

CONSTRUCTION CONTRACTORS BOARD

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Memorandum

To: Construction Contractors Board
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Date: February 8, 2016
Subject: Proposed Rulemaking: Pre-License Testing and Education Requirements; Home Inspectors; Continuing Education Requirements

RULEMAKING

The Construction Contractors Board (CCB) seeks to improve the administrative rule adoption process by limiting the frequency of rule changes, grouping rule changes together when they deal with similar subject matter, and seeking stakeholder input before considering rule changes.

The following rule changes are being proposed in order to clarify, simplify and streamline the requirements for pre-licensure testing and education, home inspector continuing education, and the requirements for contractor continuing education.

SUMMARY OF GOALS

The CCB is proposing rule changes that will do the following.

- ✓ Provide an optional alternative path to contractor licensing. This option sets a higher bar for knowledge about construction, but offers a more portable license for multistate contractors. The alternative includes successfully passing an examination offered by the National Association of State Contractor Licensing Agencies (NASCLA) and the Oregon pre-licensure test.
- ✓ Reduce confusion by providing that contractor license applicants may obtain a CCB license within two years of passing the Oregon pre-license test. Currently, the rules restrict applicants to two years from completing the pre-license training.

- ✓ Expand and align exemptions to commercial continuing education and residential continuing education.
- ✓ Remove obsolete language from the continuing education rules and pave the way for more, significant statutory reforms of residential continuing education.
- ✓ Make prerequisite home inspector requirements compatible with the newly adopted National Home Inspector Examination. (Adopted by CCB on July 1, 2015, with an effective date of October 1, 2015). Slightly modify continuing education requirements, at the suggestion of the home inspector industry.

PROPOSED LAW REFORMS FOR RESIDENTIAL CONTINUING EDUCATION

The CCB will submit a legislative proposal for the 2017 session to make substantial reforms to residential continuing education. The proposal will do the following.

- ✓ Allow contractors more latitude to select the classes they determine are most relevant to their businesses. (The proposal will eliminate the Series A/Series B course distinction).
- ✓ Offer CCB's required classes (3 hours every two years) at no additional charge. (Currently, licensees pay the CCB \$15/hour for these classes).
- ✓ Eliminate the residential continuing education provider and course approval process and the associated fees.
- ✓ Remove the requirement that providers upload student rosters and the associated fees. Replace with random audits of contractors at the time of renewal to determine that contractors completed the required continuing education. (Currently, this is the law that applies to commercial contractors.)
- ✓ Request a license fee increase of \$50/two-year renewal period to recover lost program revenue and maintain existing budget. (Most licensees will see the fee increase offset by \$45 that they will no longer pay for CCB classes).

Until such time as statutes are changed, the CCB proposes to adopt rules to implement short-term reforms of residential continuing education.

All of the rule changes being proposed are discussed in more detail below.

ALTERNATIVE NASCLA EXAMINATION

The CCB proposes to allow individuals who pass the NASCLA examination and the Oregon pre-licensure test to be qualified as responsible managing individuals (RMIs). The NASCLA examination is the “NASCLA Accredited Examination for Commercial General Building Contractors.” Under the CCB proposal, individuals will satisfy the training requirement either by self-study or a course of study using the 20 resources that are the basis for the NASCLA examination. They will also need to study to pass the Oregon test. They will satisfy the testing requirement by passing both the NASCLA examination and the Oregon test. Although the NASCLA examination is directed to commercial contractors, because of the comprehensiveness of the subject matter it covers, the CCB has determined it is an appropriate test for assessing the competence of residential and specialty contractors as well, and will be accepted for those licenses.

The Oregon test is still valuable. It covers items – like Oregon laws – that are not covered in the NASCLA examination.

This concept represents an “alternative” option for training and testing. It is not required, and the current pre-licensure training and test will remain the mainstay for contractor licensing in Oregon.

PROPOSED RULES

A. NASCLA Examination as Alternative to CCB Training and Testing Requirements (OAR 812-006-0100 to 812-006-0400(3))

a. Problem

NASCLA offers an examination that is currently required or accepted by 12 other state contractor licensing agencies (and the Virgin Islands). For contractors who seek to practice in multiple jurisdictions, passing this exam offers opportunities for a streamlined licensure process.

