temporary rulemaking activities.

Description of Rulemaking	Action Taken	Oregon Administrative Rule (OAR) Numbers
2020 License Expiration Date Extension (Building Codes Division)	Adopt	OAR 918-030-3000
Covid-19 Response Inspection Flexibility (Building Codes Division)	Adopt	OAR 918-098-4000
Building program delegation rules (Building Codes Division)	Amend	OAR 918-020-0090, 918-020-0095, 918-020-0105
2020 License Renewal Date Extension (Building Codes Division)	Adopt	OAR 918-030-3005
2020 License Expiration Date Extension (Building Codes Division)	Suspend	OAR 918-030-3000
2020 License Renewal Date Extension (Building Codes Division)	Adopt	OAR 918-030-0310
Electrical Apprenticeship Math Grade Requirement (Building Codes Division)	Amend	OAR 918-282-0270
Inspection Flexibility for COVID-19 Emergency (Building Codes Division)	Adopt	OAR 918-098-4001
Modifies requirements for journeyman electrical reciprocity agreements (Building Codes Division)	Amend	OAR 918-030-0045
Create boiler inspection cycle extension program to allow extended inspection cycles for certain boilers (Building Codes Division)	Adopt	OAR 918-225-0590
To amend the Oregon Residential Specialty Code to make new residential structures solar read (Building Codes Division)	Amend	OAR 918-480-0010
Building program delegation rules (Building Codes Division)	Amend	OAR 918-020-0090, 918-020-0095, 918-020-0105
Establish a minor label pilot program for mechanical inspection (Building Codes Division)	Adopt	OAR 918-440-1000
2020 License Expiration Date Extension (Building Codes Division)	Adopt	OAR 918-030-3015
Quarantine Time Loss Program (Director's Office)	Adopt	OAR 440-150-0001

Description of Rulemaking	Action Taken	Oregon Administrative Rule (OAR) Numbers
Temporary authorization to allow for remote participation in annual stockholder meetings of Oregon-chartered banks (Division of Financial Regulation)	Adopt	OAR 441-505-2005
Temporary authorization to allow Oregon chartered banks to pay dividends in excess of retained earnings (Division of Financial Regulation)	Adopt	OAR 441-505-2010
COVID-19 Update to Statistical Plan for Workers' Compensation Insurance Reporting (Division of Financial Regulation)	Amend	OAR 836-042-0045
Wind down of emergency order prohibiting nonrenewals of insurance policies (Division of Financial Regulation)	Adopt	OAR 836-054-0400, 836-054-0410
Rule Addressing the COVID-19 public health emergency in labor housing and agricultural employment (Oregon OSHA)	Adopt	OAR 437-001-0749
Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces (Oregon OSHA)	Adopt	OAR 437-001-0744
Fees for telephonic and digital evaluation and management services during COVID-19-related care limitations (Workers' Compensation Division)	Amend	OAR 436-009-0040
Reduction in civil penalties against first-time noncomplying employers (Workers' Compensation Division)	Amend	OAR 436-080-0040
Reduction in civil penalties against first-time noncomplying employers (Workers' Compensation Division)	Suspend	OAR 436-080-0040
Fees for telephonic and digital services; new Current Procedural Terminology codes for COVID-19 testing (Workers' Compensation Division)	Amend	OAR 436-009-0004, 436-009-0010, 436-009-0040
Processing workers' compensation claims for COVID-19 or SARS-CoV-2 exposure (Workers' Compensation Division)	Adopt	OAR 436-060-0141
Adoption of new medical billing codes for 2021 (Workers' Compensation Division)	Amend	OAR 436-009-0004, 436-009-0010, 436-009-0012, 436-009-0023, 436-009-0040

An electronic version of this report is available at <https://www.oregon.gov/dcbs/news-info/Pages/rule-making.aspx>. For questions, please contact:

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Department of Consumer and Business Services, Building Codes Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	7
Repealed	1

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	8
Amended	9
Suspended	1

BCD 5-2020 **Filed: 03/16/2020 3:08 PM**
918-030-3000 Adopt

Statement of Need

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty completing continuing education courses required for license renewal. This rule extends the deadline to renew certain licenses from April 1, 2020 until July 1, 2022 to allow licensees time to complete the required continuing education credits.

Justification

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty completing continuing education courses required for license renewal. This rule extends the deadline to renew certain licenses from April 1, 2020 until July 1, 2022 to allow licensees time to complete the required continuing education credits.

BCD 6-2020 **Filed: 03/20/2020 4:33 PM**
918-098-4000 Adopt

Statement of Need

In order to respond to Covid-19/Coronavirus restrictions, building departments need additional flexibility to provide inspections utilizing all available staff and technological resources. These rules are needed to provide flexibility while maintaining safety during the impacts of Coronavirus.

