

Oregon Administrative Rules
Chapter 808: Landscape Contractors

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Landscape Contractors Board

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**DIVISION 1
ADMINISTRATION**

808-001-0000**Notice**

Except as provided in OAR 808-001-0002, before adoption, amendment, or repeal of any permanent rule, the State Landscape Contractors Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the State Landscape Contractors Board mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule;

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(4) By mailing a copy of the notice to the:

(a) Capitol press room;

(b) Associated Press;

(c) Oregon Landscape Contractors Association;

(d) Oregon Association of Nurserymen;

(e) Southern Oregon Landscaping

Association;

(f) Agri-Business Council.

808-001-0002**Temporary Rule**

The State Landscape Contractors Board Administrator may adopt, amend, or suspend a rule as provided in ORS 183.335.

808-001-0005**Model Rules**

The Landscape Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act in effect January 31, 2012, with the following exceptions: OAR 137-003-0015, 137-005-0050, 137-005-0060, and 137-005-0070. [ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Landscape Contractors Board.]

808-001-0008**Operating Budget**

(1) Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2015 and ending June 30, 2017, as approved at a Board Meeting held June 18, 2015. The Board Administrator will amend accounts as necessary, within the approved budget amount for the effective operation of the Board. Copies of the budget are available at the Board's office.

(2) Effective July 1, 2015, the Board adopts the July 1, 2015 through June 30, 2017 budget to reflect a total income amount of \$1,241,618 and a total expense of \$1,217,545.36 with a projected net income of \$28,072.64.

[Publications: Publications referenced are available from the agency.]

808-001-0015**Election of Officers**

The Board may elect a Board Chairman and Vice Chairman at the first board meeting held after January 1 of each year.

808-001-0020**Charges for Documents; Refunds**

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board's office shall be in writing and may be delivered in person, by mail, by fax or by email. The request must include:

(a) The name and address of the person requesting the public record;

(b) The telephone number or other contact information for the person requesting the public record;

(c) A sufficiently detailed description of the record(s) requested to allow the agency to search for and identify responsive records;

(d) Date of request; and

(e) Signature of the person requesting the public record.

(2) Charges to the general public and to state agencies shall be payable in cash, check, money order, or any credit card accepted by the board office. Billing to such state agencies must be authorized by the Administrator. Checks or money orders shall be made payable to the Landscape Contractors Board.

(3) The Board accepts credit card payment submitted in person or by mail, e-mail or fax. Any credit card that is rejected by the bank and

requested to be confiscated will be retained and returned to the bank. All payments by credit card that are rejected must be paid in full by a check or money order within ten days from notification of rejection.

(4) Charges for copies, documents, and services shall be as follows:

(a) Twenty-five cents per page for photocopies.

(b) The cost of records transmitted by fax is \$.75 for the first page and \$.60 for each additional page, limited to a 20-page maximum, not including the cover page.

(c) The cost of records transmitted by email is \$5 per email.

(d) Upon request, copies of public records may be provided electronically if the document(s) are stored in the agency's computer system. Disks will be provided at a cost of \$5.00 per disk and may contain as much information as the disk will hold. Due to the threat of computer viruses, the agency will not permit requestors to provide disks for electronic reproduction of computer records.

(e) Actual cost for delivery of records such as postage and courier fees.

(f) Actual attorney fees charged to the agency for the cost of time spent by an attorney in reviewing the public records, redacting materials from the public records or segregating the public records into exempt and nonexempt records.

(g) The agency may require pre-payment of estimated fees before taking further action on a request.

(h) \$20 for each certification that an entity has or has not been licensed with the Landscape Contractors Board.

(i) \$20 for certified copies of documents.

(j) \$100 for listing of individual landscape construction professional contractors or landscape contracting businesses on CD or provided electronically through e-mail. Requests for searching or formatting the data will be billed as per subsection (k) of this rule. The Administrator may waive this charge for other public agencies.

(k) Labor charges that include researching, locating, compiling, editing or otherwise processing information and records:

(A) No charge for the first 30 minutes of staff time;

(B) Beginning with the 31st minute, the charge per total request is \$30 per hour or \$7.50 per quarter-hour. A prorated fee is not available for less than a quarter-hour;

(L) For both machine copies and documents, an additional amount set at the discretion of the Administrator for staff time required for search, handling, and copying.

(m) \$20 for duplicate recording of Board meetings.

(n) \$20 for duplicate recordings of a three hour agency hearing or arbitration and \$10 for each additional 90 minute or fraction thereof of the hearing or arbitration.

(o) Plant CD: The cost of the item, the cost of shipping and a fee for the cost of processing the order. Contact the State Landscape Contractors Board for the current charges.

(p) Landscape Construction book by David Sauter is the cost of the item, the cost of shipping and a fee for the cost of processing the order. Contact the State Landscape Contractors Board for the current charges.

(q) Owner/Managing Employee Study Guide & Manual the cost of the item, the cost of shipping and a fee for the cost of processing the order. Contact the State Landscape Contractors Board for the current charges.

(5) Refunds: All requests for refunds must be in writing.

(a) Except as set forth in subsection (b) of this section, applicant and licensing fees are non-refundable and nontransferable.

(b) When an applicant for a landscape construction professional license withdraws their renewal or fails to complete the renewal process the agency may retain a processing fee of \$20. When an applicant withdraws their application for a landscape contracting business license or renewal or fails to complete the renewal process, the agency may retain a processing fee of \$50.

(6) If the agency receives payment of any fees or penalty by check and the check is returned to the agency by the bank, the payer of the fees may be assessed a charge of \$25 in addition to the required payment of the fees or penalty.

(7) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

808-001-0030**When Mail Deemed Delivered; Response Time to Notices**

(1) Except as provided in section (2) of this rule, mail shall be considered delivered to a person when deposited in the United States mail with the correct amount of postage and addressed to the last known address of record of the person.

(2) If the agency directs mail to a person who is not a licensee or a claimant under Division 4 of these rules, the mail shall not be deemed delivered if it is returned as undeliverable because the person moved with no forwarding address.

(3) Time for responses to all notices to a person delivered by placement in the United States mail with the correct amount of postage and addressed to the last known address of the person shall run from the date of mailing, unless otherwise specified in the notice.

(4) OAR 137-003-0520(10) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

808-001-0050**Confidentiality and Inadmissibility of Mediation Communications**

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible

as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(f) Mediation by an authorized representative acting on behalf of the Landscape Contractors Board in which the parties to the mediation are parties to a claim or arbitration filed under ORS 671.700 to 671.703, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation

communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a

felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any

part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediation or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent that agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

808-001-0060

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not

apply to disputes involving the negotiations of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under OS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision or law. A party to the mediation may disclose confidential mediation

communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of

public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

DIVISION 2

DEFINITIONS AND STANDARDS

808-002-0020

Contracts; Minimum Standards for Written Contracts and Billings

(1) Contracts. Pursuant to ORS 671.625(2) a contract for landscaping work for which the business charges \$2,000 or more for a landscape job must be in writing. For the purpose of this rule, "landscape job," has the same meaning it does under OAR 808-002-0495.

(2) Written landscaping contracts and subcontracts with a homeowner or an agent of the homeowner shall include, but not be limited to, the following:

(a) Landscape contracting business name, license number, business address and telephone number;

(b) Consumer's name and address;

(c) Address or location of work to be performed if different from the consumer's address;

(d) General description of the work to be performed and materials to be installed;

(e) Estimated time for completion or estimated completion date;

(f) Price and payment schedule;

(g) Description of guarantee; if no guarantee such a statement shall be included;

(h) Signatures of the authorized business representative and consumer;

(i) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(j) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

(23) Written landscaping contracts or subcontracts with another contractor licensed with the Landscape Contractors

Board or the Construction Contractors Board shall include, but not be limited to, the following:

(a) Landscape contracting business name;

(b) Other contractor's name;

(c) Address or location of work to be performed;

(d) General description of the work to be performed;

(e) Estimated completion date or statement regarding schedule of work;

(f) Price and, if payments are to be made, a payment schedule;

(g) Description of guarantee; if no guarantee such a statement shall be included; and

(h) Signatures of the authorized business representative for both the other contractor and the landscape contracting business.

(3) Changes or amendments to landscaping contracts and subcontracts shall identify the scope of the change or amendment, be agreed to by both parties, and be in writing.

(4) All billings by a licensed landscape contracting business shall include the following:

(a) Name, address and telephone number of the licensed landscape contracting business;

(b) Name and address of the consumer;

(c) Total contract price and amount paid to date;

(d) The amount now due and the work performed for the amount due.

808-002-0100

Definitions Generally

Except where the context requires otherwise, the definitions in this division govern the interpretation of ORS 671.510 to 671.710, 671.955 and OAR chapter 808.

808-002-0120

Action on the Bond or Deposit

"Action on the Bond or Deposit" means an agency order that the claim be paid out of the deposit or bond as provided in ORS 671.703.

808-002-0130

Administrative Law Judge

"Administrative law judge" means a person authorized to conduct hearings for the Office of Administrative Hearings.

808-002-0140

Agency

"Agency" means the State Landscape Contractors Board, Administrator, and staff.

808-002-0145

Agriculture Exemption

The following are exempt from ORS 671.510 to ORS 671.760:

1. All plants, including, but not limited to, trees, shrubs, vines or trees which have their situs of production on a farm or vineyard and are used by humans or animals as food and grown for commercial sale.

2. Drainage systems used to drain agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

3. Irrigation systems used to irrigate agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

808-002-0150

Backflow Assembly

"Backflow assembly," as used in ORS 671.615, means the combination of a backflow device and two manual control valves on either side of the device, and the plumbing in between.

808-002-0155

Bid

%Bid+means offering to perform landscaping work on a given job site in return for compensation.

808-002-0160

Board

"Board" means the seven-member Landscape Contractors Board appointed under ORS 671.630.

808-002-0200

Casual, Minor, or Inconsequential

(1) "Casual, Minor, or Inconsequential" work, as used in ORS 671.540(1)(c)(C), includes:

- (a) The replacement of shrubs, vines, trees and nursery stock with varieties that are similar in habit and culture;
 - (b) The replacement of existing lawns;
 - (c) The planting of annuals, perennials and bulbs in existing beds and outdoor pots and containers that are part of a structure or require power equipment to be placed when empty or filled. This does not include the commercial production of nursery stock;
 - (d) The replacement of non-concrete landscape edging;
 - (e) In an irrigation system, the replacement of three or fewer malfunctioning sprinkler heads with heads of the same or of a similar type and hydraulic equivalency;
- (2) "Casual, minor or inconsequential" work does not include:
- (a) The construction of new planting areas;
 - (b) The construction or repair of arbors, decks, driveways, fences, retaining walls, walkways, patios, concrete landscape edging, or ornamental water features, drainage systems or irrigation systems; or
 - (c) The maintenance of irrigation systems with the use of compressed air.
 - (d) The placement of outdoor pots and containers where the use of powered equipment is required when the pots or containers are empty or filled.

808-002-0205

Charges

%Charges+as used in ORS 671.690 means any compensation that a landscape contracting business asks for to perform landscaping work.

808-002-0210

Claimant

"Claimant" means a person who files a claim against a landscape contracting business under ORS 671.695.

808-002-0220

Claims

%Claims+as used in ORS 671.690 to 671.710 and in division 4 of this chapter are:

- (1) %Breach of contract claim+means a claim for amounts due from a landscape contracting business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.760.

(2) **Material or equipment claim**+means a claim filed by:

(a) a material supplier who has not been paid for materials sold to a licensed landscape contracting business installed on a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760; or

(b) an equipment rental business who has not been paid for the rental of equipment to a licensed landscape contracting business to be used in the performance of work of a licensed landscape contracting business in connection with a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760.

(3) **Employee claim**+means a claim for unpaid wages or benefits filed by an employee of a landscape contracting business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscape contracting business for work performed subject to ORS 671.510 to 671.760.

(4) **Negligent or improper work claim**+means a claim for amounts due from a landscape contracting business as a result of negligent or improper work subject to ORS 671.510 to 671.760.

(5) **State tax and contribution claim**+means a claim filed by the State of Oregon for amounts due from a licensed landscape contracting business for taxes and contributions due to the State of Oregon.

(6) **Subcontractor claim**+is a claim filed by a subcontractor arising out of a contract between the subcontractor and a licensed landscape contracting business for unpaid labor or materials furnished under the contract on a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760.

(7) **Lien Claim**+means a claim filed by a property owner against a licensed landscape contracting business to discharge or to recoup funds expended in discharging a construction lien on a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760.

**808-002-0240
Compensation**

"Compensation" means payment made or value received in the form of money, goods, or services in return for landscape contracting. Compensation includes, but is not limited to, the following: (a) profit from the sale or lease of property where landscaping was performed as part of developing the property for sale or lease, (b) salary or wages where the employee's duties included landscaping work.

**808-002-0260
Court, Arbitrator or Other Entity**

"Court, arbitrator or other entity" means a court of competent jurisdiction or an arbitrator or other entity authorized by law or the parties to a dispute to effect a resolution to the dispute.

**808-002-0278
Project**

Project+as used in ORS 671.690 means the landscape job as defined in OAR 808-002-0495.

**808-002-0280
Date Work Completed**

"Date Work Completed" is:

(a) The date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or

(b) The date the landscaping business ceased work, if the landscaping business fails to substantially fulfill the provisions of the contract.

**808-002-0290
Days**

"Days" as used in this chapter means calendar days, unless otherwise provided or the context otherwise indicates.

**808-002-0300
Defective Materials**

"Defective Materials" are materials which are below the standard quality normally used unless specified in the written or verbal contract.

**808-002-0320
Defective Work**

"Defective Work" means work which does not substantially meet the provisions presented in the written or verbal contract.

808-002-0325**Direct Contractual Relationship**

"Direct Contractual Relationship" as used in OAR 808-004-0320 has the following meanings:

(1) For a negligent or improper work claim, a breach of contract claim, or a construction lien claim "direct contractual relationship" means a relationship created by a contract between claimant and respondent providing that respondent performs landscape construction work in return for valuable consideration conveyed directly from claimant to respondent.

(2) For a material claim or subcontractor claim, "direct contractual relationship" means a relationship created by a contract between claimant and respondent providing that claimant provide labor, material or rental equipment in return for valuable consideration conveyed directly from respondent to claimant.

808-002-0328**Direct Supervision**

"Direct supervision" as used in ORS 671.540(1)(q) and (r), means that a licensed landscape construction professional supervises any unlicensed employee who performs landscaping work such that the employee:

(1) has had instruction on the project from the landscape construction professional, verbally or in writing;

(2) knows the landscape construction professional by name;

(3) knows how to contact the landscape construction professional; and

(4) can communicate with the landscape construction professional within an hour, and, if unavailable, that landscape construction professional will return the call by end of day to the employee.