The NASCLA examination is more comprehensive than Oregon’s test. It sets a higher bar for contractor knowledge and requires study of 20 different resources. The subjects covered in the materials and tested on the NASCLA examination include laws (codes, safety and environment) and business practices (planning, estimating and financial and project management). The NASCLA examination also covers site construction, concrete, masonry, metals, wood, thermal and moisture protection, doors/windows/glazing, finishes and specialty equipment.

b. Solution

CCB proposes to amend current rules and adopt a new rule accepting the NASCLA exam for licensure in Oregon. The new rule, OAR 812-006-0160, will provide an alternative method to obtain a contractor's license. The alternative method requires the following:

- i. Study for the NASCLA examination.
- ii. Pass the NASCLA examination.
- iii. Pass the Oregon pre-licensure test.

c. Section-by-Section Analysis

- i. OAR 812-006-0100(2)(c).

This section provides an alternative method by which an applicant may qualify a contractor for licensing. Specifically, the application must document that the applicant has an RMI who has: (1) studied for the NASCLA examination; (2) passed the NASCLA examination; and (3) passed the Oregon pre-licensure test.

- ii. OAR 812-006-0100(6)(c).

This section provides an alternative method by which an RMI may qualify a contractor for licensing. Specifically, the application must document that the RMI has: (1) studied for the NASCLA examination; (2) passed the NASCLA examination; and (3) passed the Oregon pre-licensure test.

- iii. OAR 812-006-0150.

This section creates an exemption from the standard pre-licensure training for persons who study for and pass the NASCLA examination.

- iv. OAR 812-006-0160 (new).

This section sets forth the pre-licensure training requirements for individuals that take and pass the NASCLA examination. Study of 20 sources will satisfy the pre-licensure training.

- v. OAR 812-006-0200.

This section focuses on providers and creates an exemption from the standard pre-licensure training for persons who study for and pass the NASCLA examination and the Oregon pre-licensure test. The amendments include a "housekeeping" change because

the agency is preparing a new reference manual, which may have a different title than that used previously.

vi. OAR 812-006-0310.

This section provides an alternative method to obtain a contractor's license by: (1) studying for the NASCLA examination; (2) passing the NASCLA examination; and (3) passing the Oregon pre-licensure test.

vii. OAR 812-006-0400(3).

This section exempts RMIs that use the alternative NASCLA examination from standard training and testing timing periods.

B. Pre-Licensure Training and Testing Period (OAR 812-006-0400(1), (2))

a. Problem

Many contractor applicants are confused by the current requirement that that they must obtain a CCB license within two years of completing the required pre-licensure training. Instead, they think they have two years from the date they pass the Oregon pre-licensure test. The current rule is confusing and difficult for CCB staff to administer.

b. Solution

CCB proposes to amend the rule to align it with common expectations. The change is not contrary to the statute (ORS 701.122) and will have no adverse effect on the licensure training and testing program.

c. Section-by-Section Analysis

i. OAR 812-006-0400(1).

Under the current rule, contractors have 24 months from the date their RMI completes pre-licensure training to become licensed. This section will be changed to align it with common expectations – contractors will have 24 months from the date their RMI passes the Oregon pre-licensure test to become licensed.

ii. OAR 812-006-0400(2).

This section clarifies that the change outlined above does not affect certain contractors that may obtain a license based on experience (“grandfathered” contractors).

C. Home Inspector Definitions (OAR 812-008-0020)

a. Problem

The CCB recently adopted new rules that require home inspector candidates to take and pass a national examination. See OAR 812-008-0040, 812-008-0050 (effective October 1, 2015). The definitions that apply to OAR chapter 812, division 8, refer to a test that is defined as a “test administered by the agency.” This definition is no longer necessary, or accurate.

b. Solution

CCB proposes to delete the definition of “test” in OAR 812-008-0020(34) and renumber subsection (35).