Justification

In order to respond to Covid-19/Coronavirus restrictions, building departments need additional flexibility to provide inspections utilizing all available staff and technological resources. These rules are needed to provide flexibility while maintaining safety during the impacts of Coronavirus.

BCD 7-2020 **Filed: 04/10/2020 1:16 PM**
918-020-0090 Amend
918-020-0095 Amend

Statement of Need

The Building Codes Division (the division) adopted temporary rules April 23, 2018, to address program delegation standards based on advice from the Department of Justice (DOJ). Those rules have been repealed. The division was directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. The division adopted temporary rules while waiting for the formal opinion. Additionally, final rulemaking had been postponed pending the final outcome of legislation that was being considered in the 2019 session. The division has been directed to maintain the temporary rules that are needed to address those communities that would otherwise need to renew their building program operation period while legal issues are considered and permanent rules are developed through the Rulemaking Advisory Committee (RAC) process. The RAC permanent rule development process is ongoing, but due to the Coronavirus/COVID-19 response the RAC process has been delayed and temporary rules are needed while that process is completed. The RAC has had one meeting, and will need at least two more meetings to complete its work. The division is working with RAC members to schedule a teleconference meeting in place of the in person March meeting that was postponed.

Justification

The division adopted temporary rules April 23, 2018, to address program delegation standards based on advice from the DOJ. Those rules have been repealed. The division was directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. The division adopted temporary rules while waiting for the formal opinion. The formal opinion has been published. These rules are justified to address those communities that would otherwise need to renew their building program operation period, and to create clarity for cities and counties while legal issues are considered and permanent rules are developed through the RAC process. The RAC permanent rule development process is ongoing, but due to the Coronavirus/COVID-19 response the RAC process has been delayed and temporary rules are needed while that process is completed. The RAC has had one meeting, and will need at least two more meetings to complete its work. The division is working with RAC members to schedule a teleconference meeting in place of the in person March meeting that was postponed.

BCD 8-2020**Filed: 05/14/2020 9:38 AM**

918-030-3005

Adopt

Statement of Need

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. This rule extends the deadline to renew all licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. Action is needed now to ensure license holders have adequate notice of the change, and so that the division can make necessary administrative changes to postpone the renewals.

Justification

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. This rule extends the deadline to renew all licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. This temporary rule is justified because it will allow license holders sufficient time to account for the change in their renewal date, and it will allow the division to take immediate action to make necessary administrative changes to prepare for the new one time renewal date.

BCD 9-2020**Filed: 05/14/2020 9:44 AM**

918-030-3000

Suspend

Statement of Need

This extension was needed to ensure that license holders are able to complete the necessary continuing education courses that may not currently be available due to the closure of education provider locations because of the Coronavirus/Covid-19 response. This rule is being suspended and a new rule will be filed to extend the deadline to renew all licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. Action is needed now to ensure license holders have adequate notice of the change, and so that the division can make necessary administrative changes to postpone the renewals.

Justification

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. New rules are needed to extend the deadline to renew all licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. The suspension of this rule and filing of a new temporary rule is justified because it will allow license holders sufficient time to account for the change in their renewal date, and it will allow the division to take immediate action to make necessary administrative changes to prepare for the new one time renewal date.

BCD 10-2020

Filed: 06/10/2020 7:48 AM

918-030-0310

Adopt

Statement of Need

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. This rule extends the deadline to renew three licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. Action is needed now to ensure license holders have adequate notice of the change, and so that the division can make necessary administrative changes to postpone the renewals.

Justification

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. This rule extends the deadline to renew three licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. This temporary rule is justified because it will allow license holders sufficient time to account for the change in their renewal date, and it will allow the division to take immediate action to make necessary administrative changes to prepare for the new one time renewal date.

BCD 11-2020

Filed: 06/23/2020 9:13 AM

918-282-0270

Amend

Statement of Need

OAR 918-282-0270 requires that applicants for apprenticeship provide transcripts demonstrating at least a "C" letter grade in certain math classes. The Oregon Department of Education issued guidance that required schools to only issue "pass/incomplete" grades to students for coursework completed during the Coronavirus/COVID-19 school closure. Letter grades were not allowed to be given.

Justification

Without this temporary rule amendment, students who were unable to receive letter grades in math classes during the COVID-19 school closure would be unable to meet electrical apprenticeship application requirements. Those impacted

people will be unfairly disadvantaged, and a rule change is justified to allow them the opportunity to apply for electrical apprenticeships.

BCD 12-2020 **Filed: 07/01/2020 11:35 AM**

918-098-4001 Adopt

Statement of Need

In order to respond to COVID-19 restrictions, building departments need additional flexibility to provide inspections utilizing all available staff and technological resources. These rules are needed to provide flexibility while maintaining safety during the impacts of COVID-19.

