

Report to the Legislative Assembly 2018 Annual Rulemaking Report

February 2019



Executive Summary

TO: Oregon Legislative Assembly

FROM: Cameron Smith, Director

RE: 2018 Rulemaking Activities

House Bill 4106 (2016) asks state agencies to report annually on permanent and temporary rulemaking actions.

In 2018, the cumulative rulemaking activities within the Department of Consumer and Business Services adopted, amended, suspended or repealed a total of 387 rules. The department processed 27 temporary rulemakings that adopted, amended, or suspended a total of 64 rules. The following is a synopsis of the department's temporary rulemaking activities.

Description of Rulemaking	Action Taken	Oregon Administrative Rule (OAR) Numbers
Lake County delegation of electrical program (Building Codes Division)	Adopted	OAR 918-308-0500
Aviation Hangar Fire Suppression (Building Codes Division)	Adopted	OAR 918-060-0105
Prefabricated structures plan review clarification (Building Codes Division)	Amended	OAR 918-311-0060, 918-780-0040
Building and electrical program delegation (Building Codes Division)	Amended	OAR 918-020-0090, 918-020-0095, 918-020-0097, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-308-0010, 918-308-0180
Emergency Responder Radio Coverage (Building Codes Division)	Amended	OAR 918-460-0015
Building and electrical program delegation (Building Codes Division)	Amended	OAR 918-020-0090, 918-020-0095, 918-020-0105
	Suspended	OAR 918-020-0097, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-308-0010, 918-308-0180
Recreational park trailer definition for ODOT purposes (Building Codes Division)	Amended	OAR 918-525-0005
Sleeping lofts and ladders (Building Codes Division)	Amended	OAR 918-480-0010
Oregon Reach Code scope and adoption process (Building Codes Division)	Amended	OAR 918-465-0020, 918-465-0040
	Suspended	OAR 918-465-0010, 918-465-0030
Administrative Limited Journeyman Manufacturing Plant Electrician License (Building Codes Division)	Adopted	OAR 918-282-5006
Administrative Limited Maintenance Electrician License (Building Codes Division)	Adopted	OAR 918-282-5007
Provisional General Journeyman License (Building Codes Division)	Adopted	OAR 918-282-5000, 918-282-5001, 918-282-5002

Description of Rulemaking	Action Taken	Oregon Administrative Rule (OAR) Numbers
Provisional Limited Journeyman Manufacturing Plant Electrician License (Building Codes Division)	Adopted	OAR 918-282-5003, 918-282-5004, 918-282-5005
Qualifying military experience for limited maintenance electrician license (Building Codes Division)	Adopted	OAR 918-282-5008
Emergency Radio Responder Coverage (Building Codes Division)	Adopted	OAR 918-460-0110
Expedited process for county assumption of electrical inspection program (Building Codes Division)	Adopted	OAR 918-308-0510
Prefabricated structures plan review clarification (Building Codes Division)	Amended	OAR 918-311-0060, 918-780-0040
Building program delegation rules (Building Codes Division)	Amended	OAR 918-020-0090, 918-020-0095, 918-020-0105
Recreational Park Trailer safety and construction standards (Building Codes Division)	Amended	OAR 918-525-0005
Aviation Hangar Fire Suppression (Building Codes Division)	Adopted	OAR 918-460-0106
Sleeping lofts and ladders (Building Codes Division)	Adopted	OAR 918-480-0180
Post-Earthquake Damage Inspector (Building Codes Division)	Suspended	OAR 918-098-1600, 918-098-1610, 918-098-1620, 918-098-1630
Errors and Omissions Insurance to broker-dealers and investment advisors (Division of Financial Regulation)	Adopted	OAR 836-053-0014
Standard plan designs (Division of Financial Regulation)	Amended	OAR 836-053-0013
Establishing Adjusted Weekly Wage for Workers with Irregular Wages (Workers' Compensation Division)	Amended	OAR 436-060-0005, 436-060-0025
Establishing Adjusted Weekly Wage (Workers' Compensation Division)	Amended	OAR 436-120-0147
Vocational assistance eligibility; weekly wage determination if multiple jobs held at time of injury (Workers' Compensation Division)	Amended	OAR 436-009-0004, 436-009-0010, 436-009-0023, 436-009-0040, 436-009-0080

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

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For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Building Codes Division

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 6

Amended: 40

Repealed: 4

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 15

Amended: 18

Suspended: 21

(b) A list of the rules:

Adopted: OAR 918-060-0105, 918-282-5000, 918-282-5001, 918-282-5002, 918-282-5003, 918-282-5004, 918-282-5005, 918-282-5006, 918-282-5007, 918-282-5008, 918-308-0500, 918-308-0510, 918-460-0106, 918-460-0110, 918-480-0180

