

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

FILED 9-4-14 2:05 PM ARCHIVES DIVISION SECRETARY OF STATE

Construction Contractors Board Agency and Division	812 Administrative Rules Chapter Number
Catherine Dixon Rules Coordinator	(503) 934-2185 Telephone
Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310 Address	

RULE CAPTION

Fees for Public Records and Exempt Contractors with Workers

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
10-28-14	11:00 a.m.	1300 Broadway St NE, Peru Room (306), Salem, OR 97301	Rob Yorke

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

812-009-0330

AMEND:

812-001-0160

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 293.445, 670.310, 701.235

Other Authority:

Statutes Implemented:

ORS 192.430, 293.430, 293.445, 701.035, 701.098, 701.235, 701.250

RULE SUMMARY

Adopt 812-009-0330 that creates a "rebuttable presumption" that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit - in which contractor's name it is issued.

Amend 812-001-0160 to :

1. Clarify that charge is for a recording of three hours, or less, of agency hearings or arbitrations;
2. Reduce charge for data requested pursuant to CCB's "Request for Information on Licensed Contractor Businesses" from \$40 to \$15 - records will be provided in electronic format, by e-mail;
3. Add a charge of \$15 plus \$25 per hour for actual costs to research, query and produce records requested other than pursuant to CCB's "Request for Information on Licensed Contractor Businesses," which is reduced from \$40 to \$15 - records will be provided in electronic format, by e-mail; to clarify that records will be provided in electronic format, by e-mail.;
4. Delete previous sections (2)(h), (2)(k) and (2)(l) to eliminate supplying paper records in lieu of electronic transmissions. Paper records will be governed by section (2)(c) - \$5 for the first 20 copies and \$.25 per each page thereafter; delete previous section (2)(i) to eliminate providing weekly or other than monthly information; to remove obsolete reference to "3.5-inch computer disk";

5. Renumber (2)(m)-(p); and

6. Add computer-maintained data requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

10-28-2014 Close of Hearing	Catherine Dixon	Catherine.A.Dixon@state.or.us
Last Day (<i>m/d/yyyy</i>) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED
9-4-14 2:05 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Construction Contractors Board
Agency and Division

812
Administrative Rules Chapter Number

Fees for Public Records and Exempt Contractors with Workers

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to OAR 812

Statutory Authority:

ORS 293.445, 670.310, 701.235

Other Authority:

Statutes Implemented:

ORS 192.430, 293.430, 293.445, 701.035, 701.098, 701.235, 701.250

Need for the Rule(s):

Adopt 812-00-0330:

Creates a "rebuttable presumption" that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit - in which contractor's name it is issued.

The rule creates a "rebuttable presumption" that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit - in which contractor's name it is issued. Thus, if the contractor pulled a structural permit and there are framers on the jobsite, presumably they are that contractor's employees.

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5. Renumber (2)(m)-(p); and
6. Add computer-maintained data requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.

It is difficult to administer a public records fee schedule based primarily on "actual costs." The fee schedule must be applied by many sections and employees within the agency. The more specificity, the less confusion exists in the rule's application. However, in some cases, actual costs are more realistic and appropriate. The agency's recommendations retain a basic fee schedule, but adopt "actual costs" where appropriate.

Documents Relied Upon, and where they are available:

ORS 701 and OAR 812. Documents are on the agency website at www.oregon.gov/ccb or a paper copy is available upon request.

Fiscal and Economic Impact:

The rule changes have no known fiscal or economic impact on state agencies, units of local government or the public. The rule changes do not increase the reporting, recordkeeping or other administrative activities for businesses. The rule changes will not increase costs of compliance for businesses. The rule changes will not increase the cost of a new single-family dwelling.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The rule changes have no known fiscal impact on state agencies, units of local government or the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

These rule amendments do not have an impact on small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

These rule amendments do not impact reporting, recordkeeping or other administrative activities required for compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

These rule amendments do have an impact on equipment, supplies, labor or increased administration requirements.