Justification

In order to respond to COVID-19 restrictions, building departments need additional flexibility to provide inspections utilizing all available staff and technological resources. These rules are justified because of the need to provide flexibility while maintaining safety during the impacts of COVID-19.

BCD 13-2020 **Filed: 08/12/2020 11:22 AM**

918-030-0045 Amend

Statement of Need

Need For the Temporary Rule(s): This rule is needed to implement a general journeyman electrician reciprocity agreement with the state of Washington, as approved by the Electrical and Elevator Board. The rule amendments are necessary to align existing Oregon standards and administrative procedures with Washington standards and administrative procedures, facilitating the ability of the two states to recognize existing licensing and examination standards as equivalent for reciprocity purposes.

Justification

Justification of Temporary Rule(s): Without this temporary rule, Oregon and Washington cannot have reciprocity for journeyman electrician licenses, and Oregon standards and administrative procedures will not align with Washington standards and administrative procedures. The Electrical and Elevator Board has approved the draft rule and the reciprocity agreement. This temporary rule is justified as it enable the division to align adoption and implementation of the reciprocity agreement with Washington.

BCD 15-2020 **Filed: 08/31/2020 4:29 PM**

918-225-0590 Adopt

Statement of Need

Prior to the COVID-19 health crisis, certain operators of large-scale steam and hot water boilers requested inspection cycle extensions. The closing of many businesses during the health crisis increased the demand for such extensions. By allowing inspection cycle extensions to certain boiler operators, they will better be able to navigate the challenges posed by the COVID-19 health crisis, and the division will still be able to ensure safe boiler operation throughout the state. The rule has been approved by the Board of Boiler Rules and has had a public hearing, but a temporary rule is needed so that the rule can be available prior to the quarterly adoption date of October 1, 2020.

Justification

Without this rule, some businesses operating large boilers that would otherwise qualify for an inspection extension will

still need to get yearly inspections, which during the COVID-19 health crisis will be difficult and expensive to perform.

BCD 20-2020

Filed: 09/30/2020 11:07 AM

918-480-0010

Amend

Statement of Need

The Governor's 2017 executive order EO 17-20 directed the Department of Consumer and Business Services Building Codes Division to, by October 1, 2020, amend the building code to require that all newly constructed residential structures be ready for installation of solar panels and related technologies. Due to the impacts of COVID-19, adoption of the Oregon Residential Specialty Code has been delayed from October 1, 2020 to April 1, 2021. This temporary rule is needed to amend the 2017 Oregon Residential Specialty Code to make the change effective on October 1, 2020 as required by EO 17-20.

Justification

The Governor's 2017 executive order EO 17-20 directed the Department of Consumer and Business Services Building Codes Division to, by October 1, 2020, amend the building code to require that all newly constructed residential structures be ready for installation of solar panels and related technologies. This temporary rule is justified because code adoption that was scheduled to be effective on October 1, 2020, was delayed due to disruptions caused by Covid-19/Coronavirus closures and restrictions.

BCD 21-2020

Filed: 10/06/2020 4:00 PM

918-020-0090

Amend

918-020-0095

Amend

918-020-0105

Amend

Statement of Need

The Building Codes Division (the division) adopted temporary rules April 23, 2018, to address program delegation standards based on advice from the Department of Justice (DOJ). Those rules have been repealed. The division was directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. The division adopted temporary rules while waiting for the formal opinion. Additionally, final rulemaking was postponed pending the final outcome of legislation that was being considered in the 2019 session. The division has been directed to maintain the temporary rules that are needed to address those communities that would otherwise need to renew their building program operation period while legal issues are considered and permanent rules are developed through the Rulemaking Advisory Committee (RAC) process. The RAC permanent rule development process is ongoing, but due to the Coronavirus/COVID-19 response the RAC process has been delayed and temporary rules are needed while that process is completed. The RAC has had three meetings to date, and its work is not complete.

Justification

The division adopted temporary rules April 23, 2018, to address program delegation standards based on advice from the DOJ. Those rules have been repealed. The division was directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. The division adopted temporary rules while waiting for the formal opinion. The formal opinion has been published. These rules are justified to address those communities that would otherwise need to renew their building program operation period, and to create clarity for cities and counties while legal issues are considered and permanent rules are developed through the RAC process. The RAC permanent rule development process is ongoing, but due to the Coronavirus/COVID-19 response the RAC process has been delayed and temporary rules are needed while that process is completed. The RAC has had three meetings, and its work is not complete.

BCD 22-2020

Filed: 10/30/2020 2:15 PM

918-440-1000

Adopt

Statement of Need

This rule is needed to establish a temporary pilot program to allow contractors to purchase mechanical minor labels to cover certain minor repairs and installations covered by the Oregon Mechanical Specialty Code or, in some cases, the Oregon Residential Specialty Code. The rule establishes that inspection of mechanical minor labels will be performed remotely by viewing files uploaded to the mechanical minor label software system by the contractor that documents the work performed.