Amended: OAR 918-020-0090, 918-020-0095, 918-020-0097, 918-020-0105, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-308-0010, 918-308-0180, 918-311-0060, 918-460-0015, 918-525-0005, 918-780-0040

Suspended: OAR 918-020-0097, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-098-1600, 918-098-1610, 918-098-1620, 918-098-1630, 918-308-0010, 918-308-0180, 918-465-0010, 918-465-0020, 918-465-0030, 918-465-0040, 918-480-0010, 918-525-0005

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

1. OAR chapter 918, division 308 – Electrical Program Municipal Administration

918-308-0500, Program Amendment Procedure

Need for temporary rules: The rule allows Lake County to amend its program delegation to include administration and enforcement of the electrical inspection program. That program is currently administered by the division. An expedited process is necessary to ensure that a local electrical inspection program is available to provide inspection services to that County.

Justification of temporary rules: The division is required to administer and enforce uniform construction standards throughout the state. That authority is delegated to municipalities, who administer the building inspection program on behalf of the division. Where a program has not been delegated to a county, the division provides building inspection services. Lake County currently operates a building inspection program, but has not been delegated responsibility for the electrical inspection program.

Allowing Lake County to amend its delegation to include administration and enforcement of the electrical inspection program will help to ensure that electrical inspection services are available to the construction industry and homeowners in the Lake County area and will result in a complete program, eliminating potential disconnects in service delivery.

The temporary rules were in effect until 4/30/2018.

2. OAR chapter 918, division 460 – Structural and Energy Efficiency Specialty Codes

918-460-0105, Aviation Hangar Fire Suppression

Need for temporary rules: Information has been presented to the division illustrating the risk that accidental discharge of aviation hangar foam fire suppression systems pose to occupants, property, and the environment. An additional temporary rule is necessary to implement new Oregon Structural Specialty Code language regarding manually actuated foam fire suppression systems to mitigate these identified risks while the division continues to work with the fire service to find a code path to address the issue.

Justification of temporary rules: The new code language is intended to mitigate the potential harm to health, public safety, and the environment, as well as potential damage to property posed by accidental discharge of foam fire suppression systems. A temporary rule will allow for additional time to develop a permanent solution. For these reasons the division finds that a failure to act promptly would result in serious prejudice to the public interest or interested parties.

The temporary rules were in effect until 9/08/2018.

3. OAR chapter 918, division 311 – Miscellaneous Electrical Rules

918-311-0060, Electrical Plan Review for Prefabricated Structures

OAR chapter 918, division 780 – Plumbing Fees, Permits, Inspections

918-780-0040, Plumbing Plan Reviews

Need for temporary rules: This temporary rule is needed to clarify when plan review is required for prefabricated structures. The standards across specialty code areas need to be consistently applied throughout the state. The misapplication of the plan review standards for prefabricated structures creates financial harm and causes unnecessary delays for manufacturers and purchasers of prefabricated structures.

Justification of temporary rules: Without a temporary rule, plan review standards could be misapplied creating a situation where prefabricated structures would receive unequal treatment throughout the state. The legislature created a system where all building codes are to apply uniformly throughout the state. A failure to act promptly would result in serious prejudice to the public interest or the interest of the parties involved by allowing for the inequitable treatment of prefabricated structures, resulting in financial harm and project delays.

The temporary rules were in effect until 10/15/2018.

4. OAR chapter 918, division 020 – Delegation of Programs to Local Jurisdictions

918-020-0090, Program Standards

918-020-0095, Program Assumption Procedures

918-020-0097, Intergovernmental Agreements and Regional Options

OAR chapter 918, division 090 – Specialty Code Plan Review and Inspection

918-090-0010, Definitions

918-090-0110, Business Registration Application Requirements

918-090-0120, Registered Business Responsibilities

918-090-0200, Specialty Code Plan Reviewer and Inspector License - Scope

918-090-0210, Specialty Code Plan Reviewer and Inspector License - Application Requirements

918-090-0300, Requirements for the Quality Control Manual

918-090-0310, Record Keeping Requirements

918-090-0400, Specialty Code Plan Reviewer and Inspector License and Business Registration Monitoring

OAR chapter 918, division 308 – Electrical Program Municipal Administration

918-308-0010, Standards for Delegation

918-308-0180, Formation of Municipal Program

Need for temporary rules: Under ORS Chapter 455, there is a statewide building inspection program which may be delegated from the state to municipalities to administer and enforce. ORS Chapter 455 also allows for use of licensed private third party inspection services. On February 7, 2018, during review of HB 4086 (2018), which related to third party inspection businesses, Legislative Counsel submitted an opinion questioning the constitutionality of discretionary functions being delegated to private third parties who administered building inspection programs on behalf of municipalities. On February 16, 2018, counsel at the Department of Justice issued a memorandum to the Building Codes Division (the division) and the Electrical and Elevator Board, outlining constitutional and statutory issues with the delegation of discretionary functions to private parties. These rules are intended to address these constitutional and statutory issues by addressing the roles and responsibilities of municipalities administering building programs, and of third party contractors operating on their behalf. The memorandum advised the division not to renew the delegation of any municipality's inspection program if the municipality contracts with private third parties to perform discretionary functions on behalf of the municipality and, ultimately, the state.