808-002-0330**Dishonest or Fraudulent Conduct**

"Dishonest or fraudulent conduct," as used in ORS 671.610(1)(q), includes, but is not limited to, the following:

(1) Failing to pay monies when due for materials or services rendered in connection with the applicant's or licensee's operations as a landscape contracting business when the applicant or licensee has received sufficient funds as payment for the particular landscaping

project or operation for which the services or materials were rendered or purchased; or

(2) Accepting payment in advance on a contract or agreement and failing to perform the work or provide the services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or

(3) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or

(4) Failing to pay minimum wages or overtime wages as required under state or federal law; or

(5) Failing to comply with the state Prevailing Wage Rate Law, ORS 279.348 to 279.380; or

(6) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance; or

(7) Failing to pay wages as determined by the Bureau of Labor and Industries, Wage and Hour Division; or

(8) Presenting for payment to the board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account; or

(9) Misrepresenting the employment relationship between a landscape contracting business and a landscape construction professional.

(10) Providing false information to the board.

808-002-0338**Drainage Systems**

(1) "Drainage Systems," as used in ORS 671.520(1)(c), mean assemblies of piping and fittings that are used to drain lawns, trees, shrubs, and nursery stock and other landscape work. "Drainage Systems" do not include systems used solely to drain roofs, foundations, footers, buildings, basements, or crawl spaces unless done in conjunction with landscape work. Drainage systems do not include systems used to drain agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

(2) Installation. For the purposes of ORS 671.520(1)(c), to install drainage systems includes, but is not limited to:

- (a) Trenching;
 - (b) Installing drainage pipe or pipe fittings;
 - (c) Installing drainage filtering materials including filter fabric, gravel, or other natural or synthetic materials; or
 - (d) Backfilling.
- (e) To install drainage systems does not include installing drainage systems for buildings, basements, foundations, footings, roofs, or crawl spaces, unless done in conjunction with planting lawns, trees, shrubs, nursery stock, artificial turf or other landscape work.

(3) Maintenance. As used in ORS 671.520(1)(c), %maintain+drainage systems includes, but is not limited to:

- (a) Cleaning out the catch basin; or
- (b) Cleaning out the drain tiles.

(4) Repair. As used in ORS 671.520(1)(c), "repair" drainage systems includes, but is not limited to:

- (a) Patching; or
- (b) Replacement of piping, fittings and filtering materials.

808-002-0340

Employ

"Employ," as used in ORS 671.530(6), 671.565(1)(b) and 671.610(2)(f), means to hire an employee, as defined in OAR 808-002-0360, and thereafter be subject to ORS Chapters 654, 656, 657 and state and federal wage and hour laws.

808-002-0360

Employee

"Employee" means any individual working for remuneration who does not meet the requirements of an independent contractor in ORS 670.600. Employee does not include either a subcontractor that is an independent contractor, or a leased or temporary employee.

808-002-0390

Family Members

%family members+means members of the same family and are related as parents, spouses,

sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, or grandchildren.

808-002-0420

Full Year of Training

"Full Year of Training in an area related to landscaping at an Accredited School or College", as used in ORS 671.570(1)(d)(B) means 36 quarter hours or 24 semester hours of classes relating to landscape contracting at a school or college accredited by an agency recognized by either the United States Department of Education (USDE) or the Council for Higher Education Accreditation (CHEA).

808-002-0440**Given Job Site**

"Given Job Site" means a fixed location, but in the instance of a building complex, not necessarily a single address.

808-002-0455**Install**

- (1) For the purpose of ORS 671.520 *and* 2015 Laws Chapter 672 "install" means:
- (a) the planting of lawns, trees, shrubs, vines and nursery stock outdoors including the preparation of the property. For the purpose of this rule, planting includes, but is not limited to, the excavation of the planting pit or hole, physically moving the plant into the pit or hole, backfilling the pit or hole, compacting the backfill and staking the plant if necessary.
 - (b) adding mulching material when a tree, shrub, vine, and/or nursery stock are planted.
 - (c) the laying of artificial turf as defined in OAR 808-002-0500(2) including the preparation of the site.
 - (d) the construction of
 - (A) ornamental water features,
 - (B) landscape drainage,
 - (C) irrigation systems,
 - (D) fences,
 - (E) decks,
 - (F) arbors,
 - (G) patios,
 - (H) landscape edging,
 - (I) driveways,
 - (J) walkways; and
 - (K) retaining walls.
- (2) Except as provided in subsection (1) installing does not include:
- (a) the placement of mulching materials which includes, but is not limited to bark dust, chips, husks, shells or compost; and
 - (b) the planting of nursery stock for commercial sale or reforestation.

808-002-0480**Irrigation Systems**

"Irrigation systems" as used in ORS

671.520(1)(e):

- (1) Includes, but are not limited to, assemblies of station or master valves, piping, sprinklers, nozzles, emitters, filters, or controllers and the positioning and piping of pumps; that are installed for the purpose of watering lawns, trees, shrubs or nursery stock.
- (2) If an irrigation system is connected to a water supply that is used for multiple purposes, the irrigation system begins immediately downstream of a backflow device (if required) or any shut-off valve installed at the point of connection in the water supply line separating the irrigation system from the other functions of the water supply.
- (3) Irrigation systems do not include systems used to irrigate agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.
- (4) For the purpose of this rule, a shut-off valve is any valve installed solely for the purpose of isolating all functions of an irrigation system from the supply source and a station or master valve is a valve installed for the purpose of distributing a controlled amount of water to the other components of the irrigation system.
- (5) Installation. For the purposes of ORS 671.520(1)(e), to install irrigation systems includes, but is not limited to:
 - (a) Trenching;
 - (b) Installing irrigation pipe or pipe fittings, valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements of an irrigation system;
 - (c) Altering an existing irrigation systems; or
 - (d) Backfilling.
- (6) Maintenance. Maintenance of irrigation systems includes, but is not limited to:
 - (a) the use of compressed air. Use of compressed air, as used in ORS 671.520(1)(d), means the use of an air compressor or air storage tank to introduce air into an irrigation system to remove water within the system for winter;
 - (b) Replacing debris screens in nozzles and drip irrigation;

(c) Any project that includes cutting, raising and changing irrigation head grade more than four (4) inches; or

(d) Replacement of irrigation heads.

(7) Repair.

(a) As used in ORS 671.520(1)(c), to "repair" irrigation systems includes, but is not limited to:

(A) Replacing any irrigation water line;

(B) Disassembling and replacing the internal parts of backflow assembly when performed pursuant to ORS 447.060(3).

(b) The Repair of irrigation systems does not include replacing three or fewer sprinkler heads with the same or similar type and hydraulic equivalency sprinkler heads, adjusting sprinkler head nozzles; or programming irrigation controls.

808-002-0490**Landscape Edging**

"Landscape edging," as used in ORS 671.520(1)(f), means concrete, metal, plastic, wood or other material that is used to separate different planting elements of a landscape from each another.

808-002-0495**Landscape Job**

Landscaping job, means the performance of, bidding on, contracting for, or arranging for landscaping work on a given job site, with the same owner in any 12-month period, regardless of the number of contracts or bids submitted.

808-002-0500**Landscaping Work**

"Landscaping Work," as used in ORS 671.540, 671.570, 671.660(5), and 671.690, and 2015 Laws Chapter 672, means:

- (1) The planning or installing of lawns, shrubs, vines, trees, and nursery stock outdoors including the preparation of property on which the vegetation is to be installed. For the purposes of this rule, "preparation of property" includes, but is not limited to the installation of root penetration prevention materials, the placement of containers and pots that require the use of power equipment to move, the adding and

incorporating of soil amendments, importation of topsoil and other planting media, removal of soil, and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed;

(2) The preparation, installation, and repair of artificial turf installed outdoors, except sports fields. For purposes of this rule:

(a) sports field means one or more areas of a property that total more than 30,000 square feet of artificial turf and are designated to be used primarily for sport or other athletic activities

(b) preparation, for the purpose of this rule, includes, but is not limited to the installation of root penetration prevention materials, base material such as crushed rock, gravel, or decomposed granite, grading to smooth out the base material, compacting the base, laying, cutting, stretching, seaming, and fastening the turf, the addition of a filler, and brushing.

(2) The installation, maintenance or repair of ornamental water feature or landscape drainage systems;

(3) The installation or repair of irrigation systems for lawns, shrubs, vines, trees and nursery stock;

(4) The maintenance of irrigation systems with the use of compressed air;

(5) The preparation of plans and drawings for a landscape irrigation system. Plans and drawings for a landscape irrigation system include, but are not limited to plans and drawings that identify the positioning, number, type and model of pumps, piping, valves, sprinklers, nozzles, emitters, filters, controllers and other components for the system. The landscape construction professional may only prepare these plans and drawings if that professional holds a license that authorizes the installation of irrigation systems.

(6) The planning, installation, maintenance, or repair of fences, decks, arbors, patios, landscape edging, driveways, walkway and retaining walls, which can be constructed of, but not limit to, the following materials:

sand, gravel, rocks, bricks, concrete, asphalt, wood, wire, plastic, composite decking, fabrics and synthetic turf.

(7) Landscaping work does not include structural work, waterproofing or work with waterproof membranes, flashing, or other work involving the building envelope that is outside the scope of license of a landscape contracting business.

808-002-0520

Landscaping Work on Residential Property

"Landscaping work on residential property that is directly related to local building code requirements or occupancy ordinances" as used in ORS 671.540(1)(i) means landscaping work performed on specific residential dwelling sites and does not include landscaping work performed in open spaces, tracts, and common areas.

808-002-0540

Last-Known Address of Record

"Last-known address of record" for a landscape construction professional, a landscape contracting business or for a claimant, as used in ORS 671.603(2), means the mailing address provided by the landscape construction professional, landscape contracting business or claimant in writing to the agency.

808-002-0560

Legal Entity

"Legal Entity" includes, but is not limited to, an individual, a partnership, a limited liability partnership, a corporation, a limited liability company, an association, or a firm.

808-002-0580

Legal Holiday

"Legal Holiday" is any day designated by ORS 187.010 to 187.020.

808-002-0590

Lienor

Lienor means a person who holds a construction lien on another's property.

808-002-0620

Landscape Maintenance

"Landscape Maintenance" means the regular and practical care of existing landscapes and would include, but is not limited to:

- (1) The mowing, trimming and edging of lawns;
- (2) Pruning of trees to a height of no more than 15 feet above ground level, removal of trees up to 15 feet in height where the diameter of the tree is 4 inches or less when measured at 6" to 12" above soil line. Limbs may be removed when the diameter of the limb is 3 inches or less at its origin;
- (3) The placement of mulching materials including, but not limited to, bark dust, chips, husks, shells or compost; or
- (4) The application of fertilizer to lawns, trees and shrubs using fertilizer as defined in ORS 633.311.
- (5) The planting of outdoor pots and containers when the pots and containers can be placed without the assistance of power equipment when empty or filled.
- (6) In an irrigation system:,
 - (a) The adjustment of sprinkler head nozzles; or
 - (b) The programming of irrigation controllers.

808-002-0623

Manages or shares in the management

"Manages or shares in the management" means to have a position in the business that is accountable for exercising delegated authority over the human and financial resources to accomplish the objectives of the business which may include, but is not limited to, the performance of the planning, directing, implement, organizing, evaluation, supervising or administering the operations of the business and includes the preparation or administration of contracts for landscaping work performed by the business.

808-002-0625

Managing Employee

The term "Managing Employee" is defined as any individual, including a general manager, business manager, or administrator employed by a landscape contracting business who exercises operational or managerial control over the business activities of the landscape contracting business. An individual can only be a managing employee of one landscaping business at a time.

808-002-0650

Minority Shareholder

"Minority shareholder," as used in ORS 671.607(2)(a)) means a shareholder of a corporation who owns or controls less than one-half the total shares outstanding.

808-002-0665

Monetary Damages

"Monetary damages" may include, but is not limited to:

(1) The dollar amount required in excess of the contract amount to provide the claimant what was agreed to be provided under the terms of the contract minus any amount due and unpaid the licensed landscape contracting business; or

(2) The dollar amount paid to the licensed landscape contracting business less the reasonable value of any work properly performed by the licensed landscape contracting business, plus the cost to demolish negligent or improper work, and to restore the property to the condition it was in before work began.

808-002-0680

Nature and Complexity

"Nature or Complexity" as used in ORS 671.703 includes, but is not limited to the following meaning:

- (1) Involves issues requiring legal interpretation of statutes and case law that are not normally part of a landscaping claim;
- (2) In the interest of fairness and equity, requires rulings against persons or entities outside the jurisdiction of the agency; or
- (3) Involves issues and fact determinations that are outside the expertise of the agency.

808-002-0725

Office of Administrative Hearings

"Office of Administrative Hearings" means the Office of Administrative Hearings established under ORS 183.605.

808-002-0730

Ornamental Water Features

(1) "Ornamental Water Features," as used in ORS 671.520(1)(c) & (5), means outdoor fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions including shallow, decorative pools (singularly or in combination with others), or streambeds constructed of material such as

liners, gravel, rocks, boulders, or concrete. Ornamental water features may include piping, pumps, or a filtration system.

(2) Ornamental water features do not include prefabricated systems which are self contained and do not require construction on the site.

(3) Installation. For the purpose of ORS 671.520(1)(c) %install+ornamental water features includes, but is not limited to:

- (a) Excavating;
- (b) Liner installation;
- (c) Gravel, rock and boulder placement;
- (d) Piping;
- (e) Pump installation;
- (f) Automatic fill installation;
- (g) Mortaring;
- (h) Concreting; or
- (i) Filter installation.
- (j) To install ornamental water features does not include the installation of pre-fabricated systems that are self-contained and do not require construction on the site.

(4) Repair. As used in ORS 671.520(1)(c), "repair" ornamental water features includes, but is not limited to:

- (a) Liner patching;
- (b) Rock and boulder replacement;
- (c) Mortaring; or
- (d) Pump replacement.
- (e) Repair of ornamental water features does not include draining, cleaning or refilling ornamental water features.

808-002-0734

Owner

- (1) "Owner," as defined in ORS 671.607 means:
 - (a) A person described in ORS 671.607(1)(d);
 - (b) A general partner in a limited partnership;
 - (c) A majority stockholder in a limited partnership;
 - (d) A manager in a manager-managed limited liability company;
 - (e) A member in a member-managed limited liability company; or
 - (f) A person who has a financial interest in a business and manages or shares in the management of the business.

(2) For purposes of this rule, "manages or shares in the management" has the meaning given in OAR 808-002-0623.

808-002-0755

Patio

%Patio+as used in ORS 671.520 and ORS 671.690 is a single or multi-level area, which may be accessorized, including but not limited to stairs, railings, seating, low voltage lighting fire pits, outdoor kitchens and outdoor wood fire ovens and ornamental water features. However, nothing in this rule authorizes a licensee under ORS 671.510 to 671.760 to perform work outside the scope of that license.