Justification

This rule is necessary to avoid serious prejudice to the public interest, members of the public that are users of buildings, and building owners. Given the state of emergency of the COVID-19 pandemic creating options for property inspections that do not involve direct personal contact will increase public safety. A temporary rule will allow the division to set up the program faster and minimize in person contact when inspecting work performed under a mechanical minor label. A mechanical minor label program with the ability to perform inspections remotely will lower costs for the division and jurisdictions. Additionally, it will expedite inspections which would increase convenience for property owners where the inspections are required.

BCD 23-2020

Filed: 11/10/2020 11:21 AM

918-030-3015

Adopt

Statement of Need

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. This rule extends the deadline to renew all licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. Action is needed now to ensure license holders have adequate notice of the change, and so that the division can make necessary administrative changes to postpone the renewals.

Justification

Recent Covid-19/Coronavirus closures and restrictions have resulted in various licensees having difficulty renewing their licenses, including completing relevant continuing education courses required for license renewal. This rule extends the deadline to renew all licenses that have not already renewed that would otherwise be due to renew in 2020 to January 15, 2021. This temporary rule is justified because it will allow license holders sufficient time to account for the change in their renewal date, and it will allow the division to take immediate action to make necessary administrative changes to prepare for the new one-time renewal date.

Department of Consumer and Business Services, Director's Office

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	2
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	1
Amended	0
Suspended	0

DO 1-2020

Filed: 09/15/2020 10:36 AM

440-150-0001

Adopt

Statement of Need

The Emergency Board directed the department to establish a Quarantine Time Loss program, providing financial assistance for sick leave to certain workers that were not extended sick leave benefits under the Families First Coronavirus Relief Act (FFCRA). Rules are needed for purposes of administering the program and distributing payments financed by the state's Coronavirus Relief Fund.

Justification

A failure to act promptly will result in delay of providing financial assistance to workers who have been asked to quarantine to exposure or symptoms, and do not have access to COVID-19 paid sick leave. The funding must also be expended by the end of calendar year 2020. Rules need to be quickly adopted due to the nature of the Quarantine Time Loss Program and its funding resources.

Department of Consumer and Business Services, Finance and Securities Regulation

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	2
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	2
Amended	0
Suspended	0

FSR 19-2020

Filed: 03/27/2020 3:40 PM

441-505-2005

Adopt

Statement of Need

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease. The Centers for Disease Control and Prevention strongly recommends the avoidance of any large gatherings until further notice.

On March 8, 2020, Governor Kate Brown declared a state of emergency in Oregon to address the spread of COVID-19. On March 12, Governor Brown announced new rules to slow the spread of the virus, including banning large gatherings of 250 people or more and implementing social distancing measures at worksites. On March 16, 2020, Governor Brown announced a statewide ban, effective immediately, of all public events of 25 people or more. Oregon Governor Kate Brown issued a stay-at-home order, effective March 23, 2020.

Additionally, many people are in self-quarantine after possible exposure to the virus to help slow the spread and several companies are considering precautions for employees by directing them to stay home.

Justification

ORS 707.610 requires Oregon chartered commercial banks and savings banks to hold a stockholders' meeting within 120 days after the close of the fiscal year. Under ORS 707.610, the deadline for holding this meeting is April 29, 2020. The right to vote at the annual meeting is governed by ORS 707.623. ORS 707.623(1) states: "Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting at the time the vote is taken and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater

number or voting by classes is required by the Bank Act or the articles of incorporation." The term "in person" is not statutorily defined.

The current restrictions on public and private gatherings of individuals make it impossible for banks to comply with ORS 707.610 if shareholders must be physically in attendance at the annual stockholders meeting to be considered as being "present" at the meeting.

This rule temporarily authorizes Oregon chartered commercial banks and savings banks to conduct annual meetings remotely and to consider shareholders remotely attending the meeting as "present" for purposes of ORS 707.621 if the meeting is held by means of conference telephone or similar communications equipment that allows all persons participating in the meeting to hear each other, provided that participation is controlled and limited to those entitled to attend, and the identity of participants is determinable and reasonably verifiable.