The deadline for current building inspection programs that are up for renewal to begin their next delegation period is July 1, 2018. In addition, ORS 455.035 limits the dates on which the division can adopt permanent rules to January 1, April 1, July 1, and October 1. Because the July 1 permanent adoption date would not provide any time for municipalities to comply with the rules before renewal of their program, temporary rules are appropriate.

Therefore, these rules are needed to: 1) address concerns raised by the Department of Justice and Legislative Counsel; 2) allow municipalities up for renewal sufficient time to implement the requirements of the rules; and 3) ensure continuity of building inspection services.

Justification of temporary rules: Temporary rules are justified in this instance because there is an immediate need to address the concerns raised by the Department of Justice in their February 16, 2018, memorandum prior to the approval or renewal of any building program. In addition, ORS 455.035 limits the dates on which the division can adopt permanent rules to January 1, April 1, July 1, and October 1. Because the July 1 permanent adoption date would not provide any time for municipalities to comply with the rules before renewal of their program, temporary rules are appropriate.

Therefore, these rules are justified because they are needed to: 1) address concerns raised by the Department of Justice and Legislative Counsel; 2) allow municipalities up for renewal sufficient time to implement the requirements of the rules; and 3) ensure continuity of building inspection services.

The temporary rules were in effect until 10/19/2018.

5. OAR chapter 918, division 460 – Structural and Energy Efficiency Specialty Codes
918-460-0015, Amendments to the Oregon Structural Specialty Code

Need for temporary rules: This rule is necessary to clarify a prior Oregon Structural Specialty Code (OSSC) amendment, delineate division of authorities relating to emergency responder radio coverage, and specify OSSC Form 915 is required. This rule is needed to maintain emergency responder radio coverage construction component requirements in the OSSC while detailed requirements continue to be reviewed by the Building Codes Structures Board. These code changes provide uniform and predictable standards for the installation of construction components for emergency responder radio coverage. This coverage is integral to the duties of first responders and the safety of building occupants.

Justification of temporary rules: Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. Without a temporary rule there will be no provisions in the Oregon Structural Specialty Code requiring emergency responder radio coverage construction components. The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because this coverage is critical to first responders and increases public safety.

Previous action by the Building Codes Structures Board necessitated additional board review before the division can adopt a permanent rule. Due to the time required to resolve the various issues associated with emergency responder radio coverage the previous temporary rule was set to expire before the additional board review could happen. In order to avoid having the construction requirements lapse, the division finds that a subsequent additional temporary rule is required. This action ensures continuous and uniform construction standards while providing the Building Codes Structures Board the opportunity to have a final review of the proposed permanent rule.

The temporary rules were in effect until 10/23/2018.

6. OAR chapter 918, division 020 – Delegation of Programs to Local Jurisdictions

- 918-020-0090, Program Standards
- 918-020-0095, Program Assumption Procedures
- 918-020-0097, Intergovernmental Agreements and Regional Options
- 918-020-0105, Renewal of Existing Programs

OAR chapter 918, division 090 – Specialty Code Plan Review and Inspection

- 918-090-0010, Definitions
- 918-090-0110, Business Registration Application Requirements
- 918-090-0120, Registered Business Responsibilities
- 918-090-0200, Specialty Code Plan Reviewer and Inspector License - Scope
- 918-090-0210, Specialty Code Plan Reviewer and Inspector License - Application Requirements
- 918-090-0300, Requirements for the Quality Control Manual
- 918-090-0310, Quality Control Manual — Record Keeping Requirements
- 918-090-0400, Specialty Code Plan Reviewer and Inspector License and Business Registration Monitoring

OAR chapter 918, division 308 – Electrical Program Municipal Administration

- 918-308-0010, Standards for Delegation
- 918-308-0180, Formation of Municipal Program

Need for temporary rules: 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 has been directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. These rules replace the repealed rules while the division awaits additional DOJ advice, and are needed to address those communities that would otherwise need to renew their building program operation period effective July 1, 2018.

Justification of temporary rules: 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 has been directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. These rules are justified to address those communities that would otherwise need to renew their building program operation period effective July 1, 2018, and to create clarity for cities and counties while the division awaits additional legal guidance.

The temporary rules were in effect until 10/19/2018.

7. OAR chapter 918, division 525 – Safety and Construction Standards for Recreational Vehicles 918-525-0005, Definitions

Need for temporary rules: This rule is needed to provide a path for the Oregon Department of Transportation to issue titles to recreational park trailers.