OAR 812-001-0160 has the following fee changes:

1. (2)(g) reduces the charge for data requested pursuant to CCB's "Request for Information on Licensed Contractor Businesses" from \$40 to \$15. Records will be provided in electronic format, by e-mail.
2. (2)(h) adds a charge of \$15 plus \$25 per hour for actual costs to research, query and produce records requested other than pursuant to CCB's "Request for Information on Licensed Contractor Businesses," which is reduced from \$40 to \$15. Records will be provided in electronic format, by e-mail.
3. Deletes previous sections (2)(h), (2)(k) and (2)(l) to eliminate supplying paper records in lieu of electronic transmissions. (These rules contained fees of \$140/month or \$150/month). Paper records will be governed by section (2)(c) - \$5 for the first 20 copies and \$.25 per each page thereafter.
4. Deletes previous section (2)(j) to eliminate providing weekly or other than monthly information; fee was \$50 a month.
5. Adds (2)(o) computer-maintained data requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.

How were small businesses involved in the development of this rule?

The agency works with its Board to develop administrative rules. Six of the current nine Board members are business owners.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The agency uses a Policy Team comprised of staff from various sections of the agency to review draft proposed rules and make recommendations to the Board. The agency uses its Board which is made up of six contractors; one elected public official, and two public members who review and approve agency's administrative rules. Some of the Board members are members of industry associations who discuss proposed rules with their associations.

10-28-2014 Close of Hearing	Catherine Dixon	Catherine.A.Dixon@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534)

FOR ADMINISTRATIVE RULES

AGENCY NAME: Construction Contractors Board PERMANENT: HEARING DATE: October 28, 2014
ADDRESS: 700 Summer St. NE Ste 300
CITY/STATE: Salem OR 97309 TEMPORARY: EFFECTIVE DATE:
PHONE: (503) 934-2185

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

- Adopt 812-009-0330 that creates a “rebuttable presumption” that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit – in which contractor’s name it is issued.
- Amend 812-001-0160 to :
 - Clarify that charge is for a recording of three hours, or less, of agency hearings or arbitrations;
 - Reduce charge for data requested pursuant to CCB’s “Request for Information on Licensed Contractor Businesses” from \$40 to \$15 - records will be provided in electronic format, by e-mail;
 - Add a charge of \$15 plus \$25 per hour for actual costs to research, query and produce records requested other than pursuant to CCB’s “Request for Information on Licensed Contractor Businesses,” which is reduced from \$40 to \$15 - records will be provided in electronic format, by e-mail; to clarify that records will be provided in electronic format, by e-mail.;
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 - Renumber (2)(m)-(p); and
 - Add computer-maintained data requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.

Description of the need for, and objectives of the rule:

- Adopt 812-009-0330 that creates a “rebuttable presumption” that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit – in which contractor’s name it is issued.

The rule creates a “rebuttable presumption” that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit – in which contractor’s name it is issued. Thus, if the contractor pulled a structural permit and there are framers on the jobsite, presumably they are that contractor’s employees.

- Amend 812-001-0160 to :
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- Renumber (2)(m)-(p); and
- Add computer-maintained data requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.

It is difficult to administer a public records fee schedule based primarily on "actual costs." The fee schedule must be applied by many sections and employees within the agency. The more specificity, the less confusion exists in the rule's application. However, in some cases, actual costs are more realistic and appropriate. The agency's recommendations retain a basic fee schedule, but adopt "actual costs" where appropriate.

List of rules adopted or amended:

Adopt: 812-009-0330

Amend: 812-001-0160

Materials and labor costs increase or savings:

The rule amendments have no known impact on materials and labor costs.

Estimated administrative construction or other costs increase or savings:

The rule amendments have no measurable impact on administrative construction or other cost increases or savings.

Land costs increase or savings:

The rule amendments have no measurable impact on the cost of new home or a building lot.