808-002-0760

Person

"Person" means any legal entity.

808-002-0775

Piping

%Piping+as used in ORS 671.540(1)(m), (n) & (o) and OAR 808-002-0480 means water distribution pipe, of any type or composition, including connecting fittings, used in an irrigation system. Piping does not include valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements used in an irrigation system.

808-002-0780

Plan or Install

"Plan or Install" as used in ORS 671.520(2)(a) and (f) means:

- (1) %Plan,+for the purposes of this rule, means the ability to lay out verbally, or in sketch or scale drawing form, a landscape project for implementation, including preparation, construction, and planting.
- (2) %Install,+for the purposes of this rule, has the same meaning as it does under OAR 808-002-0455.

808-002-0785

Primary Contractor

"Primary contractor" is an entity who has a contract, either oral or written, with the owner of the property to perform work subject to ORS Chapter 671, or who is holding itself out to be a licensed contractor in connection with property it owns; who may engage one or more

subcontractors to perform all or part of the work; and who may have responsibility for the entire project which is the subject of the contract. Responsibility for the entire project includes coordinating work, seeing that prompt and proper payment is made to all subcontractors and suppliers, thereby preventing the filing of construction liens against the property.

808-002-0800**Renew License**

"Renew License" means to annually maintain the current status of a valid license or to bring a lapsed or expired license to current, valid status.

808-002-0808**Repair or maintenance work on piping for an irrigation system**

Repair or maintenance work on piping for an irrigation system as used in ORS

671.540(1)(m), (n) & (o) is the following:

- (1) Excavation of the immediate area around the water distribution pipe of the irrigation system where the repair or maintenance is to occur;
- (2) Replacement of the water distribution pipe and any fittings required to fix the problem in the water distribution pipe using solvent welding, compression fittings or other acceptable forms of replacement and repair determined by the type of pipe being repaired;
- (3) Maintaining the pipe of irrigation systems by winterizing the system using compressed air; and
- (4) Backfilling the area where the repair or maintenance occurred.

808-002-0820**Residential Dwelling**

"Residential Dwelling" as used in ORS

671.540(1)(h) means a residence, including a site-built home, a modular home constructed off site, a manufactured dwelling, or a duplex.

808-002-0840**Residential Property****Residential Property**

"Residential Property" as used in ORS

671.540(1)(h) and (i) means property upon which one or more "residential dwellings," as defined in 808-002-0820 are constructed or will be constructed.

808-002-0870**Respondent**

"Respondent" as used in this chapter, means a landscape contracting business that a claim is filed against under ORS 671.690 to 671.710 or that the board proposes to impose a penalty against under ORS 671.510 to 671.625 and 671.950 to 671.992.

808-002-0875**Rough Grading**

"Rough grading," for purposes of ORS 671.540(1)(e), means the movement of earth by cutting and/or filling of a site to establish proper sub-grade elevations prior to the preparation and establishment of the final grade for seed beds or tree or shrub planting. Rough grading does not include grading done by raking or other mechanical means to establish a grade that is suitable for planting.

808-002-0880**Sod and Seed**

"Sod and Seed" means planting grass seed, vegetative parts or laying sod.

808-002-0882**Under contract for the construction of a new dwelling**

Under contract for the construction of a new dwelling+as used in ORS 671.540(1)(h) means a residential general contractor has agreed, pursuant to a written contract, to construct a new residential dwelling for the owner in a location on the property where a structure did not previously exist or the existing structure is completely demolished, including the foundation, and removed prior to the new construction. For the purposes of this rule, remodeling or modifying an existing structure is not considered construction of a new dwelling.

808-002-0885**Valid License**

"Valid," as used in ORS 671.530 and OAR Chapter 808, means a landscape contracting business license or a landscape construction professional license that is active.

808-002-0890**Warranty work**

"Warranty work" is work done pursuant to an agreement that warrants the quality of the work upon any portion of a project for the purpose of making corrections or repairs to the work described by the contract and supplemental agreements, whether or not final payment has been made by the consumer.

808-002-0895**With the intent of offering for sale**

Evidence ~~with~~ the intent of offering for sale+as used in ORS 671.540(1)(f) & (g) includes, but is not limited to, the following:

- (1) The owner has posted or otherwise made known through the use of a sign, advertisement, device, or any other method that indicates to the public that the property is for sale. If the owner of the property removes the signage, advertisement, device or other method of indicating the property is for sale, that action alone does not remove the fact that there was an intent to sell property;
- (2) The property is listed as ~~or~~ sale+with a real estate firm or if the property is ~~or~~ sale by owner+ there is an intent to sell;
- (3) The property is being offered as a ~~lease~~ with option to purchase+or other similar wording; or
- (4) The owner who performed landscaping work on the property or arranged to have the landscaping work performed on the property:
 - (a) does not occupy, rent or lease the property for a period of 6 months or more after the completion of the landscaping work; and
 - (b) sells such property within two years of completion of the landscaping work.

808-002-0920**Work Period**

"Work Period" as used in OAR 808-004-0320 and 808-004-0600 means the time period from the date a landscape contracting business accepts a payment, offers a written or verbal proposal which is later accepted as a contract or enters into a contract or begins construction, whichever occurs first, until the date the work is completed as defined in OAR 808-002-0280 or the landscape contracting business ceases work.

**DIVISION 3
LICENSES**

808-003-0010**Written Advertising**

(1) All written advertising, except telephone and internet directory line listings and uniforms, shall include the landscape contracting business license number. The landscape contracting business license number in a written advertisement shall be capable of being read (legible) and clearly visible.

(2) Advertising shall include, but not be limited to:

- (a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671.510 through 671.710;
- (b) Telephone or internet directory space ads, display ads and line listings;
- (c) Business cards;
- (d) Business flyers;
- (e) Business letterhead;
- (f) Business signs at construction sites;
- (g) Contracts and/or proposals;
- (h) Vehicles and trailers with signage; and
- (i) Websites.

(3) No person shall advertise under the heading of "landscape contractor" or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds an active landscape contracting business license.

(4) A landscape contracting business that holds a valid license shall not advertise for landscaping work outside the scope of the license.

(5) All written advertising on websites must include the landscape contracting business license number at least on the homepage, the footer of each page, or the contact us.

(6) Effective January 1, 2016, a vehicle sticker issued by the State Landscape Contractors Board does not constitute meeting the requirement to have the landscape contracting business license number on a vehicle.

808-003-0015

**Application for Landscape Contracting
Business and Landscape Construction
Professional License**

(1) Application for a landscape contracting business license shall be on forms provided by the agency. Information provided on the form must include, but not be limited to:

- (a) Name of business entity, all additional assumed business names under which the landscaping work is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;
- (b) Mailing and physical address of the business entity;
- (c) Name of all owners and percent of ownership of each owner;
- (d) Name and license number of all licensed landscape construction professionals employed by the business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A business may meet the requirements of ORS 671.565, notwithstanding the conditions of 657.044, if the licensed landscape construction professional is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscape contracting business operations and is receiving remuneration, whether by salary or other payment, for services provided;
- (e) Name and address of owner or managing employee;
- (f) Independent contractor certification statement;
- (g) A signed statement by the owner of the business, on which the landscape contracting business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Complete questions to Licensing and Litigation History and Criminal Background sections;

(j) State Tax Identification number, if applicable;

(k) Federal Employer ID Number (EIN), if applicable;

(l) Workers Compensation Information, if nonexempt; and

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) Application for a landscape contracting business license must be accompanied by:

(a) A non-refundable application fee;

(b) A required license fee;

(c) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(d) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 if the application is received prior to January 1, 2106 and not less than \$500,000 if the application is received after January 1, 2016 listing the Landscape Contractors Board as the certificate holder;

(e) A Certificate of Completion of Owner/Managing Employee course from an approved course provider and proof of passing the Laws, Rules & Business Practice examination if the managing owner or managing employee does not hold an active landscape construction professional license;

(f) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal

or exceptions. For purposes of this rule and ORS 671.563, %applicant+has the same meaning as owner as defined in OAR 808-002-0734.

(g) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships;

(h) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional who is supervising work for the landscape contracting business as required in OAR 808-003-0018; and

(i) Certificate of Insurance verifying workers compensation insurance coverage for all employees, if the applicant qualifies as nonexempt.

(3) Application for a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) A non-refundable application fee;

(b) Verification of experience and/or transcripts or copies of completion certificates from courses of study;

(c) If applicable, name of employing licensed landscape contracting business or businesses;

(d) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, %applicant+means the person applying for the individual landscape construction professional license;

(e) Complete questions to Licensing and Litigation History and Criminal Background sections;

(f) Social security number of the applicant;

(g) Mailing and physical address of the applicant; and

(h) Signature of applicant.

(4) Application for a probationary landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

- (a) A non-refundable application fee,
 - (b) If applicable the name of the employing licensed landscape contracting business or businesses.
 - (c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, ~~an~~ applicant means the person applying for the individual probationary landscape construction professional license;
 - (d) Complete questions to Licensing and Litigation History and Criminal Background sections;
 - (e) Social security number of the applicant;
 - (f) Mailing and physical address of the applicant; and
 - (g) Signature of applicant.
- (5) If an applicant as defined in subsections (1), (3) and (4) of this rule has any unpaid damages as stated in subsections (1), (3) and (4) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to issue the license.

**808-003-0018
Employment, Change of License Phase,
Supervisory Responsibilities**

- (1) The licensed landscape construction professional who holds part or the complete phase basis of the landscape contracting business license must perform the following supervisory services:
- (a) Review and initial the landscape plan and/or written contract for each job;
 - (b) Attend all on-site meetings and appear at any hearings that are a consequence of

any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

- (c) Directly supervise all non-licensed employees employed by the landscape contracting business as defined in OAR 808-002-0328. For the purpose of verification of direct supervision of an unlicensed employee as required by ORS 671.540(1)(q) or (r), the communication requirement of direct supervision will be considered met if the licensed landscape construction professional communicates with the Landscape Contractors Board investigator who requested the unlicensed employee to contact the supervising landscape construction professional before midnight of the same day of the request.
- (2) A landscape contracting business must:
- (a) require a licensed landscape construction professional to directly supervise the unlicensed employees of the landscape contracting business who are performing work that corresponds to the landscape construction professional's phase of license; and
 - (b) Have the landscape construction professional who is responsible for supervision as required in subsection (a) of this section on the payroll each hour receiving at least minimum wage or meeting the salary test for salaried exempt employees during the time the landscape contracting business is engaged in landscaping work that corresponds to this landscape construction professional's phase of license except when the landscape construction professional is not considered a subject worker under ORS 656.027.
 - (c) Submit a Verification form when a new landscape construction professional becomes part or the complete basis of the landscape contracting business license.
- (3) Upon application for a landscape contracting business license, and at any other time the board requests, a landscape contracting business must submit a completed, signed and notarized

Verification form (provided by the board) for every licensed landscape construction professional for whom the landscape contracting business has not previously submitted this Verification form and who is supervising landscaping work for the landscape contracting business;

(4) The Verification form verifies that the licensed landscape construction professional:

- (a) Is a paid employee of the landscape contracting business and is on the payroll each hour receiving at least minimum wage or meets the salary test for salaried, exempt employees or is an owner of the business as defined in OAR 808-002-0734 during the time the business is performing landscape work related to the landscape construction professional's phase days after termination of employment from the landscape contracting business as of license;
- (b) Will directly supervise work based on the landscape construction professional's phase of license;
- (c) Will attend on site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and
- (d) Understands the requirement to notify the board within ten calendar required by OAR 808-003-0125(4).

808-003-0020

Business Names

- (1) A partnership, corporation, limited liability company, limited liability partnership, joint venture, professional corporation, assumed business name or other business entity shall be registered to do business in Oregon with the Corporation Division of the State of Oregon.
- (2) Every licensed landscape contracting business entity that changes its name or registers for an assumed business name with the Corporation Division of the State of Oregon and every sole proprietor that changes his or her surname, must notify the agency within 30 days of assuming, filing or registering the new name.

(3) An actively licensed landscape contracting business that does not register or maintain registration as required by the Corporation Division of the State of Oregon shall have the license suspended or not renewed until properly registered with the Corporation Division of the State of Oregon.

(4) An applicant for a landscape contracting business license that does not register as required by the Corporation Division of the State of Oregon shall not be issued a landscape contracting business license.

808-003-0025

Alternative Experience

An applicant will be deemed to have qualifying experience under ORS 671.570(2) if the applicant:

- (1) Submits documentation to verify two years of related landscaping experience; or
- (2) Successfully completes the Landscape Industry Certification program administered by the Oregon Landscape Contractors Association (OLCA) or another entity licensed to the Professional Landcare Network; or
- (3) Obtains an Associate, Bachelors or Masters Degree in horticulture or other related fields from an accredited school or college, which includes the completion of a cooperative work experience requirement in landscaping. If no cooperative work experience, six months of related landscape experience may substitute; or
- (4) Obtains a Certificate in horticulture or other related fields from an accredited school or college that requires a minimum of 72 credit hours, which includes the completion of a cooperative work experience requirement in landscaping. If no cooperative work experience, six months of related landscape experience may substitute; or
- (5) Holds a current certification with the International Society of Arboriculture (ISA) as a Certified Arborist; or
- (6) Holds a current membership as a Certified Professional Member of APLD; or
- (7) Complete an Oregon Drinking Water Program approved Backflow Assembly Tester five (5) day course or holds a current Oregon Backflow Assembly Tester certification; or
- (8) Any other landscaping related certified membership on an individual basis to be determined by the Board.

808-003-0030

Expiration of Application; Change of Application

Applicants who fail to complete the license process within the following time periods must submit a new application and fee and, if applicable, retake and pass the exam.

(1) A landscape contracting business license application will expire one year from the date the application was received by the agency.

(2) Except as provided in subsection (3), an individual landscape construction professional license application will expire two years after the last examination sitting or two years after the application was received by the agency, whichever is later. Exam results are subject to OAR 808-003-0065(3).

(3) An individual landscape construction professional application for a Probationary All Phase Plus Backflow license will expire two years after the application is received by the agency or, one year after the first sitting for any section of the exam, whichever is first. Exam results are subject to OAR 808-003-0065(4).

(4) An applicant for a Probationary All Phase Plus Backflow license may submit another application for a Probationary All Phase Plus Backflow license after the previous application has expired. Exam results are subject to OAR 808-003-0065(4).

(5) An applicant that applied for a Probationary All Phase Plus Backflow license may submit an application for a regular landscape construction professional license at any time prior to being issued a probationary license along with the required documentation pursuant to ORS 671.570 or OAR 808-003-0025. If a Probationary All Phase Plus Backflow license is issued the licensee must comply with OAR 808-003-0045(5) to obtain removal from probationary status. Exam results are subject to OAR 808-003-0065(3).