Justification of temporary rules: This rule is justified because the Oregon Department of Transportation has indicated that they rely on the definition of recreational vehicle adopted by the Building Codes Division in order to have a path to issue titles. This rule expands the definition of recreational vehicle to include, only for Oregon Department of Transportation purposes, a recreational park trailer.

The temporary rules were in effect until 11/27/2018.

8. OAR chapter 918, division 480 – One- and Two-Family Dwelling Specialty Code
918-480-0010, Amendments to the Oregon Residential Specialty Code

Need for temporary rules: This temporary rule is needed to amend the Oregon Residential Specialty Code to comply with the mandate of ORS 455.615 (2017 House Bill 2737). The statute requires the Building Codes Division (the division) to amend the state building code to allow sleeping lofts and ladders or alternating tread devices as the primary means of egress from a sleeping loft for small homes. This rule amends the Oregon Residential Code to meet this requirement by allowing sleeping lofts with ladder or alternating tread device access. A temporary rule was adopted on January 1, 2018. There are unresolved issues that need to be addressed, and additional consultation with stakeholders and the Residential and Manufactured Structures Board that need to take place before a permanent rule can be adopted. Therefore this rule is needed to continue the temporary rule pending resolution of outstanding issues with stakeholders and the Residential and Manufactured Structures Board. This statement of need and justification takes into consideration the requirements specified in ORS 183.534 and OAR 813-025-0015 regarding housing impacts for single family dwellings. There is no cost increase for these rules provisions, because the rules create an option for builders to add sleeping lofts with ladder or alternating tread device access. The provisions are not mandatory on any builder.

Justification of temporary rules: This rule is intended to meet the requirements of ORS 455.615 (2017 House Bill 2737). There has not been sufficient time for the division and the Residential and Manufactured Structures Board to develop and adopt a permanent rule. A temporary rule will allow for additional time to solicit public feedback and develop a permanent rule. For these reasons, the division finds that a failure to act promptly would result in serious prejudice to the public interest or interested parties.

The temporary rules were in effect until 12/26/2018.

9. OAR chapter 918, division 465 – Reach Code

- 918-465-0010, Reasonable Notice to Interested Parties
- 918-465-0020, Updates rules regarding Oregon Reach Code
- 918-465-0030, Adopted the Oregon Reach Code
- 918-465-0040, Amendments to the Oregon Reach Code

Need for temporary rules: The Oregon Reach Code is established in ORS 455.500 as a set of optional construction standards separate from the state building code. These rules are needed to clarify the scope and adoption process for the Oregon Reach Code so that a new Oregon Reach Code can be established and available to builders by September 1, 2018.

Justification of temporary rules: These rules are justified because they create a consistent process for acknowledging the most recent Oregon Reach Code, and they clarify the scope of the Oregon Reach Code, consistent with statute.

The temporary rules are in effect until 02/27/2019.

10. OAR chapter 918, division 282 – Electrical and Elevator Licensing

918-282-5006, Administrative Limited Journeyman Manufacturing Plant Electrician License

Need for temporary rules: Industry has identified a need to bring qualified individuals from out of state into Oregon to meet skilled electrical labor needs. This rule will allow industry and properly licensed individuals to sponsor out of state applicants to come into the state and work for a limited time while applying and testing for their license.

Justification of temporary rules: Industry has identified the lack of ability to work while waiting to obtain an Oregon license as being a barrier to attracting qualified individuals to the state. This rule is intended to provide a path to allow qualified individuals to work in a supervised manner while obtaining their Oregon license. A failure to act promptly would cause a delay in the implementation of the program and miss the summer working season, which would limit the effectiveness of the program. Industry has identified that it has an immediate need for skilled labor, and a delay would cause serious prejudice to the industry and its ability to market the program to out of state applicants.

The temporary rules were in effect until 2/10/2019.

11. OAR chapter 918, division 282 – Electrical and Elevator Licensing

918-282-5007, Administrative Limited Maintenance Electrician License

Need for temporary rules: Industry has identified a need to bring qualified individuals from out of state into Oregon to meet skilled electrical labor needs. This rule will allow industry and properly licensed individuals to sponsor out of state applicants to come into the state and work for a limited time while applying and testing for their license.

Justification of temporary rules: Industry has identified the lack of ability to work while waiting to obtain an Oregon license as being a barrier to attracting qualified individuals to the state. This rule is intended to provide a path to allow qualified individuals to work in a supervised manner while obtaining their Oregon license. A failure to act promptly would cause a delay in the implementation of the program and miss the summer working season, which would limit the effectiveness of the program. Industry has identified that it has an immediate need for skilled labor, and a delay would cause serious prejudice to the industry and its ability to market the program to out of state applicants.

The temporary rules were in effect until 2/10/2019.