Other costs increase or savings:

The proposed rules have no known fiscal impact on state agencies, units of local government or the public.

OAR 812-001-0160 has the following fee changes:

- (2)(g) reduces the charge for data requested pursuant to CCB's "Request for Information on Licensed Contractor Businesses" from \$40 to \$15. Records will be provided in electronic format, by e-mail.
- (2)(h) adds a charge of \$15 plus \$25 per hour for actual costs to research, query and produce records requested other than pursuant to CCB's "Request for Information on Licensed Contractor Businesses," which is reduced from \$40 to \$15. Records will be provided in electronic format, by e-mail.
- Deletes previous sections (2)(h), (2)(k) and (2)(l) to eliminate supplying paper records in lieu of electronic transmissions. (These rules contained fees of \$140/month or \$150/month). Paper records will be governed by section (2)(c) - \$5 for the first 20 copies and \$.25 per each page thereafter.
- Deletes previous section (2)(j) to eliminate providing weekly or other than monthly information; fee was \$50 a month.
- Adds (2)(o) computer-maintained data requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: Catherine Dixon

EMAIL ADDRESS: catherine.a.dixon@state.or.us

Proposed Rule	Explanation
<p>812-001-0160 Requests for Information; Charges for Records</p> <p>(1) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:</p> <p>(a) License numbers. (b) Name of licensed entity and any assumed business names on file with the agency. (c) Type of business entity. (d) Category of license. (e) Class of independent contractor license status. (f) Personal names of owner, partners, joint venturers, members, corporate officers, or trustees. (g) The dates in the license history and the action that took place on those dates.</p> <p>(2) The agency may make the following charges for records:</p> <p>(a) \$20 for each certification that an entity has or has not been licensed with the Construction Contractors Board. (b) \$20 for certified copies of each file or of set of documents certified under one cover or of any other document. (c) \$5 for the first 20 copies made and 25 cents per page thereafter. (d) \$20 for duplicate audio recordings of[-] Board meetings and Appeal Committee meetings. (e) \$20 for duplicate audio recordings of [a three hour] up to three hours of any agency hearing or arbitration and \$10 for duplicate audio recordings of each additional 90 minutes or fraction thereof of the hearing or arbitration. (f) \$10 per half-hour unit or portion of a half-hour unit for researching, copying or preparing records for each request from a person beginning with the 31st minute of research or copying time. (g) [\$40] \$15 for an electronic copy transmitted by e-mail of computer-maintained data [containing information on CCB licensees] requested pursuant to CCB’s “Request for Information on Licensed Contractor Businesses” form. [(h) \$140 for a paper copy of computer maintained data containing information on CCB licensees.] (h) \$15 plus \$25 per hour for actual costs for researching, querying and producing an electronic copy transmitted by e-mail of computer-maintained data requested other than pursuant to CCB’s “Request for Information on Licensed Contractor Businesses” form. (i) \$40/month for an electronic copy transmitted by e-mail of computer-maintained data containing information on CCB mailings of application packets, provided once during the month. [(j) \$50/month for electronic copies of computer maintained data containing information on CCB mailings of application packets, provided on a weekly basis.] [(k) \$140/month for a paper copy of computer maintained data containing information on CCB mailings of application packets, provided once during the month.]</p>	<p>Amend: Amend section (2)(e) to clarify that charge is for a recording of three hours, or less, of agency hearings or arbitrations.</p> <p>Amend section (2)(g) to reduce charge for data requested pursuant to CCB’s “Request for Information on Licensed Contractor Businesses” is reduced from \$40 to \$15. Records will be provided in electronic format, by e-mail.</p> <p>Amend section (2)(h) to add a charge of \$15 plus \$25 per hour for actual costs to research, query and produce records requested other than pursuant to CCB’s “Request for Information on Licensed Contractor Businesses,” which is reduced from \$40 to \$15. Records will be provided in electronic format, by e-mail.</p> <p>Amend section (2)(i) to clarify that records will be provided in electronic format, by e-mail.</p> <p>Delete previous sections (2)(h), (2)(k) and (2)(l) to eliminate supplying paper records in lieu of electronic transmissions. Paper records will be governed by section (2)(c) - \$5 for the first 20 copies and \$.25 per each page thereafter.</p> <p>Delete previous section (2)(j) to eliminate providing weekly or other than monthly information.</p> <p>Amend new section (2)(j) to remove obsolete reference to “3.5-inch computer disk.”</p> <p>Re-number (2)(m)-(p).</p> <p>Adds (2)(n) computer-maintained data requested in paper format, the agency will</p>