808-003-0035

License Categories

(1) Licenses may be issued only for the following:

- (a) All Phase;
- (b) Planting;
- (c) Standard; or
- (d) Irrigation and Backflow Prevention.
- (e) Probationary All Phase Plus Backflow

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:

- (a) Irrigation;
- (b) Irrigation and Backflow Prevention;
- (c) Sod & Seed; and
- (d) Trees.

(3) The "All Phase" license shall include standard (which includes planting), irrigation, and Backflow Prevention, unless, in lieu of Backflow Prevention, the landscape construction professional has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work, with the penalty for violation of the agreement being \$1,000 and suspension of the landscape contracting business license and the landscape construction professional license who is the phase basis of the landscape contracting business.

808-003-0040

Scope of License and Subcontracting

(1) Scope of License. A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:

- (a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;
- (b) For an irrigation, no backflow, limited license holder, irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems and the maintenance of irrigation systems with the use of compressed air;
- (c) For a sod and seed limited license holder, grass seed planting or sod laying;
- (d) For a tree limited license holder, install new or transplant trees;
- (e) For a planting limited license holder, plan or install lawns, shrubs, vines, trees or nursery stock and perform grading and drainage services for the installation of lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as

defined in OAR 808-002-0500. A planting limited licensing holder cannot perform low voltage work.

(f) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;

(g) For an irrigation plus backflow license holder, irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems, the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.

(h) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000,

(3) Landscaping Work Exceeding Licensee's Scope. A landscape contracting business may bid on a job or enter into a contract that includes one or more phases of landscaping work for which it is not licensed if that landscape contracting business:

(a) Upgrades the landscape contracting business license phase by employing a landscape construction professional licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work; or

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work.

(4) Landscaping Job Exceeding Licensee's Scope or Including Construction Contracting. A landscape contracting business may bid on a job or enter into a contract that, as part of the landscaping project, includes:

(a) Landscaping work for which the landscape contracting business is not licensed, and which is also within the scope of a construction contractor's license under ORS chapter 701, if the landscape business subcontracts with a construction contractor licensed under ORS chapter 701 to perform that work within the scope of the construction contractor's license; or

(b) Construction contracting work that is not included within the lawful scope of work of a landscape contracting business, including work of residential specialty contractors and commercial specialty contractors, and for which the landscape contracting business does not fall under a statutory exemption from appropriate licensure. This construction contracting work may be subcontracted only if the landscape contracting business subcontracts with a construction contractor licensed under ORS chapter 701 to perform work within the scope of the construction contractor's license, and if the construction contractor and its employees are properly licensed by the Department of Consumer and Business Services, Building Codes Division when required by law.

(5) Subcontracting.

(a) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with another licensed landscape contracting business to perform landscaping work, pursuant to subsection (3) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed landscape contracting business or licensed landscape contracting professional.

(b) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with a construction contractor licensed under ORS chapter 701 to perform construction contracting work pursuant to subsection (4) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed construction contractor.

(6) Subsection 3 through 5 of this rule do not allow a landscape contracting business to advertise or represent that the business is licensed to provide construction contractor services or specialty trade services regulated by the Department of Consumer and Business Services, Building Codes Division.

808-003-0045

Change to Limited Licenses; Removal from Probationary Status

(1) Landscape construction professionals holding limited licenses may upgrade that phase of license by passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be passed to upgrade to a standard landscape license:

(a) Sod & Seed license holders must pass

(A) Plants and Turf,

(B) Design, Grading and Drainage, and

(C) Hardscaping.

(b) Tree license holders must pass

(A) Plants and Turf,

(B) Design, Grading and Drainage, and

(C) Hardscaping.

(c) Irrigation license holders must pass

(A) Plants and Turf,

(B) Design, Grading and Drainage, and

(C) Hardscaping.

(d) Planting license holders must pass

Hardscaping.

(3) Holders of a Sod & Seed license or a Tree license must pass the Plants and Turf and Design, Grading and Drainage sections of the

landscape examination to upgrade to a Planting license.

(4) If the phase of license for a landscape contracting business license changes, the landscape contracting business must immediately stop advertising for or performing those phases of landscaping work for which the business no longer holds a license.

(5) Probationary license holders may obtain removal from probationary status by:

(a) Demonstrating one or more of the following after the date of obtaining the probationary license:

(A) Completion of 24 months or more of employment with an actively licensed landscape contracting business under the direct supervision of a non-probationary licensed landscape construction professional,

(B) Completion of 24 months or more as an owner or employee of an actively licensed landscape contracting business providing supervision as described in ORS 671.540(1)(q) or 671.565(1)(b) for a period of 24 months where the landscaping work performed on any landscape job by the landscape contracting business did not exceed \$15,000 and where the landscape contracting business filed and maintained with the board a bond, letter of credit or deposit in the amount of \$15,000, or

(C) Completion of 24 months or more as an actively licensed construction contractor under ORS Chapter 701.

(b) Submitting a written request to the board for removal of the probationary status.

808-003-0055

Examination Requirements

(1) Applicants may schedule an appointment with designated proctors throughout the state to take an examination after receipt of a letter of authorization from the agency and payment of the required fee(s).

(2) Applicant must show picture identification and the letter of authorization before taking an exam.

(3) Applicants may use only a hand-held calculator, scale ruler, and pencil or pen in addition to examination materials provided by the designated proctors.

(4) "Hand-held calculator" as used in this rule means a hand held electronic device that performs only basic mathematical calculations.

808-003-0060

Examinations; Translation of Exam

(1) The exam will consist of the following sections:

(a) Laws, Rules and Business Practice which includes Contract Law, General Business, and Agency Involvement;

(b) Plants and Turf;

(c) Design, Grading and Drainage;

(d) Hardscaping;

(e) Irrigation Systems, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps; and

(f) Backflow, which includes, but is not limited to the installation of irrigation and ornamental water feature backflow assemblies, cross connections, piping, valves, and related plumbing code provisions.

(2) All applicants must successfully pass the Laws, Rules and Business Practice section.

(3) To obtain an All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Low Voltage; Design; & Personal Safety, Irrigation and Backflow Prevention sections.

(4) To obtain a Standard license, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, and Hardscaping sections.

(5) To obtain an Irrigation license, the applicant must successfully pass the Laws, Rules and Business Practice, Irrigation and Backflow Prevention sections.

(6) To obtain a Planting license the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, and Design, Grading and Drainage sections.

(7) To obtain a Probationary All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Irrigation and Backflow Prevention sections within 12 months after the first sitting of any section of the examination.

(8) Translation of Exam.

(a) Pursuant to 2015 Laws Chapter 672 all exams will be given in the English language, unless otherwise requested.

(b) A candidate must notify the exam provider if they wish to take any section of the exam in Spanish.

808-003-0065

Scoring; Exam Section Transfer March 1, 2014

(1) Each exam section shall be scored separately.

(2) Based on 100 percent, the passing score shall be 75 percent or higher for each section.

(3) Except as provided in subsection (4) & (5), a passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.

(4) A passing score for an applicant for a Probationary All Phase Plus Backflow license will expire upon expiration of the application as stated in OAR 808-003-0030(3).

(5) A passing score of the Laws, Rules, and Business Practice section will remain valid for any applicant that passed this section and has been the managing employee or managing owner of a licensed landscape contracting business within two years; otherwise the scores will remain valid for up to one year from the date of the receipt of an application for licensing.

(6) Effective March 1, 2014 the following sections will transfer to the new exam sections as follows:

(a) Laws, Rules and Business Practice transfers into Laws, Rules and Business Practice;

(b) Plants and Turf transfers into the Plants and Turf Section;

(c) Grading and Drainage transfer into the Design, Grading and Drainage section;

(d) General Safety, estimating, soil science, chemicals and landscape design does not transfer into another exam section;

(e) Irrigation transfers into the Irrigation section; and

(f) Backflow Prevention transfers into Backflow Prevention.

808-003-0075

Notice of Score

The applicant will receive scores in person immediately after taking the exam.

808-003-0080

Review of Examinations

(1) Applicants failing to pass any section(s) of the exam may schedule an appointment, if necessary, with designated proctors throughout the state to review those sections.

(2) Requests to review failed sections of the exam must be scheduled within 30 days from notification of results.

(3) Applicants must show picture identification before reviewing any failed sections of the exam.

(4) Applicants reviewing failed sections of the exam may not:

(a) Be accompanied by another person during the review unless accompanied by an interpreter approved by the designated proctor;

(b) Retain notes taken during the review; or

(c) Challenge their examination results.

(5) Applicants will be allowed to review the failed sections of the exam once after each failure.

808-003-0081**Appeal of Examination Results**

An applicant who fails any section of the exam may not appeal those results.

808-003-0085**Cheating on the Exam**

(1) An applicant who is caught cheating during the examination:

- (a) Will not receive a result for any sections of the exam for the current sitting;
- (b) Will forfeit the exam fee;
- (c) May not retake any sections of the exam for 30 days; and
- (d) Must submit a new exam fee.

(2) The designated proctors will not grade examinations of applicants who are caught cheating.

(3) Actions that may be considered cheating include, but are not limited to:

- (a) Copying answers from another applicant during the examination;
- (b) Helping another applicant during the examination;
- (c) Unauthorized communication with another individual, in or out of the examination room, during the examination;
- (d) Using unauthorized written materials, notes or equipment during the examination; or
- (e) Removing examination materials, such as a question booklet page, in whole or in part, from the exam.

808-003-0090**Employer Status**

Landscape contracting businesses shall be licensed as either nonexempt (employer with employees) or exempt (no employees) as provided in ORS 671.525.

(1) The nonexempt class is composed of the following entities:

- (a) Sole proprietorships with one or more employees;
- (b) Partnerships or limited liability partnerships with one or more employees;
- (c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members as defined in OAR 808-002-0390;
- (d) Joint ventures with one or more employees;
- (e) Joint ventures with more than two joint venturers if any of the joint venturers are not

family members as defined in OAR 808-002-0390;

(f) Limited partnerships with one or more employees;

(g) Limited partnerships with more than two general partners if any of the general partners are not family members as defined in OAR 808-002-0390;

(h) Corporations with one or more employees;

(i) Corporations with more than two corporate officers if any of the corporate officers are not family members;

(j) Trusts with one or more employees;

(k) Trusts with more than two trustees if any of the trustees are not family members as defined in OAR 808-002-0390;

(l) Limited liability companies with one or more employees; or

(m) Limited liability companies with more than two members if any of the members are not family members as defined in OAR 808-002-0390.

(2) The exempt class is composed of sole proprietors, partnerships, joint ventures, limited liability partnerships, limited partnerships, corporations, trusts, and limited liability companies that do not qualify as nonexempt.

(3) An exempt landscape contracting business may work with the assistance of individuals who are employees of a nonexempt landscape contracting business so long as the nonexempt landscape contracting business:

(a) Is in compliance with ORS Chapters 316, 656, and 657 and is providing the employee(s) with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt landscape contracting business.

(4) Non-exempt entities shall supply the following employer account numbers:

(a) WorkersqCompensation Division 7-digit compliance number or workersqcompensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities need supply no employer account numbers except as stated below.

(6) Corporations and limited liability companies qualifying as exempt as provided by ORS 656.027(10) shall supply Employment Division and Department of Revenue account numbers unless the corporation or limited liability company certifies that corporate officers or members receive no compensation (salary or profit) from the corporation or limited liability company. Exempt corporations shall supply IRS account numbers.

(7) Out-of-state businesses with no Oregon employees shall supply their home state account numbers, and workers' compensation account.

(8) An exempt landscape contracting business must notify the agency in writing within 30 days, register with the Board as ~~nonexempt~~ and submit documentation as required in OAR 808-003-0620 when that business hires employees or otherwise no longer qualifies for the exempt status.

808-003-0095

Liability Insurance

(1) An applicant for the landscape contracting business license or renewal shall;

(a) submit a "Certificate of Insurance" (certificate) from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and subsection (2) of this section and

(b) will continue to meet those insurance requirements for as long as the applicant is licensed.

(2) The certificate of insurance must include:

(a) the name of the insurance company,

(b) policy number,

(c) effective dates of coverage;

(d) coverage in at least the amount required in ORS 671.565 and Section 2 of this rule;

(e) the agent's name, and

(f) the Oregon Landscape Contractors Board is the certificate holder.

(2) The certificate must be for an amount not less than \$100,000 if the application is received prior to January 1, 2016 and not

less than \$500,000 if the application is received after January 1, 2016 and include public liability, personal injury and property damage insurance covering landscaping work.

(3) The name of the entity as it appears on the certificate must be the same as the name on the landscape contracting business license application or license of record with the agency and the same entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the certificate must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the certificate must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the certificate must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the certificate must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the certificate;

(e) If the entity is a corporation or trust, the certificate must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the certificate must be issued in the name of the limited liability company.

(4) A landscape contracting business must continuously have in effect public liability, personal injury and property damage insurance during the licensing period to maintain an active license.

(5) A new certificate must be on file with the agency prior to the expiration date on the previous certificate. If the policy as required in subsection 2 of this section expires and a new certificate is not received on or before 5 pm on the day of policy expiration, the agency may suspend the landscape contracting business license

(6) Upon cancellation of the insurance required under ORS 671.565 the agency may immediately suspend the landscape contracting business license as provided for in 671.610(2)(b).

(7) If a landscape contracting business is licensed as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types and a new license is required, the application must be accompanied by a new certificate.

808-003-0100

Licenses; License Cards

(1) A landscape construction professional license and its identifying license number will be issued to one individual only. Other individuals shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No individual may perform work subject to ORS Chapter 671 through the use of another individual's or entity's license.

(2) Landscape construction professional licenses shall be issued in the name of the individual.

(3) A landscape contracting business license and its identifying license number will be issued to one business entity only. Other business entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No business entity may perform work subject to ORS Chapter 671 through the use of another individual's or business entity's license.

(4) Landscape contracting business licenses shall be issued as follows:

(a) A sole proprietorship shall be issued in the name of the sole proprietor;

(b) A sole proprietorship using an assumed business name shall be issued in both the name of the sole proprietor and assumed business name

(c) A partnership, limited partnership or joint venture shall be issued in the names of the partners and the assumed business name ;

(d) A partnership or limited partnership using an assumed business name shall be issued in the

names of the partners and the assumed business name;

(e) A corporation or trust shall be issued in the corporate or trust name;

(f) A limited liability company shall be issued in the limited liability company name.

(5) A license card issued to a landscape contracting business and landscape construction professional is valid for the term for which it is issued only if the licensing requirements or ORS 671.510 to 671.760 and OAR chapter 808 are met throughout the license period:

(6) If a license is no longer valid, the agency may require the return of the license card and pocket card(s).

808-003-0112

Social Security Number

(1) The Landscape Contractors Board will not issue or renew a landscape construction professional license or landscape contracting business license issued to an individual, a sole proprietorship or a general partnership unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application or renewal form, if the applicant's social security number has previously been provided to the Landscape Contractors Board and is in the record.