12. OAR chapter 918, division 282 – Electrical and Elevator Licensing

918-282-5000, Provisional General Journeyman License Purpose and Scope

918-282-5001, Application Process and Qualifications: Provisional General Journeyman Electrician

918-282-5002, Provisional General Journeyman Electrician License Effective Dates

Need for temporary rules: The electrical industry currently does not have a sufficient workforce to meet workload demands. These rules create a one-way reciprocity agreement with the following states and provinces: Alaska, Alberta, Arkansas, British Columbia, Colorado, Connecticut, Idaho, Maine, Montana, Utah, Washington, and Wyoming. This approach allows trained individuals to obtain a provisional journeyman electrician license to help meet the increased need for skilled electrical workers in Oregon.

Justification of temporary rules: A failure to act promptly would result in serious prejudice to the public interest and the parties concerned by not addressing the current skilled labor shortage. Without skilled workers, construction projects and the electrical industry would face operational delays and project cancellations. These temporary rules create an additional path to attract qualified skilled electrical workers into the state.

The temporary rules are in effect until 2/10/2019.

13. OAR chapter 918, division 282 – Electrical and Elevator Licensing

918-282-5003, Provisional Limited Journeyman Manufacturing Plant Electrician License Purpose and Scope

918-282-5004, Application Process and Qualifications: Provisional Limited Journeyman Manufacturing Plant Electrician

918-282-5005, Provisional Limited Journeyman Manufacturing Plant Electrician License Effective Dates

Need for temporary rules: The electrical industry currently does not have a sufficient workforce to meet workload demands. These rules create a one-way reciprocity agreement with the following states: Arkansas, District of Columbia, Georgia, Hawaii, Idaho, Maine, Minnesota, Montana, Texas, Utah, and Wyoming. This approach allows trained individuals to obtain a provisional limited journeyman manufacturing plant electrician license to help meet the increased need for skilled electrical workers in Oregon.

Justification of temporary rules: A failure to act promptly would result in serious prejudice to the public interest and the parties concerned by not addressing the current skilled labor shortage. Without skilled workers, construction projects and the electrical industry would face operational delays and project cancellations. These temporary rules create an additional path to attract qualified skilled electrical workers into the state.

The temporary rules are in effect until 02/10/2019.

14. OAR chapter 918, division 282 – Electrical and Elevator Licensing

918-282-5008, Military Experience for Limited Maintenance Electrician License

Need for temporary rules: The division currently has a rule to accept military related experience and training on a case-by-case basis to meet the qualifying licensing criteria. Industry requested a more prescriptive acceptance path for training related to the Limited Maintenance Electrician license to increase the number of qualified applicants with military training.

Justification of temporary rules: Industry has identified a need for more licensed limited maintenance electricians, and believes that qualified individuals with electrical experience gained while in military service can help meet the demand for skilled labor. A failure to act promptly would cause serious prejudice to the electrical industry by creating a delay in industry's ability to attract qualified labor to Oregon to become licensed as limited maintenance electricians.

The temporary rules are in effect until 3/29/2019.

15. OAR chapter 918, division 460 – Structural and Energy Efficiency Codes

918-460-0110, Emergency Responder Radio Coverage

Need for temporary rules: This rule is necessary to clarify a prior Oregon Structural Specialty Code (OSSC) amendment, delineate division of authorities relating to emergency responder radio coverage, and specify OSSC Form 915 is required. This rule is needed to maintain emergency responder radio coverage construction component requirements in the OSSC while detailed requirements continue to be reviewed by industry stakeholders and the fire service. These code changes provide uniform and predictable standards for the installation of construction components for emergency responder radio coverage. This coverage is integral to the duties of first responders and the safety of building occupants.

These amendments were previously contained in OAR 918-460-0015; due to administrative needs the amendments are being renumbered to OAR 918-460-0110.

Justification of temporary rules: Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. Without a temporary rule there will be no provisions in the Oregon Structural Specialty Code requiring emergency responder radio coverage construction components. The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because this coverage is critical to first responders and increases public safety.

The specific code provisions and approval process are still under review by stakeholders and the fire service. Without the approval of the fire service the division will not adopt permanent rules.

The temporary rules were in effect until 03/29/2019.

16. OAR chapter 918, division 308 – Electrical Program Municipal Administration

918-308-0510, Program Amendment Procedures

Need for temporary rules: The rule ensures that local electrical inspection services are available in all regions of the state by establishing an expedited process for existing county building inspection programs to assume delegation of an electrical inspection program that is currently administered by the state

Justification of temporary rules: The division is required to administer and enforce uniform construction standards throughout the state. That authority is delegated to municipalities, who administer the building inspection program on behalf of the division. Where a program has not been delegated to a county, the division provides building inspection services. Three counties currently operate a building inspection program, but have not been delegated responsibility for the electrical inspection program.

Giving those counties an expedited process to seek delegation of the electrical inspection program will help to ensure that electrical inspection services are available to the construction industry and homeowners in those counties, and will result in more complete programs, eliminating potential disconnects in service delivery.