D. Home Inspector Continuing Education (OAR 812-008-0072; 812-008-0074)

a. Problem

The home inspection industry felt that it made sense to allow continuing education credit for hosting a “ride-along.” The current rules allow continuing education credit for attending a Home Inspector Advisory Committee (HIAC) meeting. However, the committee no longer exists.

b. Solution

CCB proposes allowing one continuing education unit (CEU) for each hour of providing “ride-along” instruction and supervision. CCB proposes deleting credit for one CEU for each HIAC meeting.

c. Section-by-Section Analysis

i. OAR 812-008-0072(4)

This section is amended to replace CEUs for attending Home Inspector Advisory Committee meetings with providing instruction and supervision by hosting a “ride-along” for new applicants.

ii. OAR 812-008-0074

This section is amended to remove the reference to a “home inspector study guide” and substitute “national examination content items.”

E. Commercial Continuing Education – Obsolete Rule: Prorating (OAR 812-020-0050, 812-020-0080)

a. Problem

When the commercial continuing education program was new (in 2010), it made sense to allow a contractor to only complete a portion of the continuing education. This was because the contractor may only have had a few months before the first renewal came due. This is no longer an issue – all commercial contractors now have a full two years in which to complete the requirement.

b. Solution

CCB proposes to amend OAR 812-020-0050(3)(c) and repeal OAR 812-020-0080 to remove references to prorating continuing education.

F. Commercial Continuing Education – Exemptions (OAR 812-020-0062)

a. Problem

The exemptions are different for commercial continuing education and residential education. This is confusing.

In addition, there are several groups of contractors that currently take significant continuing education for other licenses or certifications. Requiring additional CCB continuing education is a burden on small businesses and results in complaints about the lack of relevant CCB courses.

b. Solution

CCB proposes to amend OAR 812-020-0062 to add five more exemptions (currently found in, or added to, the residential continuing education): (1) electrician-owned or operated contractors or contractors that employ one or more electricians; (2) plumber-owned or operated contractors or contractors that employ one or more electricians; (3) architect-owned or operated contractors; (4) professional engineer-owned or operated contractors; and (5) landscape contracting businesses also licensed as construction contractors.

c. Section-by-Section Analysis.

i. OAR 812-002-0062(3)

This section adds an exemption for contractors owned by, having an officer or having an employee who is a licensed electrician.

ii. OAR 812-020-0062(4)

This section adds an exemption for contractors owned by, having an officer or having an employee who is a licensed plumber.

iii. OAR 812-020-0062(5).

This section adds an exemption for contractors owned by or having an officer who is a registered architect.

iv. OAR 812-020-0062(6).

This section adds an exemption for contractors owned by or having an officer who is a licensed professional engineer.

v. OAR 812-020-0062(7).

This section adds an exemption for contractors that are licensed landscape contracting businesses.

G. Commercial Continuing Education – Certification of Hours (OAR 812-020-0070(5))

a. Problem

The commercial continuing education program contains another outdated rule. It was adopted before there was residential continuing education. It suggests that any commercial contractor not endorsed as such on its previous renewal date does not need to complete any continuing education. This is not true if the contractor was endorsed as a residential contractor at the previous renewal date.

b. Solution

CCB proposes to amend OAR 812-020-0070(5) to clarify the requirement that the contractor must complete residential continuing education – in accordance with the previous license endorsement.

H. Commercial Continuing Education – Obsolete Rule (OAR 812-020-0071(1))

a. Problem

Section (1) of this rule relates to that period “until December 31, 2015.” As of that date, the rules become obsolete.

b. Solution

CCB proposes to repeal OAR 812-020-0071(1).

I. Residential Continuing Education – Obsolete Rules (OAR 812, division 21)

a. Problem

CCB has two sets of residential continuing education rules, division 21 and division 22. The division 21 rules predate the statutory changes in SB 983 (2013), which took effect on January 1, 2014. The division 22 rules implement SB 983 (2013).