FSR 21-2020

Filed: 06/18/2020 2:17 PM

441-505-2010

Adopt

Statement of Need

Under ORS 706.795, the DCBS director has the authority to adopt rules that achieve parity among Oregon chartered banks, national banks, and banks chartered in other states doing business in Oregon. Absent the proposed temporary rule, Oregon chartered banks suffer a clear and immediate competitive disadvantage vis-à-vis national banks and banks chartered in California and Washington in paying dividends to shareholders, attracting investors, and raising capital to fund their business operations. The inability to make dividend payments when otherwise financially healthy Oregon chartered banks desire to do so, places a restriction on those institutions that is not applicable to national banks and banks chartered in Washington and California that do business in Oregon. The proposed rule will enhance and maintain competition among Oregon chartered banks, national banks, and banks chartered in California and Washington by enabling Oregon chartered banks to pay dividends on terms that are currently available to other financial institutions.

Justification

The proposed rule allows Oregon chartered banks that satisfy safety and soundness requirements to make shareholder distributions, the aggregate amount of which may exceed the bank's retained earnings, subject to receiving prior approval from the director of the Department of Consumer and Business Services. The COVID-19 pandemic requires the adoption of a temporary rule, because the failure to act promptly will result in serious prejudice to the interests of Oregon chartered banks, their shareholders, and Oregon borrowers. But for the temporary financial disruption caused by the COVID-19 pandemic, most Oregon chartered banks would be in a position to pay a dividend to their shareholders from the bank's retained earnings. The rule is needed to ensure that Oregon chartered banks are not a competitive disadvantage, vis-a-vis national banks and banks chartered in California and Washington doing business in Oregon, in regards to their ability to alleviate the financial impact of COVID-19 as well as to attract and retain capital.

Department of Consumer and Business Services, Insurance Regulation

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	8
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	2
Amended	2
Suspended	0

ID 4-2020

Filed: 04/30/2020 3:12 PM

836-042-0045

Amend

Statement of Need

ORS 737.225 states that the director shall prescribe by rule the statistical plan for workers' compensation insurance. Accordingly, OAR 836-042-0045 currently prescribes the Statistical Plan for Workers' Compensation and Employer Liability Insurance, 2008 Edition, filed by the National Council on Compensation Insurance, with revisions through January 1, 2018. This rulemaking changes the date in the current administrative rule from January 1, 2018 to May 1, 2020, the effective date of revisions reflected in NCCI's new filing.

Justification

On March 8, 2020, Oregon Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency due to the COVID-19 outbreak in Oregon under ORS 401.165. Because of this outbreak, NCCI is adding a way to report COVID-19 claims.

The Director finds that a failure to promptly update the prescribed statistical plan to reflect the most recent revisions will result in serious prejudice to the public interest or the interest of the parties concerned. A failure to update would prevent insurers and employers from accurately reporting COVID-19 claims. In light of the rapidly changing circumstances faced by insurers and the public due to the ongoing pandemic, the plan for maintaining and reporting workers' compensation insurance statistics merits adjustment accordingly. The interests of insurers and the public are subject to prejudice if revisions to the prescribed statistical plan are not given effect in a timely and expeditious manner.

ID 5-2020

Filed: 07/27/2020 1:53 PM

836-054-0400

Adopt

836-054-0410

Adopt

Statement of Need

The Department of Consumer and Business Services (DCBS) issued an emergency order on March 25, 2020, suspending all cancellations and nonrenewals of insurance policies. While the order is in place, insurers are required to renew

policies even if the insured failed to pay premium or if there were other permissible grounds for nonrenewal.

Under normal circumstances, insurers are more restricted in the allowable reasons for cancelling a policy midterm than a nonrenewal decision. After the emergency order expires, insurers will have policies in force that they had legitimate reasons to nonrenew but are not allowed to cancel midterm. This rule would put insurers back in the place they were had the emergency order not been issued, and allow a cancellation for the same reasons the insurer was permitted to nonrenew.

Justification

On March 8, 2020, Oregon Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency due to the COVID-19 outbreak in Oregon under ORS 401.165. On March 23, 2020, Oregon Governor Kate Brown signed Executive Order 20-12, ordering Oregonians to stay at home, closing specified retail businesses, requiring social distancing measures for other public and private facilities, and imposing requirements for outdoor areas and licensed childcare facilities. On March 25, 2020, DCBS issued an emergency order under ORS 731.870 suspending all cancellations and nonrenewals of insurance policies.

While the emergency order may be renewed, it is set to expire 30 days after issuance. Insurers will need to begin the process of normalizing their operations after the emergency order expires. Rules needed to wind down the emergency order may be required as early as April 25, 2020. This would not allow for adequate time for DCBS to conduct statutorily mandated public notice and comment procedures.

ID 6-2020

Filed: 08/14/2020 8:52 AM

836-042-0045

Amend

Statement of Need

ORS 737.205 requires workers' compensation insurers to file copies of rates, rating plans, and rating systems with the Director of the Department of Consumer and Business Services (DCBS). It also allows insurers to meet filing obligations by becoming a member of or a subscriber to a licensed rating organization, which makes filings on the insurer's behalf.