The temporary rules were in effect until 11/30/2018.

17. OAR chapter 918, division 311 – Miscellaneous Electrical Rules

918-311-0060, Electrical Plan Review for Prefabricated Structures

OAR chapter 918, division 780 – Plumbing Fees, Permits, Inspections

918-780-0040, Plumbing Plan Reviews

Need for temporary rules: This temporary rule is needed to clarify when plan review is required for prefabricated structures. The standards across specialty code areas need to be consistently applied throughout the state. The misapplication of the plan review standards for prefabricated structures creates financial harm and causes unnecessary delays for manufacturers and purchasers of prefabricated structures.

Justification of temporary rules: Without a temporary rule, plan review standards could be misapplied creating a situation where prefabricated structures would receive unequal treatment throughout the state. The legislature created a system where all building codes are to apply uniformly throughout the state. A failure to act promptly would result in serious prejudice to the public interest or the interest of the parties involved by allowing for the inequitable treatment of prefabricated structures, resulting in financial harm and project delays.

The temporary rules were in effect until 4/13/2019.

18. OAR chapter 918, division 020 – Delegation of Programs to Local Jurisdictions

918-020-0090, Program Standards

918-020-0095, Program Assumption Procedures

918-020-0105, Renewal of Existing Programs

Need for temporary rules: 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. The division has not received the formal opinion and 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.

Justification of temporary rules: 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. The division has not received the formal opinion and 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 the division awaits additional legal guidance.

The temporary rules are in effect until 4/17/2019.

19. OAR chapter 918, division 525 – Safety and Construction Standards for Recreational Vehicles
918-525-0005, Definitions

Need for temporary rules: This rule is needed to provide a path for the Oregon Department of Transportation to issue titles to recreational park trailers

Justification of temporary rules: This rule is justified because the Oregon Department of Transportation has indicated that they continue to rely on the definition of recreational vehicle adopted by the Building Codes Division in order to have a path to issue titles. This rule expands the definition of recreational vehicle to include, only for Oregon Department of Transportation purposes, a recreational park trailer.

The temporary rules were in effect until 5/26/2019.

20. OAR chapter 918, division 460 – Structural and Energy Efficiency Specialty Codes
918-460-0106, Aviation Hangar Fire Suppression

Need for temporary rules: This rule is needed because stakeholders in the aviation industry have indicated there are potential projects depending on a proposed rule change to aviation hangar fire suppression requirements. The Building Codes Structures Board approved the rule at its August 1, 2018, meeting. A public hearing was held on September 18, 2018. The Office of the State Fire Marshal (OSFM) submitted oral testimony at the hearing, and previously submitted written testimony raising concerns about changes to the code requirements. Because the code provisions the rule adopts impact OSFM, the division does not want to move forward absent a clear indication of support on the record from OSFM. The division has not yet received that written support for the rule change, and therefore is proceeding with a temporary rule to allow projects to move forward while the rulemaking record can be made more complete with regards to the position of OSFM.

Justification of temporary rules: This rule is justified because the Building Codes Structures Board approved the rule change, there are pending projects wishing to utilize the code provisions it adopts, and the division wants additional time to develop a complete rulemaking record for a permanent rule, including input from OSFM.

The temporary rules are in effect until 6/04/2019.

21. OAR chapter 918, division 480 – One- and Two-Family Dwelling Specialty Code
918-480-0180, Dwelling Units Containing a Loft

Need for temporary rules: This temporary rule is needed to amend the Oregon Residential Specialty Code to comply with the mandate of ORS 455.615 (2017 House Bill 2737). The statute requires the Building Codes Division (the division) to amend the state building code to allow sleeping lofts and ladders or alternating tread devices as the primary means of egress from a sleeping loft for small homes. This rule amends the Oregon Residential Specialty Code to meet this requirement by allowing sleeping lofts with ladder or alternating tread device access.

This statement of need and justification takes into consideration the requirements specified in ORS 183.534 and OAR 813-025-0015 regarding housing impacts for single family dwellings. There is no cost increase for these rules provisions, because the rules create an option for builders to add sleeping lofts with ladder or alternating tread device access. The provisions are not mandatory on any builder.

Justification of temporary rules: This rule is intended to meet the requirements of ORS 455.615 (2017 House Bill 2737). These standards have been in effect since January 1, 2018. The division anticipates the potential for additional legislative changes during the 2019 session. The division does not want to cause undue disruption to the industry and wants to keep consistent standards in place while awaiting any further legislative guidance.

The temporary rules are in effect until 6/24/2019.