<p>[(4)] \$150/month for a paper copy of computer-maintained data containing information on CCB mailings of application packets, provided on a weekly basis.]</p> <p>[(m)] (j) \$5 for a [3.5-inch computer disk or] compact disk (CD) if documents are stored on the agency’s computer system. Requestors may not provide disks for electronic reproduction due to the possibility of computer viruses.</p> <p>[(n)] (k) The actual cost for material and equipment used in producing copies of non-standard sized records.</p> <p>[(o)] (l) The actual cost for delivery of records, for example, postage, courier fees or the cost of transmitting a facsimile long-distance.</p> <p>[(p)] (m) Actual attorney fees charged to CCB for the cost of time spent by its attorney (ordinarily provided by the Oregon Department of Justice) to review public records, redact materials from public records or segregate public records into exempt and nonexempt records. The charge will not include attorney fees incurred in determining the application of ORS 192.410 to 192.505.</p> <p><u>(n) If computer-maintained data is requested in paper format, the agency will add a charge of \$.25 per page to the charges provided in the rule above.</u></p> <p>Stat. Auth.: ORS 293.445, 670.310 & 701.235 Stats. Implemented: ORS 192.430, 293.445, 701.235 & 701.250 (1/83, 3/83, 3/84, 5/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 2/89, 6/89, 7/89, 11/89, 2/90, 5/90, 6/90, 2/92, 4/92, 2/95, 9/95, 5/96, 5/97, 4/98, 9/98, 3/99, temp. 6/99, 9/99, 6/00, 12/00, 12/01, 5/02, 2/04, 12/04, 8/05, 12/05, 5/06, 6/07, 4/08, temp. 8/08, 9/08) (Amended and renumbered from 812-001-0015, 12/05)</p>	<p>add a charge of \$.25 per page to the charges provided in the rule above.</p>
<p><u>812-009-0330</u> <u>Rebuttable Presumption that Job Site Workers are Employees</u></p> <p><u>(1) If a single licensed contractor is responsible for the work performed on a job site, there is a rebuttable presumption that all workers on the job site, who are not themselves licensed contractors, are the employees of that contractor.</u></p> <p><u>(2) If multiple licensed contractors are responsible for the work performed on a job site, there is a rebuttable presumption that the workers on the job site, who are not themselves licensed contractors, performing a task covered by a building permit are the employees of the contractor who:</u></p> <p><u>(a) Obtained the corresponding building permit; or</u> <u>(b) Should have obtained the corresponding building permit.</u></p> <p><u>(3) For purposes of section (2) of this rule, “building permit” includes, but is not limited to, a structural permit, an electrical permit, and a plumbing permit.</u></p> <p><u>Stat. Auth.: ORS 670.310 & 701.235</u> <u>Stats. Implemented: ORS 701.035 and 701.098</u> <u>(New)</u></p>	<p>Adopt: The rule creates a “rebuttable presumption” that unlicensed workers on a job site are the employees of the contractor responsible for the work being performed. If there is only one licensed contractor, the agency will presume that the workers work for that contractor. If there are multiple licensed contractors, the agency will presume that responsibility is determined by the building permit – in which contractor’s name it is issued.</p>