(2) If an individual, the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings) has not been issued a social security number by the United States Social Security Administration, the Landscape Contractors Board will accept a written statement from the individual, owner or partners to fulfill the requirements of section (1). The individual, owner or partners must submit the written statement on a form provided by the agency. This form must:

(a) Be signed by the individual, owner or partner (where the partner is a human being);

(b) Attest to the fact that no social security number has been issued to the individual, owner or partner by the United States Social Security Administration; and

(c) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6,250.

808-003-0125**Notification of Change of Address, Employment, Partners or Owners or Ownership Interest**

(1) Within thirty (30) calendar days following a change of address, the landscape construction professional shall submit written or online notification to the agency as provided in ORS 671.603.

(2) Within thirty (30) calendar days following a change of address, the landscape contracting business shall submit written or online notification to the agency as provided in ORS 671.603.

(3) A landscape contracting business shall notify the agency in writing within ten (10) days after the date a landscape contracting business' phase of license changes due to:

(a) The license phase of an owner or employee who is the licensed landscape construction professional and phase basis of the business changes; or

(b) The landscape construction professional who holds part or wholly the phase basis of the landscape contracting business license ceases to own or be employed by the landscape contracting business.

(4) A landscape construction professional shall notify the agency in writing within ten (10) days of the date of termination of employment or ownership from an actively licensed landscape contracting business.

(5) A landscape contracting business subject to ORS 671.595 must:

(a) Within ten (10) calendar days of the date a managing owner or managing employee ceases to act in the roles as defined in OAR 808-002-0625 or 808-002-0734(2) notify the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the managing owner or managing employee ceasing to act in this role.

(b) Within thirty (30) calendar days of a change of managing owner or managing employee, designate a new managing owner or managing employee and must

have notified the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the new managing owner or managing employee performing this role.

(6) Within ten (10) calendar days following a change in partners or owners or a change in percentage of an ownership interest, the landscape contracting business shall submit written notification of the change to the agency as required by ORS 671.605.

808-003-0126**Permits and Other Requirements for Work Performed by a Landscape Contracting Business.**

(1) Prior to the performance of work a landscape contracting business must obtain a permit, if required. This includes but is not limited to the installation of:

(a) A backflow assembly for irrigation systems or water features;

(b) A retaining wall, driveway, deck, fence, walkway, arbor, landscape edging or patio;

(c) Low voltage wiring for irrigation systems or landscape lighting;

(d) Plantings on structures; and

(e) Drainage systems for landscaping work.

(2) Prior to the performance of landscaping work on a structure the landscape contracting business must confirm that the structure has been properly engineered and municipal approval has been obtained in writing or by issuance of a municipal permit for construction.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by a licensed landscape construction professional who holds a backflow license and who is either an employee or owner of a landscape contracting business. The landscape construction professional or landscape contracting business shall obtain all required permits prior to the installation of the backflow assembly and the landscape construction professional shall install the backflow assembly in conformance with the applicable code requirements.

(b) If a landscape construction professional or landscape contracting business fails to obtain permits to tap into the potable water system for the installation of backflow assemblies for irrigation or ornamental water feature or fails to comply with applicable code requirements, the Board, in addition to any other remedy, may suspend, condition or revoke the landscape construction professional and/or landscape contracting business license.

(4) The preparation of plans and drawings for a landscape irrigation system may only be prepared by a landscape construction professional if that professional:

(a) holds a license that authorizes the installation of irrigation systems as stated in OAR 808-003-0040 of this rule; and

(b) meets the employment requirements of ORS 671.570(1)(d); or

(c) meets any of the alternative experience qualifications listed under OAR 808-003-0025.

808-003-0130

Fees

(1) Initial license

(a) Initial landscape contracting business license, \$275 effective November 1, 2015.

(b) Initial landscape construction professional license, \$100 effective November 1, 2015.

(c) Initial landscape construction professional license, \$95 for licenses issued on or before October 31, 2015.

(d) Initial landscape contracting business license, \$260 for licenses issued on or before October 31, 2015.

(2) Renewal of active license

(a) Renewal of active landscape contracting business license with an expiration date of November 30, 2015 or later, \$275.

(b) Renewal of active landscape construction professional license with an expiration date of November 30, 2015 or later, \$100.

(c) Renewal of active landscape contracting business license with an expiration date of October 31, 2015 or later, \$260.

(d) Renewal of active landscape construction professional license with an expiration date of October 31, 2015 or later, \$95.

(3) Renewal of inactive license

(a) Renewal of inactive landscape contracting business, \$275 effective November 30 1015.

(b) Renewal of inactive landscape construction professional, \$100 effective November 30, 2015.

(c) Renewal of inactive landscape contracting business license with an expiration date of October 31, 2015, \$260

(d) Renewal of inactive landscape construction professional license with an expiration date of October 31, 2015, \$95.

(4) Late penalty fee:

(a) Landscape contracting business, \$35.

(b) Landscape construction professional, \$35

(5) Landscape Construction Professional License Application fee: \$100.

(6) Landscape Contracting Business License Application fee: \$150.

(7) Probationary Landscape Construction Professional License Application: \$75

(8) Owner or Managing Employee Application fee: \$60.

(9) Request from license holder for a replacement license card: \$20

(10) Reinstatement of suspended license: \$50. The reinstatement date will be the date the agency updates the record.

(11) To convert a license from an inactive status to an active status or from an active status to an inactive status at a time other than at renewal: \$50. The status change date will be the date the agency updates the record.

(12) If a landscape construction professional license expires, the amount to be paid for reinstatement to active or inactive status equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the agency updates the record.

(13) If a Landscape contracting business license expires, the amount to be paid for reinstatement to active or inactive status equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the agency updates the record.

(14) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(15) The board may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal

requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by a board error or omission.

808-003-0135

Date of Issue/Expiration

(1) All licenses shall be issued on the date all application requirements are met. New licenses are valid for up to 13 months. Renewal licenses are valid for one year.

(2) Except as set forth in (3) of this rule, the expiration date will be the last day of the month in which the license was originally issued.

(3) At the request of the licensee, the agency may adjust the expiration date of the landscape construction professional license to correspond with that of the landscape contracting business license in accordance with ORS 670.310.

808-003-0210

Value of Landscaping work Performed by a Residential General Contractor

A general contractor licensed under ORS 701 who meets the exemption listed in 671.540(1)(h) may perform landscaping work if the total value of the landscaping work is:

- (1) \$3,000 if the landscaping work was completed after September 1, 2003 and before September 1, 2008; or
- (2) \$3,400 if the landscaping work was completed on September 1, 2008.
- (3) \$3,800 if the landscaping work was completed on or after September 1, 2013.

808-003-0220

Voluntary Surrender/Resignation of License

(1) A landscape construction professional or landscape contracting business may request resignation and surrender of the holder's license issued under ORS 671, by submitting:

- (a) A written resignation;
- (b) The current license card issued by the Board;
- (c) A written acknowledgment that, after such resignation, in the event that the licensee wishes to reapply for a license to perform landscaping work, the licensee must meet all requirements of ORS Chapter 671 and OAR Chapter 808;

(d) A written acknowledgment that the licensee will take action to prevent all reasonably foreseeable harm to the licensee's current clients upon resignation.

(2) A resignation is effective only with the express written approval of the agency. Such license will not be subject to renewal.

(3) If the licensee is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee may not be approved by the Agency.

(4) Upon any subsequent application to perform landscaping work, the licensee must meet all requirements of ORS Chapter 671 and OAR Chapter 808.

808-003-0225

Terms of Board Imposed Probation

The board may place a landscape contracting business, landscape contracting business owner or landscape construction professional on probation pursuant to ORS 671.614. In placing a landscape contracting business, landscape contracting business owner or landscape construction professional on probation, the board may, in addition to imposing conditions outlined in ORS 671.614(3) & (4), require that the landscape contracting business, landscape contracting business owner or landscape construction professional:

- (1) Submit to the board copies of all written contracts entered into during the period of probation;
- (2) Submit to the board copies of all billing invoices (or those that the board specifies) issued during the period of probation;
- (3) Submit copies to the board of all permits required for landscaping work during the period of probation;
- (4) Authorize the board to contact the customers of the landscape contracting business and supply to the board the names, addresses and phone numbers of such customers; and
- (5) Maintain a log of site visits and customer contacts during the period of probation.

808-003-0230

Renewal of Landscape Contracting Business and Landscape Construction Professional License

(1) Application for renewal of a landscape contracting business license shall comply with ORS 671.660 and be:

- (a) Accompanied by:
 - (A) Required renewal fee; and
 - (B) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.560 and 671.563, %applicant+has the same meaning as owner as defined in OAR 808-002-0734; and-

- (c) A certificate of insurance as required in OAR 808-003-0095 if the licensee's insurance coverage amount is less than \$500,000.
- (b) On forms provided by the agency and the licensee shall update the following items:
 - (A) Mailing address;
 - (B) Assumed business name;
 - (C) Entity type;
 - (D) Employer status as required by ORS 671.525 and OAR 808-003-0090;
 - (E) Listing of owners/officers and percentage of ownership of each owner;
 - (F) List of landscape construction professional(s), with accompanying license numbers employed by the business;
 - (G) Bond amount as required by ORS 671.690 and OAR 808-003-0613;
 - (H) Insurance expiration date as required by OAR 808-003-0095; and
 - (I) Name of the owner/managing employee, if applicable as required by ORS 671.595
- (2) Application for renewal of a landscape construction professional license shall comply with ORS 671.660 and be:
 - (a) Accompanied by:
 - (A) Required renewal fee; and
 - (B) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.560 and 671.563, %applicant+has the same meaning as owner as defined in OAR 808-002-0734.;
 - (b) On forms provided by the agency and the licensee shall update the following items:
 - (A) Mailing address; and
 - (B) Name of landscape contracting business(es) individual is employed by, if applicable;
 - (C) Listing of continuing education courses completed, if applicable; and

(D) Signature of applicant.

(3) If an applicant as defined in subsections (1) and (2) of this rule has any unpaid damages as stated in subsections (1) and (2) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to renew the license.

(4) If an applicant satisfies all requirements for license renewal before the expiration date:

- (a) The license is renewed;
- (b) The effective date of the license is the expiration date; and
- (c) The license is valid until the last day of the anniversary month of the initial issues of the license.

(5) If an applicant satisfies all requirements for license renewal within two years after the expiration date:

- (a) The license will be renewed;
- (b) The effective date of the license is the date the agency updates the record; and
- (c) The license is valid until the last day of the anniversary month of initial issuance of the license

(6) If an applicant satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The applicant must apply for a new license under OAR 808-003-0015.

808-003-0231

Restoration of a License that has not been Permanently Revoked

As provided in ORS 671.610(6) a license that has not been permanently revoked may be restored. This rule shall be effective as of July 1, 2012. The license may be restored under the following circumstances:

(1) Revocation for nonpayment of a claim under a final order of the board or an arbitration award or under a judgment rendered in this or any other state. To restore license, revoked licensee must pay the claim under a final order of the board, arbitration award, or judgment rendered in this or any other state in full, or

make arrangements for payment of a claim under a final order of the Board if approved by the Board. If restored licensee fails to timely comply with payment arrangements approved by the Board, licensee is subject to revocation, including permanent revocation.

(2) Revocation for non-payment of civil penalty. To restore license, revoked licensee must pay all civil penalties assessed and owing in full, or make arrangements for payment of civil penalty approved by the board. If the restored licensee fails to timely comply with payment arrangements approved by the Board, licensee is subject to revocation, including permanent revocation.

808-003-0235

Inactive Status Generally

(1) A licensee may not convert a license to inactive status if the licensee is engaged in work as a landscape contracting business or is operating as a landscape construction professional;

(2) A licensee may not offer to undertake, advertise for, submit a bid to, obtain a permit for, or perform landscaping work while in inactive status;

(3) A licensee shall notify the board of any change of address while in inactive status. While the licensee is inactive, the board will send notices and communications to the licensee at the licensee's last known address of record.

(4) To convert to inactive status:

- (a) A licensee must have a current active license or a license that expired less than two years prior to the request for inactive status;
- (b) If the licensee was subject to discipline or probation by the board, the licensee must satisfy any conditions imposed by the board as a result of the discipline;

(c) The licensee must submit a request to convert to inactive status on forms provided by the board; and

(d) The licensee must comply with OAR 808-003-0240 or 808-003-0245.

808-003-0240

Inactive Status Request at Renewal

(1) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 808-003-0130.

(2) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license.

808-003-0245

Inactive Status Request Other than at Renewal

(1) A request to convert a license to inactive status made prior to the expiration date of the license, but at a time other than the time of renewal of the license, will be accepted only if the licensee making the request has paid all applicable fees under OAR 808-003-0130.

(2) If a license is converted to inactive status prior to the expiration date of the license, but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire on the upcoming expiration date.

808-003-0250

Renewal of Inactive Status

To renew an inactive license in an inactive status:

(1) The licensee must submit the request to renew the license in inactive status on forms provided by the board;

(2) The licensee must submit the fees required under OAR 808-003-0130.

808-003-0255

Converting from Inactive to Active Status

(1) To convert a landscape contracting business license from inactive status to active status, a licensee must:

- (a) Submit a request to convert to active status on forms provided by the board;
- (b) Submit a surety bond, irrevocable letter of credit or deposit as required by ORS 671.690;
- (c) Submit proof of insurance as required by ORS 671.565(1)(e); and
- (d) Comply with all other licensing requirements as prescribed by the board.

(2) To convert a landscape construction professional license from inactive status to active status, a licensee must:

- (a) Submit a request to convert to active status on forms provided by the board;
- (b) Comply with the continuing education requirements of OAR 808-040-0080; and
- (c) Comply with all other licensing requirements as prescribed by the Board.

(3) If a licensee requests conversion from an inactive to active status at the time of renewal, the licensee must submit all fees required under OAR 812-003-0130.

(4) If a licensee requests conversion from inactive to active status other than at the time of renewal, the licensee must be current to date upon all fees due and owing under OAR 812-003-0130.

(5) If a license is converted from inactive to active status, the board shall establish the effective date of the license. The expiration date of the license will remain unchanged.

808-003-0260

Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for "independent contractors". One requirement is that an "independent contractor" must be engaged in an "independently established business." Another requirement is related to licenses and certificates that are required for an "independent contractor" to provide services. A third requirement is that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others.

(b) The specific focus of this rule is the "direction and control" requirement. See ORS 670.600 for the requirements of the "independently established business" test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and

manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscaping businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration is considered to perform the labor or services as an "independent contractor" if the

standards of ORS 670.600 and this rule are met.

(6) The Landscape Contractors Board, Construction Contractors Board, Employment Department, Department of Consumer and Business Services, and Department of Revenue of the State of Oregon, under the authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

808-003-0440

Notification of Conviction of a Crime

A sole proprietor or partner in a partnership or individual landscape construction professional licensed by the agency who is convicted of a crime listed in ORS 671.610(1)(q) must notify the agency in writing within 30 days from the date of the entry of the judgment of conviction.