22. OAR chapter 918, division 098 – Certification Rules

918-098-1600, Post-Earthquake Damage Inspectors - Purpose and Scope

918-098-1610, Post-Earthquake Damage Inspectors - Definitions

918-098-1620, Post Earthquake Damage Inspector Registration Requirements

918-098-1630, Post-Earthquake Damage Inspector Continuing Education Requirements

Need for temporary rules: These rules need to be suspended because the Building Codes Division lacks statutory authority to regulate post-earthquake damage inspectors in the manner described by the rules. The division will proceed with permanent rulemaking to repeal the rules.

Justification of temporary rules: The suspension of these rules is justified because the adoption of the rules was outside the Building Codes Division statutory authority.

The temporary rules are in effect until 6/29/2019.



For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Director's Office

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 0

Amended: 2

Repealed: 0

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 0

Amended: 0

Suspended: 0

(b) A list of the rules:

Adopted: N/A

Amended: N/A

Suspended: N/A

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).



For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Division of Financial Regulation

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 45

Amended: 46

Repealed: 2

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 1

Amended: 1

Repealed: 0

(b) A list of the rules:

Adopted: 836-053-0014

Amended: 836-053-0013

Repealed: N/A

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

1. OAR chapter 836, division 053 – Health Benefit Plans

836-053-0013, Oregon Standard Bronze and Silver Health Benefit Plans for Plan Years Beginning on and after January 1, 2018

Need for temporary rules: This rule amends the standard plan designs adopted under ORS 743B.130 to ensure compliance with the requirements of House Bill 3391 (2017). ORS 743B.130 requires health insurers to offer a standard bronze and a standard silver plan to individuals and small employers wherever they do business in those markets. The Department of Consumer and Business Services establishes the design of the standard plans by rule. Current standard plans are adopted under OAR 836-053-0013.

House Bill 3391, passed during the 2017 legislative session, requires health benefit plans issued or renewed on or after January 1, 2019 to provide coverage for certain reproductive health services, drugs, and other items specified in the bill.

HB 3391 requires that these services must be covered at no cost to the consumer, meaning that the plan may not impose a deductible, copayment, or cost sharing. The current standard plan rules do not fully align with HB 3391. While many services required under HB 3391 are already covered under the standard plans, some may not be. Moreover, even where services required under HB 3391 are covered, the current standard plan designs impose deductibles and other cost sharing. This is especially true of the standard bronze plan, which subjects all services except federally-recognized preventive services to the deductible. This rule brings the standard plans into compliance with statute by amending OAR 836-053-0013 to clarify that coverage provided under the standard plans must meet the requirements of HB 3391.

Justification of temporary rules: The coverage requirements of HB 3391 apply to plans issued or renewed in the individual or small employer market on or after January 1, 2019. Insurers wishing to participate in these markets must file their 2019 plan offerings with the Department by May 16, 2018. The guidance provided in this temporary rule is necessary for carriers to make informed decisions on 2019 market participation and to complete the required regulatory filings timely. If the Department does not act, Oregonians may not receive the full scope of benefits to which they are entitled under the Insurance Code. The Department does not have sufficient time to complete the notice and comment procedures required under the Administrative Procedures Act for permanent rules. The Department has, however, consulted with affected parties prior to filing the temporary rule

The temporary rule was in effect until 10/20/2018.

2. OAR chapter 441, division 175 - Licensing of Broker-Dealers, Investment Advisers, and Salespersons

441-175-0185, Errors and Omissions Coverage under ORS 59.175

Need for temporary rules: These temporary rules are necessary in order to provide guidance to broker-dealers and investment advisors subject to the errors and omissions insurance requirement enacted through Senate Bill 96 (2017). Senate Bill 96 requires certain broker-dealers and investment advisors with their principal place of business in Oregon to obtain, and maintain, a minimum of \$1 million in errors and omissions insurance. The requirement to have errors and omissions coverage becomes effective July 31, 2018. Currently, the primary source of financial services errors and omissions insurance is in the surplus lines and risk retention markets. Because Oregon surplus lines and risk retention markets are not “admitted” in Oregon, the department must authorize coverage through one or both groups through rule. Because this is a new requirement, financial advisors subject to the requirement need time in order to shop for and obtain appropriate coverage. These temporary rules are necessary to clarify, for both insurance producers and affected financial advisors, how to provide proof of insurance to the division.

Justification of temporary rules: Senate Bill 96 (2017) requires certain broker-dealers and investment advisors with their principal place of business in Oregon to obtain, and maintain, a minimum of \$1 million in errors and omissions insurance. The requirement to have errors and omissions coverage becomes effective July 31, 2018. Currently, the primary source of financial services errors and omissions insurance is in the surplus lines and risk retention markets. Because Oregon surplus lines and risk retention markets are not “admitted” in Oregon, the department must authorize coverage through one or both of these groups through rule. These temporary rules are necessary in order to clarify how affected advisors can demonstrate to the department they possess the requisite coverage. While the division is currently undertaking permanent rulemaking, substantial prejudice could result in the absence of the temporary rules if financial advisors are unaware of how to meet the requirements of SB 96 in a timely manner. If financial advisors are unaware of how to meet the terms of the requirement they could have their license suspended or revoked.

