

**Oregon Department of Agriculture Annual Report to Legislative Assembly
Regarding Administrative Rulemaking Activity for the Period January 1, 2020
through December 31, 2020.**

Summary

House Bill 4106 requires all agencies to report annually to the Legislature on rulemaking activities, including temporary or emergency rules. This report details the Oregon Department of Agriculture's (ODA) rulemaking activity for the 2020 calendar year. During that period, ODA adopted 30 rules, amended 30 rules and repealed three rules. Additionally, ODA adopted two temporary rules, amended two temporary rules and suspended zero temporary rules.

Rules adopted, amended or repealed [ORS 183.335 (2) and (3)]

Adopted	30
Amended	30
Repealed	3

Temporary rules adopted, amended or suspended [ORS 183.335 (5)]

Adopted	2
Amended	2
Repealed	0

List of Temporary Rules:

1. 603-027-0420; Amended
 - a. Standard Fuel Specifications
 - b. Biotoxin management zone: Cape Blanco to California border; Crab harvested outside Oregon in an area that would be a biotoxin management zone if in Oregon.
 - c. Need statement: The transition from winter to summer gasoline occurs during the months of March and April in preparation for the May 1st deadline to ship gasoline compliant with the summer specifications. At the reduced rate of consumption terminal facilities in region will not sell enough of the residual winter gasoline from the terminals in order to complete the turn over from winter to summer leaving them holding potentially large quantities of off-spec gasoline in their storage tanks on May 1st which they will be unable to sell if state agencies do not publish temporary rules pushing back the May 1st date long enough to allow the winter gasoline to be sold. If action is not taken the winter gasoline will continue to occupy fuel storage tanks with no place to go making it impossible to bring in an adequate supply of summer grade gasoline with which to supply the transportation market after May 1st creating a gasoline shortage in the State at a critical time. The EPA issued a waiver to the May 1st summer gasoline requirements found in 40 C.F.R. part

80.27 for all 50 states making sale of winter gasoline legal at the federal level for the period from May 1st to May 20th. This rule will allow Oregon to sell winter gasoline per the federal waiver.

- d. Justification: Oregon is currently in a state of emergency. ODA finds that the failure to act immediately will create a shortage of gasoline and create the corresponding spikes in gasoline prices that will likely occur. If action is not taken the winter gasoline will continue to occupy fuel storage tanks with no place to go making it impossible to bring in an adequate supply of summer grade gasoline with which to supply the transportation market after May 1st creating a gasoline shortage in the State at a critical time. The people of Oregon would suffer if this rule is not adopted because they will face a gas shortage; effecting commuters as well as emergency vehicles which need fuel to operate. The EPA issued a waiver to the May 1st summer gasoline requirements. This rule will allow Oregon to sell winter gasoline per the federal waiver and alleviate and gas shortage issues.
 - e. Dates: Adopted 4/17/20
2. 603-027-0710; Adopt
 - a. Limited Changes to Standard Fuel Specifications for Wholesale Dealers
 - b. Modifies the gasoline volatility specifications and adopted by rule herein to allow the sale of winter gasoline at retail gasoline stations until the supply has been exhausted. Typically, a retail gasoline stations has transitioned from winter gasoline supplied from Fuel Terminals by June 1st. However, due to the reduction in overall gasoline sales, that transition has not occurred. This rule will bring retail gasoline stations into compliance with State and Federal law, allow the gasoline supply to be maintained and is consistent with the EPA waiver issued on 3/27/2020.
 - c. Need statement: Additional time is required to complete the transition from winter to summer gasoline at retail gasoline stations across the state. Less gasoline has been sold than previously expected, due to the large number of people staying at home per the Covid-19 executive orders. Previous time estimates for fuel terminals to complete the transition from winter to summer grade gasoline were not met; this means that retail gasoline stations will not have adequate time to complete their normal transition from winter to summer gasoline. This temporary rule is necessary in order for the transition to be completed and to bring retail gasoline stations into compliance with the law.
 - d. Justification: Retail gasoline stations typically have completed the transition from winter gasoline to summer gasoline by June 1st. However, due to the Covid-19 stay at home orders, gasoline sales have been reduced from 50-95% depending on the area. Previous time estimates for Fuel Terminals to transition from winter gasoline to summer gasoline were optimistic. Retail gasoline stations need additional time to sell the winter gasoline. This rule brings retail gasoline stations into compliance with State and Federal laws, will allow the continuity of our gasoline supply and will ensure that smaller locally owned or operated retail gasoline stations are not disproportionately impacted by the decline in sales.
 - e. Dates: Adopted 5/20/2020

3. 603-011-0212; Amended
 - a. SARS-Co-V-2 Disease Reportable by Veterinarians
 - b. The amendment to OAR 603-011-0212 adds SARS-CoV-2 to the list of diseases that veterinarians shall report to the department.
 - c. Need statement: ORS 596.020 directs the State Department of Agriculture to take all measures necessary and proper, in its judgment, to control diseases within this state and to eradicate and prevent the spread of infectious, contagious and communicable diseases that may exist among livestock and to prevent the entry into this state of animals or materials liable to convey infectious, contagious and communicable diseases to the livestock or people of this state. SARS-CoV-2 is the virus causing the current global pandemic in the human population and has been shown to also infect animals. In order for the Department to effectively respond to this disease in animals it must be reported to the Department.
 - d. Justification: Due to the global pandemic caused by SARS-CoV-2 and its ability to infect animal species it is necessary for the Department of Agriculture to immediately require that any person practicing veterinary medicine in this state shall immediately notify the department by telephone of clinical evidence of SARS-CoV-2
 - a. Dates: Adopt 9/3/2020

4. 603-048-9001; Adopted
 - a. Invalid Pre-harvest Testing
 - b. Temporary rule to give information to growers for options relating to invalid pre-harvest testing to request re-sampling or retesting; requirements for discretionary granting of written requests and deadlines associated with rule.
 - c. Need Statement: Oregon Liquor Control Commission issued an Order of Immediate License Suspension to the recreational marijuana lab license of Ecotest Labs in Phoenix, Oregon. The suspension of license has affected a number of registered growers. In order to avoid an inequitable result on registered growers this temporary rule is necessary. This rule will allow ODA to work with those registrants that had potency tests conducted by Ecotest on or after August 21, 2020 in order to have the product re-tested.
 - d. Justification: Oregon Department of Agriculture cannot undergo traditional rule making and public comment on proposed rules in time in order to avoid irreparable harm to registrants effected by Ecotest license suspension. Failure of ODA to act by enacting temporary rules for this purpose will result in serious prejudice to registrants who, in good faith, submitted their product for potency tests by Ecotest, a lab they believed to be licensed and accredited with authority to perform the tests. If ODA were not to act, some registrants would be required to destroy their crop; resulting in catastrophic profit loss
 - a. Dates: Adopted 10/15/2020