ORS 737.225 states that the Director shall prescribe by rule the statistical plan for workers' compensation insurance. Accordingly, OAR 836-042-0045 currently prescribes the Statistical Plan for Workers' Compensation and Employer Liability Insurance, 2008 Edition, filed by the National Council on Compensation Insurance, with revisions through January 1, 2018. This rulemaking changes the date in the current administrative rule from January 1, 2018 to August 16, 2020, the effective date of revisions reflected in NCCI's new filing.

This rulemaking allows for NCCI's revisions, which comprise of excluding COVID-19 claims from experience rating, and indicating if an insurer did not perform an audit due to COVID-19.

Justification

On March 8, 2020, Oregon Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency due to the COVID-19 outbreak in Oregon under ORS 401.165. COVID-19 claims must be excluded from experience rating, and insurers must be able to indicate if an audit was not performed because of the outbreak.

The Director finds that a failure to promptly update the prescribed statistical plan will result in serious prejudice to the public interest or the interest of the parties concerned. A failure to update would result in the inclusion of COVID-19 claims in experience rating, and no strategy for omitted audit information due to emergency orders, laws, and regulations impacting an employer's staffing and business operations. In light of the circumstances faced by insurers and the public due to the ongoing pandemic, the plan for maintaining and reporting workers' compensation insurance statistics merits adjustments accordingly. The interests of insurers and the public are subject to prejudice if revisions to the prescribed statistical plan are not given effect in a timely and expeditious manner.

Department of Consumer and Business Services, Health Insurance Marketplace

Administrative Rules Annual Report

HB 4106 (2016 Session)

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Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	3
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Consumer and Business Services, Oregon Occupational Safety and Health Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	2
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	3
Amended	0
Suspended	0

OSHA 2-2020

Filed: 04/28/2020 5:19 PM

437-001-0749

Adopt

Statement of Need

These rules are needed to protect vulnerable workers in agriculture, especially those who spend both their working and their off-work hours at the employer's location in an extension of the normal workplace, from the unique health risks created by the current public health emergency.

Justification

COVID-19 represents a public health crisis throughout the country and the world, as well as in the state of Oregon. In most situations, Oregon OSHA has concluded that the application of general guidance in tandem with the employer's general obligations to provide a safe and healthy workplace for workers provide sufficient, if not ideal, protection. However, the unique exposures created in the agricultural environment, particularly in working situations requiring large numbers of workers, and the unique challenges faced in situations where housing is provided as part of the employment relationship, create a unique set of issues, presenting not only an increased risk to individual workers, but also providing the potential for further contagion as the state begins its return to a more normal working environment. A failure to adopt rules immediately would subject these workers, who live in particularly vulnerable situations and who are faced with greater-than-normal obstacles to effective health care, to a heightened risk of serious illness – and even death -- due to COVID-19. Oregon has concluded that existing requirements provide insufficient protection, and cannot be expected to provide sufficient protection throughout the current public health crisis, since no rules could be adopted in the normal course of events until well after the current season's harvests have been completed. These temporary rules will provide increased minimum standards related to sanitation, toilet and handwashing facilities, and social distancing that will serve to mitigate – although not fully resolve – the increased risks faced by the working population in labor camps and throughout agriculture.

OSHA 3-2020

Filed: 11/06/2020 4:11 PM

437-001-0744

Adopt

Statement of Need

These rules are needed to protect workers throughout the state in the context of the current public health emergency,

which has not abated as might have been expected earlier in the year. Although significant public discussion was used to refine the rule through multiple drafts, it remains the case that urgent action is necessary to protect the health of workers and the normal rulemaking procedures would delay these important protections for too long, leaving workers less than fully protected and subject to the uncertainties of public health guidance rather than the relative clarity of a rule designed specifically to address Oregon workplaces.

Justification

COVID-19 represents a public health crisis throughout the country and the world, as well as in the state of Oregon. In most situations, Oregon OSHA has previously relied upon the application of general guidance in tandem with the employer's general obligations to provide a safe and healthy workplace. However, as the pandemic has progressed and, in many respects, become more severe, it has become clear that relying upon such general guidance does not provide sufficient protection to workers or sufficient predictability for their employers. A failure to adopt rules immediately would subject workers throughout the state to a heightened risk of serious illness – and even death -- due to COVID-19.

OSHA 4-2020

Filed: 12/11/2020 8:35 AM

437-001-0744

Adopt

Statement of Need

These rules are needed to protect workers throughout the state in the context of the current public health emergency, which has not abated as might have been expected earlier in the year. Although significant public discussion was used to refine the rule through multiple drafts, it remains the case that urgent action is necessary to protect the health of workers and the normal rulemaking procedures would delay these important protections for too long, leaving workers less than fully protected and subject to the uncertainties of public health guidance rather than the relative clarity of a rule designed specifically to address Oregon workplaces.