Additionally, without appropriate procedures for demonstrating the requisite coverage, investors may be without recourse if they are harmed by uninsured financial advisors. While the division is currently undertaking permanent rulemaking, substantial prejudice could result in the absence of the temporary rule if financial advisors are unaware of how to meet the requirements of SB 96 in a timely manner. If financial advisors are unaware of how to meet the terms of the requirement they could have their license suspended or revoked.

The temporary rule was in effect until 12/08/2018.



For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Health Insurance Marketplace

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 0

Amended: 3

Repealed: 0

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 0

Amended: 0

Suspended: 0

(b) A list of the rules:

Adopted: N/A

Amended: N/A

Suspended: N/A

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).



For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Oregon OSHA

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 2

Amended: 62

Repealed: 0

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 0

Amended: 0

Suspended: 0

(b) A list of the rules:

Adopted: N/A

Amended: N/A

Suspended: N/A

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).



For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Workers' Compensation Board

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 0

Amended: 0

Repealed: 0

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 0

Amended: 0

Suspended: 0

(b) A list of the rules:

Adopted: N/A

Amended: N/A

Suspended: N/A

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).



For Department of Consumer and Business Services' annual report to the Legislative Assembly on agency rulemaking

Workers' Compensation Division

As required by enrolled House Bill 4106 (2016) no later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. The report must include:

1. The number of rules adopted, amended or repealed in accordance with ORS 183.335(2) and (3), i.e., through permanent rulemaking:

Adopted: 14

Amended: 78

Repealed: 19

2. With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335(5), i.e., through temporary rulemaking:

(a) The number of rules:

Adopted: 0

Amended: 8

Suspended: 0

(b) A list of the rules:

Adopted: N/A

Amended: 436-060-0005, 436-060-0025, 436-120-0147, 436-009-0004, 436-009-0010, 436-009-0023, 436-009-0040, 436-009-0080

Suspended: N/A

(c) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and

(d) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

1. OAR 436-060, Claims Administration

436-060-0005, Definitions

436-060-0025, Worker's Weekly Wage Calculation and Rate of Temporary Disability Compensation

Need for temporary rules: Temporary rules are needed to ensure that workers with irregular wages who have experienced wage increases during the year preceding their injuries are fairly compensated during their recovery.

Justification of temporary rules: Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. A worker's weekly wage is the basis for determining the rate of temporary disability. For workers whose wages have increased in the year before their injuries, the current rule requires wage averaging based on total earnings for a period of up to 52 weeks before the injury. This method has harmed some workers whose temporary disability rate does not reflect the wage subsequent to the pay increase.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because it will very quickly end the practice of basing the rate of temporary disability on wages that do not reflect the worker's wage subsequent to a pay increase.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because more workers may not be fairly compensated during the time required to promulgate a permanent rule.

2. OAR 436-120, Vocational Assistance to Injured Workers

OAR 436-120-0147, Establishing the Adjusted Weekly Wage

Need for temporary rules: Temporary rules are needed because the Court of Appeals found that certain provisions in OAR 436-120-0147 are inconsistent with statute.

Justification of temporary rules: Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. The Court of Appeals found parts of OAR 436-120-0147 to be inconsistent with statute, and specifically that a worker's regular employment at the time of injury includes all jobs held at the time of injury, not just the job where the injury occurred. Until the rule is revised to reflect the Court's findings, insurers and other stakeholders are likely to apply the existing rule and therefore fail to provide some vocational services required under ORS 656.340. Also, application of the existing rule would probably result in litigation, as workers would dispute insurers' vocational eligibility determinations that ignored income from other jobs held at the time of injury.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because the Court of Appeals decision has immediate effect, and parts of OAR 436-120-0147 are now inconsistent with ORS 656.340.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because during the time required to promulgate a permanent rule, OAR 436-120-0147 would remain in conflict with ORS 656.340. Continued application of the current rule could result in harm to workers who hold multiple jobs at the time of injury, as well as increased litigation regarding vocational eligibility determinations that ignored income from other jobs held at the time of injury.

3. OAR 436-009, Oregon Medical Fee and Payment

436-009-0004, Adoption of Standards

436-009-0010, Medical Billing and Payment

436-009-0023, Ambulatory Surgery Center (ASC)

436-009-0040, Fee Schedule

436-009-0080, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

Need for temporary rules: Temporary rules are needed to allow health care providers and workers' compensation insurers to use 2019 medical billing codes on and after Jan. 1, 2019.

Justification of temporary rules: 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 2019 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 2019 codes. Without these temporary rule changes: providers and payers would be required to use only 2018 codes until the agency can formally adopt new codes effective April 1, 2019 (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.