As of January 1, 2016, all contractors must comply with the division 22 rules.

b. Solution

CCB proposes to repeal the division 21 rules. These include: OAR 812-021-0000, 812-021-0005, 812-021-0010, 812-021-0011, 812-021-0015, 812-021-0016, 812-021-0019, 812-021-0021, 812-021-0023, 812-021-0025, 812-021-0028, 812-021-0030, 812-021-0031, 812-021-0032, 812-021-0033, 812-021-0034, 812-021-0035, 812-021-0037, 812-021-0040, 812-021-0042, 812-021-0045, and 812-012-0047.

J. Residential Continuing Education – Obsolete Rule (OAR 812-022-0010)

a. Problem

Although this is a division 22 rule (adopted to implement SB 983), the rule provides several options for renewals of licenses between January 1, 2014, and December 31, 2015. Those dates have passed. These sections are unnecessary.

b. Solution

CCB proposes to repeal most of the rule and leave in place a basic rule that provides that division 22 rules apply to all residential contractors that renew their licenses on or after January 1, 2016.

K. Residential Continuing Education – Exemptions (OAR 812-022-0011)

a. Problem

There are two rules in division 22 that govern exemptions from residential continuing education. This rule, OAR 812-022-0011, exempts residential developers from continuing education. It duplicates the same subject matter (contractor exemptions) found in OAR 812-022-0021.

b. Solution

CCB proposes to repeal this rule.

L. Residential Continuing Education – Exemptions (OAR 812-022-0021)

a. Problem

The exemptions from continuing education differ for commercial continuing education and residential education. This is confusing.

In addition, there are several groups of contractors that currently take significant continuing education for other licenses or certifications. Requiring CCB continuing education, in addition, is a burden on small businesses and results in complaints about the lack of relevant CCB courses.

b. Solution

CCB proposes to amend OAR 812-022-0021 to add exemptions for: (1) boiler contractors; (2) elevator contractors; (3) renewable energy contractors; (4) pump installation contractors; (5) limited sign contractors; (6) contractors owned by, having an officer or having an employee who is a licensed electrician; (7) contractors owned by, having an officer or having an employee who is a licensed plumber; (8) contractors owned by or having an employee who is a home inspector; and (9) contractors certified as master builders. The proposed rule will retain existing exemptions and include the residential developer exemption previously found in OAR 812-022-0011.

c. Section-by-Section Analysis

i. OAR 812-022-0021(1)(a).

This section restates previous OAR 812-022-0021(2), which exempted electrical contractors from residential continuing education requirements.

ii. OAR 812-022-0021(1)(b).

This section restates previous OAR 812-022-0021(1), which exempted plumbing contractors from residential continuing education requirements. Corrects statutory references.

iii. OAR 812-022-0021(1)(c).

This section adds an exemption for boiler contractors.

iv. OAR 812-022-0021(1)(d).

This section adds an exemption for elevator contractors.

v. OAR 812-022-0021(1)(e).

This section adds an exemption for renewable energy contractors.

vi. OAR 812-022-0021(1)(f).

This section adds an exemption for pump installation contractors.

vii. OAR 812-022-0021(1)(g).

This section adds an exemption for limited sign contractors.

viii. OAR 812-022-0021(2).

This section restates previous OAR 812-022-0011, which exempted residential developers.

ix. OAR 812-022-0021(3).

This section adds an exemption for a contractor owned by, having an officer or having an employee who is a licensed electrician.

x. OAR 812-022-0021(4).

This section adds an exemption for a contractor owned by, having an officer or having an employee who is a licensed plumber.

xi. OAR 812-022-0021(5).

This section restates previous OAR 812-022-0021(3), which exempted contractors owned by or having an officer who is a registered architect.

xii. OAR 812-022-0021(6).

This section restates previous OAR 812-022-0021(4), which exempted contractors owned by or having an officer who is a licensed professional engineer.

xiii. OAR 812-022-0021(7).

This section adds an exemption for contractors licensed as landscape contracting businesses.

xiv. OAR 812-022-0021(8).

This section adds an exemption for contractors owned by or having an employee who is a home inspector. (This exemption only applies to residential contractors).

xv. OAR 812-022-0021(9).

This section adds an exemption for contractors that are certified as master builders. (This exemption only applies to residential contractors).