808-003-0450

License Fitness Standards

(1) In considering whether to sanction an applicant or licensee pursuant to ORS 671.610(1)(q), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in landscaping work. Fitness to engage in landscaping work includes, but is not limited to, the ability to refrain from the violent, threatening, intimidating or sexually predatory behavior. Factors to be considered in suspending, revoking or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidence by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(2) Upon notice and request from the agency, it will be the duty of an applicant or licensee to provide the requested information in order for the agency to conduct a criminal background check as authorized by ORS 671.610(1)(q). Requested information includes, but is not limited to police reports, record of conviction, parole or probation reports,

restitution records, counseling reports, and letters of recommendation.

(3) Failure to provide requested information in (2) of this section may result in a suspension, revocation or refusal to issue or renew a license.

808-003-0610**Bonds, Generally**

(1) A properly executed Landscape Contractors Board bond must:

(a) Be in the form required by the agency as the Landscape Contractors Board Surety Bond.

(b) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(2) Bond documents received at the agency office from a surety company or agent via electronic facsimile or as a PDF file transmitted by e-mail or electronically may be accepted as original documents. The surety must provide the original bond document to the agency upon request.

808-003-0611**Letters of Credit or Deposits, Generally**

(1) A properly executed Landscape Contracting Business Assignment of Savings or Deposit must:

(a) Be in the form required by the agency as the Landscape Contracting Business Assignment of Savings Account or Deposit.

(b) Be signed by an owner or officer of the landscape contracting business;

(c) Be signed by an authorized agent of the bank or financial institution or by one having power of attorney and must bear an account number. Additionally, the agency may require the licensee and bank or financial institution to use the most recent revision of the Assignment of Savings Account or Deposit form; and

(2) Letters of credit or cash assignment documents received at the agency office from a bank or financial institution via electronic facsimile or as a PDF file transmitted by e-mail or electronically may be accepted as original documents. The bank or financial institution must provide the original documents to the agency upon request.

(3) Letters of credit or cash assignment documents must be renewed every year upon renewal of the landscape contracting business license.

808-003-0612

Entity Name Required on Bond, Letter of Credit or Cash Deposit

(1) The name of the entity as it appears on the bond, letter of credit or cash deposit must be the same as the name on the landscape contracting business license application or license of record with the agency and the same entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond, letter of credit or cash deposit must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond, letter of credit or cash deposit must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the bond, letter of credit or cash deposit must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond, letter of credit or cash deposit must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the bond, letter of credit or cash deposit;

(e) If the entity is a corporation or trust, the bond, letter of credit or cash deposit must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond, letter of credit or cash deposit must be issued in the name of the limited liability company.

(2) The inclusion or exclusion of business name(s) on a bond, letter of credit or cash deposit does not limit the liability of a landscape contracting business. Claims against a licensed landscape contracting business will be processed regardless of business names used by an entity.

(3) If the bond, irrevocable letter of credit or deposit is reduced to less than the amount required by ORS 671.690 or OAR 808-003-0113, the landscape contracting business shall immediately file a replacement bond, a replacement irrevocable letter of credit, a rider on the existing bond, an amended irrevocable letter of credit, or increase the deposit permitted by ORS 671.690(3), if applicable, so that the amount on deposit is equal to or greater than

the amount required by ORS 671.690 or OAR 808-003-0613.

808-003-0613

Bond, Letter of Credit or Cash Deposit Amounts

(1) Except as provided in subsection (2) below, a surety bond, letter of credit or cash deposit required under ORS 671.690 must be in one of the following amounts:

(a) \$3,000 for an applicant, unless the applicant is described in subsections (b), (c), (d) or (e) of this rule.

(b) \$10,000 for an applicant, who not in conjunction with the performance of landscaping work, constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls, unless the applicant is made subject to paragraph (c) of this subsection by work on other jobs performed by the applicant.

(c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a landscape job.

(d) \$15,000 for an applicant who charges \$25,000 ~~or more~~, but less than \$50,000 for a landscape job.

(e) \$20,000 for an applicant who charges \$50,000 or more for a landscape job.

(e) \$15,000 for a Probationary All Phase Plus Backflow license phase.

(2) A landscape contracting business may obtain or maintain a bond, letter of credit or cash deposit in an amount that exceeds the amount required under section (1) of this rule if the bond, letter of credit or cash deposit obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

(3) A landscape contracting business is subject to a higher bond, letter of credit or cash deposit before the landscape contracting business submits a bid or contract to a customer, whichever occurs first.

(4) A landscape contracting business must increase or file an additional bond, letter of credit or cash deposit when the cost of the landscape project makes the licensee

subject to a higher bond, letter of credit or cash deposit.

808-003-0614

Effective and Cancellation Dates of the Bond, Letter of Credit or Cash Deposit

(1) The bond effective date is the date as stated on the Landscape Contracting Business Surety Bond form.

(2) The bond shall remain in effect and be continuous until cancelled by the surety or until the landscape contracting business no longer meets the requirements for licensing as determined by the agency, whichever comes first.

(3) A bond may be cancelled by the surety only after the surety has given 30 days' notice to the agency. Cancellation will be effective no less than 30 days after receipt of the cancellation notice.

(4) Upon cancellation of the bond, or cancellation without an authorized release by the agency of a letter of credit or cash deposit the agency may immediately suspend the landscape contracting business as provided for in ORS 671.610(2)(a).

(5) The letter of credit or cash deposit effective date is the date the landscape contracting business meets all requirements for licensing or renewal.

(6) The letter of credit or cash deposit shall remain in effect for one year after the expiration, suspension, termination or approval of inactive status and may only be released by the agency.

(7) The bond, letter of credit or cash deposit shall be subject to final orders as described in OAR 808-004-0600.

808-003-0616

New Bond, Letter of Credit or Cash Deposit Required for Change in Entity

(1) If a landscape contracting business is licensed as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types and a new license is required, the application must be accompanied by a new:

(a) Bond separate from the bond held for the previous entity;

(b) Letter of credit separate from the letter of credit held for the previous entity; or

(c) Cash deposit separate from the previous cash deposit held for the previous entity.

(2) Riders to existing bonds issued for changing the type of business entity bonded will only be accepted if a new license is not required per OAR 808-003-0100(3). If a new license is required the landscape contracting business must file a new bond.

808-003-0617

Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Claim

If a surety company or financial institution pays all or part of a claim against a licensed landscape contracting business, the agency must suspend or refuse to issue or reissue the landscape contracting business license until the landscape contracting business submits to the agency:

(1) A properly executed bond, letter of credit or cash deposit in the amount required under ORS 671.690 and OAR 808-003-0113; or

(2) A certificate from the landscape contracting businesses surety company or financial institution that the surety company or financial institution remains liable for the full original penal sum of the bond, letter of credit or cash deposit, notwithstanding the payment from the surety bond letter of credit or cash deposit.

Workers' Compensation Insurance

808-003-0620

(1) A nonexempt applicant for the landscape contracting business license or renewal shall submit a "Certificate of Insurance" (certificate) from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and will continue to meet those insurance requirements for as long as the applicant is licensed. The certificate shall include the name of the insurance company, policy number, and coverage amount.

(2) The name of the entity as it appears on the certificate must be the same as the name on the landscape contracting business license application or license of record with the agency and the same entity name filed at the Oregon Corporation Division (if applicable).

(3) A landscape contracting business must continuously have in effect workers' compensation insurance during the licensing

period to maintain an active license if the landscape contracting business has employees.

(4) A new certificate must be on file with the agency prior to the expiration date on the previous certificate. If the policy expires and a new certificate is not received on or before 5 pm on the day of policy expiration and the landscape contracting business has not changed the employer status designation to exempt, the agency may suspend the landscape contracting business license.

(5) Upon cancellation of the workersq compensation insurance required under ORS 671.565 the agency may immediately suspend the landscape contracting business license as provided for in 671.610(2)(c).

(6) If a landscape contracting business is licensed as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types and a new license is required, the application must be accompanied by a new certificate.

(7) A landscape contracting business that is licensed as exempt and has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers shall provide documentation to the agency within 10 days of entering into the contract that the landscape contracting business has verified the maintenance of the workersq compensation insurance coverage for all employees supplied by the leasing company or temporary service provider for the use of the landscape contracting business. Such verification must also be provided during an investigation or site check or at any other time the agency requests it.

DIVISION 4 CLAIMS

808-004-0120

Liability of Landscape Contracting Business

A licensed landscape contracting business participating in a corporation wholly-owned by the landscape contracting business, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held liable for claim actions brought under ORS 671.690 to 671.710, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership or partnership was licensed as required by ORS chapter 671.

808-004-0160

Establishment of Co-Claimant

The agency may allow a person to become a co-claimant, with the claimant's permission, even though that person did not sign the Statement of Claim form if the person would otherwise qualify as a claimant.

808-004-0180

Claimants' Responsibility to Pursue Claim; Processing claims filed with the Construction Contractors Board (CCB) and the Landscape Contractors Board (LCB)

(1) Throughout the processing of a claim, a claimant has the responsibility to pursue the claim and to respond in a timely manner to requests from the agency for information or documentation.

(2) The agency may close a claim under OAR 808-004-0260 if:

(a) The claimant fails to respond to a written request from the agency, or to provide requested information or documentation within a time limit specified in that request; or
(b) The claimant fails to respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 808-004-0260.

(4) If a claim is filed with the CCB and the LCB, the claimant must:

(a) Notify the LCB of the complaint filed with the CCB within 14 days of filing that claim with the CCB; and
(b) Provide a copy to the LCB of the complaint filed with the CCB.

(5) A determination by either agency is not binding on the other agency.

(6) The total amount required to be paid by the respondent to the claimant may not exceed the damages sustained.

808-004-0195

Exhibits

If a party to a claim submits a document that is larger than 8-1/2 inches by 14 inches or a photograph as an exhibit, the agency may require that the party submit four copies of the document or photo.

808-004-0211

Address of Claimant and Respondent

(1) Initial notice of a contested case or arbitration directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 30 days of any change in the party's address withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

808-004-0240

Exhaustion of Surety Bond

At any time during the processing of a claim, if the agency becomes aware of partial or full exhaustion of the surety bond or security by prior claims, the agency may notify the claimant and close the claim, or process the claim to a final order and close the claim.

808-004-0250

Exclusion of Certain Damages from Award

(1) Except as provided in section (2) of this rule and subject to OAR 808-008-0420, an order or arbitration award of the board awarding monetary damages in a claim, including but not

limited to an order of the Board arising from a court judgment, award or decision by a court, arbitrator or other entity may not include an award for:

- (a) Attorney fees;
- (b) Court costs;
- (c) Interest;
- (d) Costs to pursue litigation or the claim;
- (e) Service charges or fees; or
- (f) Other damages not directly related to

negligent or improper work under the contract or breach of the contract that is the basis of the claim.

(2) An order or arbitration award by the board awarding monetary damages that are payable from the respondent's bond required under ORS 671.690 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order or arbitration award in an owner claim may include interest expressly allowed as damages under a contract that is the basis of the claim.

(b) An order or arbitration award by the board may include attorney fees, court costs, other costs and interest included in a court order or award of a court, arbitrator or other entity that are related to the portion of the order or award of a court, arbitrator or other entity that is within the jurisdiction of the board if the court order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

- (A) That was initiated by the respondent; or
- (B) That the agency required the claimant to

initiate under ORS 671.703(12) due to the nature or complexity of the claim.

(c) An order in a construction lien claim may include attorney fees, court costs, interest and service charges allowed under OAR 808-004-0530(4).

808-004-0260

Order Closing a Claim

(1) If the agency closes a claim because the claimant failed to act in response to a request from the agency, the closure of the claim is an order that is not an order in a contested case. An order to close a claim is subject to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a claim under this rule only if it complies with the following:

(a) The agency must include notification in its request to claimant that failure to act as requested may result in closure of the claim and that closure of the claim will prevent access to the bond.

(b) The agency may not close the claim sooner than 14 days after giving the notification required in subsection (a) of this section.

(c) The agency shall notify the parties to the claim that the claim is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a claim closed under this rule if the record of the claim contains evidence that shows that the cause of the failure of claimant to act as requested by the agency was due to excusable neglect by the claimant. The agency may reopen the claim:

(a) In response to a motion for reconsideration; or

(b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the claim.

(4) At the agency's discretion, the agency may refer a claim to the Office of Administrative Hearings for a contested case hearing on whether closure of the claim under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a claim under this rule before seeking judicial review of the order.

Filing of Claims

808-004-0300

Filing Date of Claims

(1) A claim shall be deemed to have been filed when a Statement of Claim is received by the agency that:

(a) Is in substantial compliance with OAR 808-004-0340; and

(b) Contains information that is sufficient to identify the claimant and respondent.

(2) A claim form that does not fully comply with the requirement of OAR 808-004-0340 is subject to 808-004-0350

808-004-0310

Notice Required by ORS 671.700

A Statement of Claim in substantial compliance with OAR 808-004-0340 filed with the agency is notice of the claim for purposes of ORS 671.700.

808-004-0320

Jurisdictional Requirements

(1) A claim must be of a type described under ORS 671.690(2) & (3), OAR 808-002-0220 and ORS 671.695.

(2) In addition to the types of claims described in ORS 671.690 a claim may also be accepted for breach of contract, negligent or improper work, failure to pay for materials, equipment, or labor for the following activities performed or contracted to be performed:

(a) Backflow assembly testing services provided by employees of the landscape contracting business who are certified under ORS 448.279; and

(b) The installation, repair or maintenance by the landscape contracting business of backflow assemblies for irrigation systems and ornamental water features as described in ORS 447.060;

(c) The installation by the landscape contracting business of landscape irrigation control wiring and outdoor landscape lighting as described in ORS 479.940; and

(d) The removal or pruning of a tree, removal of limbs or stumps and tree or limb guying if the removal, pruning, or guying were performed after January 1, 2016.

(3) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

(b) Labor, material and equipment claims must be filed within one year of the order or delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the

last date of work on the project, whichever is later.

(4)(a) A claim will be processed and damages may be awarded only against a licensed landscape contracting business. A respondent is ~~not~~ licensed for purposes of this section as follows:

(b) For a State tax and contribution claim, if the tax and contribution liability arose while the business was licensed.

(c) For a material or equipment claim, if one or more invoices involve material delivered or equipment rented while the landscaping business was actively licensed.

(d) For any other claim, if the landscape contracting business was actively licensed during all or part of the work period, unless the claim is for breach of contract only, in which case a landscape contracting business is ~~not~~ licensed if it was actively licensed at the time the contract was entered.