Oregon OSHA is refiling these rules on December 11, 2020 to correct non-substantive "scriveners errors" made in the original filing on November 6, 2020.

Justification

COVID-19 represents a public health crisis throughout the country and the world, as well as in the state of Oregon. In most situations, Oregon OSHA has previously relied upon the application of general guidance in tandem with the employer's general obligations to provide a safe and healthy workplace. However, as the pandemic has progressed and, in many respects, become more severe, it has become clear that relying upon such general guidance does not provide sufficient protection to workers or sufficient predictability for their employers. A failure to adopt rules immediately would subject workers throughout the state to a heightened risk of serious illness – and even death -- due to COVID-19.

Department of Consumer and Business Services, Workers' Compensation Board

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	4
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Consumer and Business Services, Workers' Compensation Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	69
Repealed	3

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	1
Amended	11
Suspended	1

WCD 8-2020

Filed: 03/25/2020 12:17 PM

436-009-0040

Amend

Statement of Need

Temporary rules are needed to increase payment for certain digital services and telephone visits between workers and their health care providers, and promote communication about the progress of recovery, when in-person care or telemedicine (two-way video) services are not possible or are unavailable. The Oregon Health Authority has recommended that reimbursement rates for telehealth services mirror payment rates for equivalent office visits.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. COVID-19-related actions to promote social distancing have disrupted workers' ability to receive in-person care for their job-related injuries and illnesses. Continuity of care is essential to monitor the progress of recovery, including whether any temporary total disability should continue and when the worker may return to modified or regular work. Treatment delays impede recovery and may increase claims costs. Increasing reimbursement for remote services to levels equivalent to in-person care should promote use of these alternatives to in-office care. The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because the need for alternatives to in-person care is immediate. Executive Order 20-10, stated in part: "No later than March 23, 2020, all elective and non-urgent procedures across all care settings that utilize PPE [personal protective equipment] ... shall be cancelled, or rescheduled no earlier than June 15, 2020" In addition, Executive Order 20-12 requires "...social distancing of at least six feet from any person who is not a member of their immediate household, to the greatest extent possible..." As a result, many medical clinics and facilities are closing or severely restricting in-person appointments. The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because permanent rulemaking requires at least 49 days under ORS 183.335(1)(d), and the need for alternatives to in-person care is immediate and emergent.

WCD 9-2020

Filed: 04/01/2020 8:24 AM

436-009-0040

Amend

Statement of Need

Temporary rules are needed to increase payment for certain digital services and telephone visits between workers and their health care providers, and promote communication about the progress of recovery, when in-person care or telemedicine (two-way video) services are not possible or are unavailable. The Oregon Health Authority has recommended that reimbursement rates for telehealth services mirror payment rates for equivalent office visits.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. COVID-19-related actions to promote social distancing have disrupted workers' ability to receive in-person care for their job-related injuries and illnesses. Continuity of care is essential to monitor the progress of recovery, including whether any temporary total disability should continue and when the worker may return to modified or regular work. Treatment delays impede recovery and may increase claims costs. Increasing reimbursement for remote services to levels equivalent to in-person care should promote use of these alternatives to in-office care.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because the need for alternatives to in-person care is immediate. Executive Order 20-10, stated in part: "No later than March 23, 2020, all elective and non-urgent procedures across all care settings that utilize PPE [personal protective equipment] ... shall be cancelled, or rescheduled no earlier than June 15, 2020" In addition, Executive Order 20-12 requires "...social distancing of at least six feet from any person who is not a member of their immediate household, to the greatest extent possible..." As a result, many medical clinics and facilities are closing or severely restricting in-person appointments.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because permanent rulemaking requires at least 49 days under ORS 183.335(1)(d), and the need for alternatives to in-person care is immediate and emergent.

WCD 10-2020

Filed: 05/28/2020 9:57 AM

436-080-0040

Amend

Statement of Need

Temporary rules are needed to reduce economic burdens on businesses that are operating in an economy severely depressed by mandatory restrictions on marketplace activity in response to COVID-19. The purpose of a civil penalty under ORS 656.735(1) is to promote compliance with laws requiring employers to provide workers' compensation coverage for their employees when an employer has no prior history of noncompliance. An appropriate penalty amount in a normal economy may prove excessive during a recession, when a sanction is more likely to affect the viability of the business. In a difficult business climate, a lesser penalty can provide a sufficient incentive to comply with coverage laws.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. Businesses are less able to absorb civil penalties during a recession. Without a reduction in the penalty amounts, more businesses may fail because they cannot afford to pay the penalties plus the costs of workers' compensation insurance. A temporary reduction in penalties will increase the likelihood that businesses can afford to return to compliance and continue operations.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because affected businesses need immediate relief. During the time required for permanent rulemaking, affected businesses may be unable to pay current minimum penalties and may fail.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because several months

are required to promulgate permanent rules. In a severely depressed economy, existing minimum penalties may cause some businesses to fail. The need for relief is immediate.