(5) A claim will be accepted only when one or more of the following relationships exist:

(a) A direct contractual relationship based on a written or verbal contract entered into by the claimant and the landscape contracting business, their employees, or their agents;

(b) Performance of landscaping work by the landscape contracting business on property owned, rented, or managed by the claimant;

(c) Payment made by a claimant, the claimant's employee, or the claimant's agent to the landscape contracting business; or

(d) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(6) A claim by a person furnishing material, or renting or supplying equipment to a landscape contracting business may not include a claim for non-payment for tools sold to a landscape contracting business, for equipment sold to the landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(7) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(8)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscape contracting business.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

808-004-0340

Form of Claims

(1) A claim must be submitted on a Statement of Claim form provided by the agency. The agency may require the use of the most recent revision of the Statement of Claim form.

(2) The claimant must provide the following information with the Statement of claim, if applicable:

(a) The name, address, and telephone number of the claimant;

(b) The name, address, telephone number and license number of the landscaping business;

(c) The amount, if known at the time the Statement of Claim is filed, that the claimant alleges is due from the landscaping business after crediting payments, offsets, and counterclaims in favor of the landscaping business to which the claimant agrees;

(d) Identification of the type of claim as defined in OAR 808-002-0220;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract with attached material invoices, time sheets, or other relevant attached documents;

(g) Job site address with driving directions to the job site;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets, and counterclaims of the landscaping business, if known, to which the claimant does not agree;

(j) A certification by the claimant that the Statement of Claim is true;

(k) A copy of any court judgment or arbitration award, including the original complaint and any answers or counter-suits related to the work that is the subject of the claim; and

(l) Additional information required under sections (3) through (8) of this rule.

(3) A claim by a subcontractor shall include a copy of each original invoice relating to the claim.

(4) An employee claim shall include copies of time cards or other evidence of the amount of compensation claimed.

(5) A material supplier or equipment claim shall include a copy of each original invoice relating to the claim and a recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, and each invoice amount. Claimant shall include documentation that claim is a minimum of 60 days old and two attempts to collect have been made.

(6) A claim involving negligent or improper work shall include a list of the alleged negligent or improper work.

(7) A claim involving a breach of contract shall describe the nature of the breach of contract.

(8) A construction lien claim must include evidence that the claimant paid the landscape contracting business as required in OAR 808-004-0530(1)(a), a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other

accounting of invoices from the lienor, if applicable and any foreclosure documents.

(9) The Statement of Claim form must be signed by the claimant or an agent of the claimant.

(10) A Statement of Claim that does not comply with the requirements of this rule is subject to OAR 808-004-0350.

808-004-0350**Procedure if Information on Statement of Claim is Incomplete**

- (1) The agency may close a claim if:
- (a) The Statement of Claim does not meet the requirements of OAR 808-004-0340; and
 - (b) The claimant fails to provide the missing information in response to a written request from the agency for the information.
- (2) The agency's written request for information and closure of the claim must comply with OAR 808-004-0260.

Administrative Processing of Claims**808-004-0400****Initial Administrative Processing of Claims**

- (1) Upon receipt of a claim, the agency shall:
- (a) Make a preliminary determination that the board has or lacks jurisdiction over the claim based on the information provided by the claimant;
 - (b) Verify that claimant has provided information required under OAR 808-004-0340 and request additional information from claimant if necessary;
- (2) If the agency determines that the claim should not be dismissed based on the information submitted by the claimant, the agency shall:
- (a) Furnish the landscape contracting business with a copy of the claim; and
 - (b) Request the landscape contracting business respond to the claim items.
- (3) If the agency determines that the claim should be dismissed based on the information submitted by claimant, the agency shall issue a proposed order to dismiss under OAR 808-004-0550.
- (4) The agency may initiate an investigation to determine the validity of the claim. The investigation may include an on-site meeting.

808-004-0420**Processing Owner and Primary Contractor Claim Together**

If a claim based on the same facts and issues is received at any time during the processing of a primary contractor claim or a homeowner claim, the two claims will be processed together.

808-004-0440**Contracts With Mediation or Arbitration Agreements**

(1) If a claim is received that is based upon a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as provided in this rule. Unless the contract requires mediation or arbitration by the agency, the agency will take the following action:

(a) The agency shall inform the claimant by written notice that complies with the requirements of OAR 808-004-0260 that the agency will close the claim unless the agency receives within 60 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the claimant and respondent; or

(B) Evidence that the claimant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the claim.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (a) of this section from the claimant within 60 days of the date of the written notice described in subsection (a) of this section, the agency may close the claim under OAR 808-004-0260. The agency may not close the claim under this section if the respondent initiates mediation or arbitration under the contract prior to the expiration of the 60-day period for providing the waiver or evidence of initiation of mediation or arbitration.

(c) The agency shall inform the respondent by written notice that:

(A) Respondent must initiate mediation or arbitration under the contract within the time allowed under ORS 671.703 and that failure to initiate mediation or arbitration within this time period is a waiver of respondent's right to mediation or arbitration under the contract;

(B) The agency will continue to process the claim if respondent fails to initiate mediation or arbitration under the contract within the time allowed under ORS 671.703 or if respondent signs a written waiver of mediation or arbitration; and

(C) The agency will suspend processing of the claim if respondent or claimant initiates mediation or arbitration under the contract.

(d) If the respondent fails to submit evidence to the agency that respondent initiated mediation or arbitration under the contract commenced within the time allowed under section 1 of this rule and if the claimant waived mediation or arbitration within the time allowed under section 1 of this rule, the agency will continue to process the claim.

(e) If mediation or arbitration under the contract is properly commenced under this rule, the agency may suspend processing the claim until the mediation or arbitration is complete.

(2) If a claim is based on a contract that contains an agreement by the parties to mediate and/or arbitrate disputes arising out of the contract, the claim shall be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and/or arbitration within the time allowed under section (1) of this rule if:

(a) The respondent commences mediation within the time allowed under section (1) of this rule; and

(b) If the claim is not resolved in mediation, the respondent submits to arbitration within 60 days of the completion of mediation, unless the parties to the claim mutually agree on a different schedule.

(3) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the claim as a contested case.

808-004-0450

On-site Meeting and Attendance of Claimant

(1) The agency may schedule an on-site meeting among the parties for the purpose of discussion of a settlement of a claim and investigation of the claim under ORS 671.703. The agency shall mail notice of the meeting no less than 14 days prior to the date scheduled for the meeting. The notice shall include notification of the requirements of section (2) and (3) of this rule and shall comply with the requirements of OAR 808-004-0260.

(2) If the agency schedules an on-site meeting, the following apply:

(a) The claimant must allow access to the property that is the subject of the claim.

(b) The claimant or an agent of the claimant must attend the meeting. An agent of the claimant must have knowledge of all claim items included in the claim and must have authority to enter into a settlement of the claim. The agency may waive the requirement that an agent have authority to enter into a settlement of the claim if there is evidence that the respondent will not attend the on-site meeting.

(c) The claimant must allow the respondent to be present at the on-site meeting as required under ORS 671.703.

(d) The individual landscape construction professional whose phase of license is the basis for the landscape contracting business license and who supervised the project must attend the meeting as required by OAR 808-003-0018.

(3) If the claimant fails to comply with the requirements of section (2) of this rule, the agency may close the claim under OAR 808-004-0260.

808-004-0460

Agency Recommendation of Resolution

If it appears that the respondent has performed negligent or improper work, or breached a contract, the agency may recommend to the claimant and respondent a resolution consistent with the terms of the contract, generally accepted landscaping practices, and industry standards.

808-004-0470

Challenge to Investigation Report

The claimant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at a contested case hearing.

808-004-0480

Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the claimant and respondent for their consideration and agreement at an on-site meeting conducted under OAR 808-004-0450.

(2) If the claimant and respondent sign a settlement agreement, the agreement shall be binding upon each party unless breached by the other.

(3) Settlement agreements may be considered by the agency to be substituted

contracts and damages may be based on the settlement.

(4) If at any time during the processing of the claim, the claimant accepts a promissory note from the respondent or other compromise as settlement of the claim, the agency may consider the agreement to be a substituted contract, and base the continued processing of the claim on the substituted

808-004-0500

Closure of Claim After Settlement

If claimant and respondent agree to a settlement, the following apply:

(1) The agency shall notify the claimant that the claimant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days of the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 808-004-0260.

(2) If the claimant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency shall close the claim.

(3) If the claimant does not notify the agency as required under section (1) of this rule, the agency may close the claim under OAR 808-004-0260.

808-004-0510

Court Judgments and Other Authorized Entity Determinations

(1) As used in this rule "a court judgment, arbitration award or other entity determination" means a judgment, award or determination by a court, arbitrator or other entity, as that phrase is defined in Division 2.

(2) A court judgment, arbitration award or other entity determination may constitute the basis for a claim if a statement of claim is filed under OAR 808-004-0300 and 808-004-0340 within the time limitation in OAR 808-004-0320(2) and all or a portion of the judgment is within the jurisdiction of the board.

(3) Facts and issues within the jurisdiction of the agency previously determined by a court, arbitrator or other entity will not be relitigated unless a party shows there was not a full and fair opportunity to be heard in the prior proceeding. A party contesting a prior determination must specify the facts and issues involved and provide a copy of appropriate parts of the record of the prior proceeding.

(4) A claim based on a court judgment, arbitration award or other entity determination shall be processed under OAR 808-004-0520. An award of damages on the claim based on a court judgment, arbitration award or other entity determination may be limited under OAR 808-004-0250.

808-004-0520

Processing of Claim Submitted to Court, Arbitrator or Other Entity

(1) "Court, arbitrator or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a claim if:

(a) The respondent submits a complaint against claimant to a court, arbitrator or other entity that relates to same facts and issues contained in the statement of claim filed against respondent, including but not limited to a breach of contract claim or a suit to foreclose a lien involving the same contract at issue in the claim;

(b) Claimant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the statement of claim filed against respondent; or

(c) The agency requires the claimant to submit the claim to a court because the agency determined that a court is the appropriate forum for the adjudication of the claim because of the nature or complexity of the claim.

(3) If the agency suspends processing a claim under subsection (2) of this rule, the agency shall notify the claimant on the date it suspends processing the claim that processing has been suspended. The following provisions apply to the agency and the claimant if processing is suspended:

(a) The notice of suspension of processing shall include notification of the requirements contained in subsections (b) and (d) of this section and shall comply with the requirements of OAR 808-004-0260.

(b) Beginning six months after the date that the agency suspends processing the claim and no less frequently than every sixth month thereafter, the claimant shall deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity.

(c) The agency may, at any time, demand from the claimant a written report describing the current status of any action before a court, arbitrator or other entity. Such demand must be in writing and must comply with the requirements of OAR 808-004-0260. The claimant shall deliver a written response to the agency within 30 days of the date the demand letter is mailed by the agency.

(d) Within 30 days of the date of final action by the court, arbitrator or other entity, the claimant shall deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If claimant complies with subsections (b), (c) and (d) of this section, the agency may resume processing the claim. If the claimant fails to comply with subsections (b), (c) or (d) of this section, the agency may close the claim under OAR 808-004-0260.

(4) If the agency suspends processing a claim under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency shall notify the claimant that the claimant must file the claim as a counter-suit, complaint, or counter-claim in the court, arbitration or other proceeding and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the claimant has done so within 30 days of notification. The notice shall comply with the requirements of OAR 808-004-0260.

(b) If the claimant fails to submit the evidence as required under subsection (a) of this section, the agency may close the claim under OAR 808-004-0260.

(5) If the agency suspends processing a claim under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency shall notify the claimant, in a notice that complies with the requirements of OAR 808-004-0260, that agency has suspended processing the claim and that the claimant must:

(A) File the claim as a complaint in a court of competent jurisdiction within 90 days of notification that the agency has suspended processing the claim; and

(B) Submit evidence, including a copy of the complaint, to the agency that the claimant complied with paragraph (A) of this subsection within 21 days of filing the complaint.

(b) If the claimant fails to submit the evidence as required under subsection (a) of this section, the agency may close the claim under OAR 808-004-0260.

(6) If the agency resumes processing a claim under section (3) of this rule:

(a) The agency shall accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the claim.

(b) Based on the judgment, award or decision, the agency shall issue a proposed default order to pay damages or to dismiss or refer the claim to the Office of Administrative Hearings for a hearing. The following apply to proceedings under this subsection:

(A) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral for the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under this section must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the claim to the Office of Administrative Hearings for a hearing, the administrative law judge shall determine the portion of the final judgment, award or decision if any, that is within the jurisdiction of the agency.

(7) At its discretion and with the agreement of the claimant and respondent, the agency may hold an on-site meeting under OAR 808-004-0450 before suspending claim processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the claim.

808-004-0530

Construction Lien Claims

(1) For a construction lien claim to be valid, the following conditions must be met:

(a) The claimant must have paid the respondent in full for the landscape job or paid in full for the materials supplied or equipment rented and the landscape contracting business must have failed to pay the subcontractor or material or equipment supplier, thereby causing the

subcontractor or material or equipment supplier to file a lien against the claimant's property;

(b) The lienor must have delivered to the claimant a Notice of the Right to Lien as specified in ORS 87.018, 87.021 and 87.025; and

(c) The lienor must have filed the lien with the recording officer of the county in accordance with ORS 87.035.

(2) If the respondent contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the respondent's account, the respondent may subpoena the lienor and pertinent records to an arbitration or contested case hearing on a claim processed under this rule in accordance with OAR 808-009-0095.

(3) If at any time before the issuance of an order the agency determines that the lien is unenforceable or invalid, the agency must dismiss the claim. Before the proposed order of dismissal is issued by the agency, the lienor must be notified, by certified mail, of the lienor's opportunity to become a party, as that term is defined in ORS 183.310, to the claim and to request arbitration or a hearing.

(4) A construction lien claim may include attorney fees, court costs, interest and service charges if these items are included as part of the lien or incurred as costs to discharge the lien. An award to the claim for attorney fees incurred to discharge the lien must not exceed the amount of the lien or \$3,000, whichever is less.

(5) The agency may reduce the amount awarded to the claimant by:

(a) Any amount the claimant owes the landscape contracting business; and

(b) Any amount included for tools sold to a landscape contracting business, for equipment sold to the landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(6) If a claimant files two or more claims against the respondent relating to work performed under the same contract and if the claimant has not paid the respondent the full amount of the contract, the amount awarded on each claim will be reduced on a pro rata basis. A proposed or final order may not be issued on a claim until all claims involving the claimant and the

respondent filed within the same 90-day period are ready for an order.

(7) If an action is filed to enforce a lien that is the subject of a claim, the agency must send notice to the claimant that:

(a) The agency will hold the claim open for 60 days from the date of the notice to allow the claimant to file a counter-suit or complaint in the foreclosure action; and

(b) The agency may close the claim under section (10) of this rule if the agency does not receive evidence within 60 days from the date of the notice that the claimant filed a complaint as a counter-suit or complaint in the court.