WCD 11-2020 **Filed: 06/18/2020 9:47 AM**

436-080-0040 Suspend

Statement of Need

In response to the recent approval by Governor Kate Brown for the Phase 1 and 2 reopening of businesses in all Oregon counties, and further supported by the Division of Financial Regulation's extension of the emergency order regarding grace periods for insurance premium payments, the recently adopted temporary rule 0040 is suspended effective June 18, 2020.

Justification

Immediate suspension of this rule is justified by the reopening of Oregon counties in conjunction with the extension of the Division of Financial Regulation's emergency order. The temporary penalty reductions were based on conditions that have improved to an extent that the reductions are no longer warranted. This suspension returns the penalties to the previous levels, helping to ensure compliance with coverage requirements, which protects both workers and employers.

WCD 13-2020 **Filed: 07/10/2020 11:22 AM**

436-009-0004 Amend

436-009-0010 Amend

436-009-0040 Amend

Statement of Need

Temporary rules are needed to maintain increased payment for certain digital services and telephone visits between workers and their health care providers, and promote communication about the progress of recovery, when in-person care or telemedicine (two-way video) services are not feasible or are unavailable. The Oregon Health Authority has recommended that reimbursement rates for telehealth services mirror payment rates for equivalent office visits. In addition, the American Medical Association has adopted new CPT® codes for billing for COVID-19 medical tests, and temporary rule changes are needed to allow health care providers and payers to use the new codes.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. COVID-19-related actions to promote social distancing continue to disrupt workers' ability to receive in-person care for their job-related injuries and illnesses. Continuity of care is essential to monitor the progress of recovery, including whether any temporary total disability should continue and when the worker may return to modified or regular work. Treatment delays impede recovery and may increase claims costs. Increasing reimbursement for remote services to levels equivalent to in-person care should promote use of these alternatives to in-office care.

Health care providers have begun to use new CPT® codes to bill for COVID-19 testing, but these codes are not included in CPT® 2020, previously adopted under OAR 436-009-0004. Until the new CPT® codes are adopted, there is risk that health care providers will not be paid for COVID-19 testing.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because the need for alternatives to in-person care is immediate and ongoing. Patient screening and social distancing requirements for in-office services will continue to incentivize remote services when they are feasible. Adoption of new COVID-19 CPT® testing codes is urgently needed, because current rules do not provide the codes for billing or a basis for payment.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because permanent

rulemaking requires at least 49 days under ORS 183.335(1)(d), and the need for COVID-19 CPT® testing codes and alternatives to in-person care is immediate and emergent.

WCD 15-2020 **Filed: 09/30/2020 11:19 AM**

436-060-0141 Adopt

Statement of Need

This temporary rule is needed to promote appropriate and consistent processing of claims for COVID-19 or exposure to SARS-CoV-2.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. Stakeholders have expressed concerns about inconsistencies in the processing of claims for COVID-19 or exposure to SARS-CoV-2, and have recommended immediate action to promote reasonable investigation of these claims.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because the COVID-19 pandemic has been declared a public health emergency, and immediate action is warranted to promote appropriate processing of claims for COVID-19 or exposure to SARS-CoV-2.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because permanent rulemaking requires at least 49 days under ORS 183.335(1)(d), and the need for rules to promote appropriate claims processing is immediate and emergent.

WCD 21-2020 **Filed: 12/15/2020 3:08 PM**

436-009-0004 Amend

436-009-0010 Amend

436-009-0012 Amend

436-009-0023 Amend

436-009-0040 Amend

Statement of Need

Temporary rules are needed to allow health care providers and workers' compensation insurers to use 2021 medical billing codes on and after Jan. 1, 2021.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. Delay in adoption of up-to-date codes creates procedural friction in workers' compensation billing and payment. Adoption of 2021 codes will keep workers' compensation billing codes consistent with industry standards.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because it will avert administrative burdens to health care providers, workers' compensation insurers, and self-insured employers we would expect with delayed adoption of 2021 codes. Without these temporary rule changes: providers and payers would be required to use only 2020 codes until the agency can formally adopt new codes effective April 1, 2021 (projected); workers'

compensation bills would have to be processed differently than bills for private health insurance, Medicare, etc.; providers using new codes would be subject to bill rejection; and insurers submitting data containing new codes to the agency would be subject to civil penalties. In addition, workers' access to quality health care is jeopardized if health care providers perceive workers' compensation care as too burdensome.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because updated billing codes are not published by the Centers for Medicare and Medicaid Services and others in time for Oregon to adopt changes using standard (permanent) rulemaking procedures.