(8) Upon timely receipt of evidence that the claimant filed a counter-suit or complaint in the court under paragraph (7)(b) of this rule, the agency must suspend processing the claim and send notice to the claimant of the requirements of OAR 808-004-0520(3). Further processing of the claim must be under OAR 808-004-0520.

(9) Time limitations in this rule supersede conflicting time limitations in OAR 808-004-0520.

(10) The agency may close a construction lien claim under OAR 808-004-0260 if the agency does not receive evidence that the claimant obtained a stay or filed a counter-suit or complaint within the time limitation in the notice required under section (7) of this rule.

(11) If a construction lien claim involves the same facts and issues as any other open claim, the agency must process the claims together.

808-004-0540

Establishing Monetary Damages, Issuing Proposed Default Order or Referring Claim for Hearing

(1) A claimant may seek monetary damages if the agency has not closed the claim and:

(a) The claimant disagrees with the resolution proposed by the agency;

(b) The respondent cannot or will not comply with the resolution proposed by the agency;

(c) The parties signed a settlement agreement proposed by the agency but, through no fault of the claimant, the respondent has not fulfilled the terms of the settlement agreement, and the agency is so advised in writing by the claimant within 30 days of the date the settlement agreement was to have been completed.

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount the claimant alleges the respondent owes the claimant, limited to claim items listed in the Statement of Claim. The agency may require the claimant to submit, in support of the amount alleged:

(a) One or more estimates from licensed landscape contracting businesses for the cost of correction of each of the claim items; or

(b) Other basis for monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for a hearing under section (4) of this rule after each party to the claim has had an opportunity to provide evidence supporting its position with regard to the claim. The agency may require that the claimant file a declaration of damages and supporting evidence described under section (2) of this rule. The declaration of damages shall be limited to claim items listed in the Statement of Claim.

(4) After documentation required under sections (2) or (3) of this rule is received, the agency may:

(a) Issue a proposed default order proposing dismissal of the claim under OAR 808-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Office of Administrative Hearings for a hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount, is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to claimant if the record of the claim contains evidence that persuades the agency that:

(A) Claimant suffered damages;

(B) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(C) The monetary value of those damages is substantiated on the record.

(b) The agency may issue a proposed default order that is not described in subsection (a) of this section if the record of the claim contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

808-004-0550

Proposed Default Order to Dismiss, Other Resolution of Claim by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a claim if the evidence in the claim record persuades the agency that one of the following grounds for dismissal exists:

(a) The claim is not the type of claim that the agency has jurisdiction to determine under ORS 671.690, 671.703 or OAR 808-004-0320.

(b) The claim was not filed within the time limit specified under ORS 671.710 and OAR 808-004-0320.

(c) The claimant did not permit the respondent to comply with agency recommendations under ORS 671.703.

(d) The claim must be dismissed for lack of jurisdiction under OAR 808-004-0320(3), (4) or (6).

(e) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the claimant is less than an amount due to the respondent from the claimant under the terms of the contract.

(f) The claimant contends that the respondent failed to fulfill the terms of a settlement that resolved the claim but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a claim if, after the agency investigates the claim, the record of the claim does not contain evidence that persuades the agency that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(3) If the claimant makes a timely request for a hearing after the agency issued a proposed

default order under section (1) or (2) of this rule, the agency may:

(a) Refer the claim for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the claimant file a declaration of damages stating an amount the claimant alleges the respondent owes the claimant and refer the claim for an arbitration or contested case hearing to determine if the claim should be dismissed and if not, the validity of the claim and whether the amount claimed, or some lesser amount is proper.

(4) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

808-004-0560

Requirements for Proposed Default Order or Referral to Hearing Officer Panel, Hearing Request

(1) A proposed default order on a claim issued by the agency shall include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for an arbitration or a contested case hearing must:

(a) Comply with OAR 808-004-0590, which regulates whether the claim will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 prior to the agency's referral of the claim to the Office of Administrative Hearings

(3) If the agency refers a claim to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the claimant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the declaration of damages on the Statement of Claim that limits the amount that the respondent may be ordered to pay the claimant and state the amount that the order is limited to under OAR 808-009-0160 and 808-008-0420.

(b) The agency shall serve on the parties an explanation of

(A) The limitation on the amount a respondent may be ordered to pay a claimant under OAR 808-009-0160 and 808-008-0420; and

(B) The procedure to file a new declaration of damages under OAR 808-009-0020 and 808-008-0110.

(4)(a) To be timely, a request for a hearing must be in writing and be received by the agency within 21 days from the date a proposed default order is mailed by the agency.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6)(a) Except as provided in subsection (b) of this section, a contested case notice issued under this rule must include a statement that the agency's file on the claim is designated as the record only for purposes of a default order issued under this rule and not for purposes of an order by default issued after a hearing under OAR 808-009-0140.

(b) If a proposed default order issued under this rule is an order to dismiss a claim, a contested case notice issued under this rule may include a statement that the agency's file on the claim is designated as the record for purposes of a default order issued under this rule and of an order by default issued after a hearing under OAR 808-009-0140.

808-004-0590

Referral of Claim to Arbitrator or Contested Case Hearing or Removal to Court

(1) If a hearing on a claim is conducted by the Office of Administrative Hearings:

(a) The hearing shall be held as an arbitration under the rules in Division 8 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (b) of this section or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing shall be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the claim makes a timely written request under section (4) of this rule that the claim be heard as a contested case; or

(B) The agency requests under sections (4) and (6) of this rule that the claim be heard as a contested case.

(2) Subject to section (3) of this rule, a claim shall be decided in court if:

(a) The claimant files a complaint in court that alleges the elements of the claim in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment, or another complaint that arises from the contract or work that is the subject of the claim and that allows the claimant to file a response alleging the elements of the claim.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limitation in this rule constitutes waiver of the right to have the claim decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 808-010-0085, whichever is applicable.

(4) A request that a claim be heard as a contested case filed under section (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 808-008-0085, whichever is applicable.

(b) A referral of a claim to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a

request that the claim be heard as a contested case under section (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the claim.

(5) Failure to deliver a timely written request for a contested case hearing under sections (1)(b) and (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the claim being held as binding arbitration under section (1)(a) of this rule.

(6) The agency may request under section (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the claim under ORS 671.690 to 671.710 is at issue; or

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the claim.

(7) The amendment to this rule that became effective on or after March 1, 2003 apply to a claim that is referred to the Office of Administrative Hearings after March 1, 2003.

808-004-0600

Payment From Bond, Irrevocable Letter of Credit or Other Security

(1) The board may notify the surety company of claims pending.

(2) The board shall notify the surety company or deposit holder of claims ready for payment. This notice shall constitute notice that payment is due on the claim. Claims are ready for payment when all of the following have occurred:

(a) An arbitration award has been issued and is ready for payment under OAR 808-008-0440 after 30 days have elapsed to allow the respondent time to pay the award or file exceptions with the circuit court or a final order has been issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order;

(b) The board has received no evidence that the respondent has complied with the final order or award;

(c) The board has not granted a stay of enforcement of the final order pending judicial review by the Court of Appeals; and

(d) All other claims filed against the licensee under ORS 671.510 to 671.710 within the same or prior 90-day period under ORS 671.710 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Claims related to jobs that are satisfied from a surety bond, irrevocable letter of credit or deposit shall be paid as follows:

(a) If a surety bond, irrevocable letter of credit or deposit was in effect when the work period began, payment shall be made from that surety bond, irrevocable letter of credit or deposit.

(b) If no surety bond, irrevocable letter of credit or deposit was in effect when the work period began, but a surety bond, irrevocable letter of credit or deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, irrevocable letter of credit or deposit to become effective after the beginning of the work period.

(4) If during a landscape job the job charges increase to an amount that requires an increase in the bonding amount for a landscape contracting business, any claims filed on that specific landscape job and any other landscape jobs contracted for by this business after the effective date of the increased bond amount will have access to the higher bond amount. Landscape jobs that were contracted for before the effective date of a bond increase will only have access to the bond amount in effect at the time of entering into the contract for that job unless the job charges on that contracted job increase to an amount requiring an equal to or greater bond amount for the landscape contracting business.

(5) The full penal sum of the bond, irrevocable letter of credit or deposit shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under ORS 671.690.

(6) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds, irrevocable letters of credit or deposits of the respondents, payment shall be made in equal amounts from each bond, irrevocable letter of credit or deposit subject to payment. If one or

more of the bonds, irrevocable letters of credit or deposits is or becomes exhausted, payment shall be made from the remaining bond, irrevocable letter of credit or deposit or in equal amounts from the remaining bonds, irrevocable letter of credit or deposits. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond, irrevocable letter of credit or deposit under this section by an amount equal to the payment made by the respondent.

(7) A surety company or deposit holder may not condition payment of a claim on the execution of a release by claimant.

(8) An expired or terminated status of the license of the respondent does not excuse payment by a surety company or deposit holder required under this rule.

**DIVISION 5
CIVIL PENALTIES**

808-005-0020**Schedule of Civil Penalties and Suspensions**

The agency assesses civil penalties for violations of ORS 671.510 to 671.760 and OAR Chapter 808, some of which may be settled per the terms of a settlement agreement. These penalties include, but are not limited to:

(1) **Operating as a landscape contracting business** in violation of ORS 671.530(1) or (3):

(a) if the value of the work is \$500 or less; \$500; and

(b) if the value of the work is more than \$500; \$1,000

(2) **Operating as a landscape contracting business** in violation of ORS 671.530(1) or (3), when a claim has been filed for damages arising out of that work, \$2,000.

(3) **Operating as a landscape construction professional** in violation of ORS 671.530(1), \$1,000.

(4) **Advertising** in violation of ORS 671.530(2), (4), or (5):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(5) **Advertising for landscaping work outside the scope** of the landscape contracting business license in violation of OAR 808-003-0040:

(a) \$1,000 for the first offense; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(6) **Operating as a landscape contracting business in violation of ORS 671.530(1) or (3) when one or more previous violations have occurred** after action taken on first offense, \$2,000.

(7) **Operating as a landscaping contracting business without having at least one owner or employee who is a licensed landscape construction professional licensed within the phase of work performed**, in violation of OAR 808-003-0040 and 808-003-0045:

(a) \$1,000 for the first offense; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(8) **Performing landscaping work while not subject to a written contract** or failing to comply with minimum contract standards, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(9) **Failure to include the license number in all written advertising**, in violation of OAR 808-003-0010:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(10) **Performing work outside the scope** of the landscape contracting business license in violation of OAR 808-003-0040:

(a) \$1,000 for the first offense; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(11) **Installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement** with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(12) **Failure to maintain the insurance or workers compensation insurance coverage required by ORS 671.565 or**

bond or other board accepted surety as required by ORS 671.690 in effect continuously throughout the license period:

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(13) **Failure to submit documentation of workers' compensation insurance coverage** or failing to register with the agency as non-exempt upon hiring one or more employees:

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(14) **Failure to conform to information provided on the application** in violation of ORS 671.510 to 671.710:

- (a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules; and
- (b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules.

(15) **Failure to comply with any part of ORS Chapters 316, 656, 657, and 671**, as authorized by ORS 671.510 to 671.710 or rules promulgated by the agency:

- (a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

- (b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules.

(16) **Conduct that is dishonest or fraudulent or that the board finds injurious to the welfare of the public** as a

landscape construction professional or landscape contracting business:

- (a) \$1,000 for the first offense and suspension of the license; and
- (b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license. The agency may also revoke the license.

(17) **Failure to verify workers' compensation coverage for temporary or leased workers** as required in OAR 808-003-0620:

- (a) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

- (b) \$1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules. For purposes of subsection 17(a) only, if the documentation of verification of workers' compensation coverage is received by the agency on or before the 21st day after the date of the contested case notice and the verification shows coverage of all employees from the employees' hire date, the contested case will be withdrawn without prejudice.

(18) **Hiring employees while licensed as an exempt landscape contracting business:**

- (a) \$400 for the first offense if the licensee obtained workers' compensation coverage prior to the employee hire date;

- (b) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date;

- (c) \$1,000 for subsequent offenses occurring after action taken on first offense if the licensee obtained workers'

compensation coverage prior to the employee hire date; and

(d) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers compensation coverage prior to the employee hire date.

(19) **Violating an order to stop work** as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(20) **Failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements** as required by OAR 808-003-0126(3)(a):

(a) \$500 for the first offense; and
(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(21) **Failure to obtain the appropriate building code permit(s):**

(a) \$500 for the first offense; and
(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(22) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;
(b) \$2,000 for the second offense;
(c) Six month suspension of the license for the third offense; and
(d) Three-year revocation of license for a fourth offense.

(23) **Failure of a landscape contracting business to notify the board of a change in the landscaping business' phase of license** as required by OAR 808-003-0125:

(a) \$200 for the first offense; and
(b) \$500 for subsequent offenses occurring after action taken on first offense.

(24) **Failure by the landscape construction professional to comply with the supervisory responsibilities** as required by OAR 808-003-0018;

(a) \$200 for the first offense;
(b) \$500 for the second offense occurring after action taken on first offense; and
(c) \$1,000 and six month suspension of the license for the third offense.

(25) **Failure of the landscape construction professional to notify the Landscape Contractors Board of a change of address or employment** in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0125:

(a) \$200 for the first offense; and
(b) \$500 for subsequent offenses occurring after action taken on first offense.

(26) **Failure of a landscape contracting business to notify the board of a change in address** in writing or on line at the LCB website as required by ORS 671.603:

(a) \$200 for the first offense; and
(b) \$500 for subsequent offenses occurring after action taken on first offense.

(27) **Failure of a landscape contracting business to require the landscape construction professional to directly supervise** unlicensed employees of the landscaping business performing landscaping work that is related to the

landscape construction professional phase of license:

- (a) \$200 for the first offense; and
- (b) \$500 for subsequent offenses

occurring after action taken on first offense.

(28) Failure of a landscape contracting business to obtain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1):

(a) \$1,000 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;

(b) \$2,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.

(29) Failure to notify the LCB of a new business name (including any new assumed business name) or, in the case of a sole proprietor, any personal surname under which the business is conducted, in violation of OAR 808-003-0020:

- (a) \$200 for first offense; and
- (b) \$500 for subsequent offenses

occurring after action taken on first offense.

(30) Failure to respond to the continuing education audit as required under OAR 808-040-0060(3):

- (a) For the first offense:
 - (A) \$200; and

(B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 26(a) only, if the CEH documentation as required by OAR 808-040-0060(3) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(b) For subsequent offenses occurring after action taken on the first offense:

- (A) \$500; and

(B) Suspension of the license until the CEH documentation is received by the agency.

(31) Failure to submit complete documentation as required under OAR 808-040-0060(3), (4), (5) or (6):

(a) For the first offense:

(A) \$200; and

(B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 27(a) only, if the CEH documentation as required by OAR 808-040-0060(3), (4), (5) or (6) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the CEH documentation is received by the agency.

(32) Failure to complete the continuing education hours by the deadline as required under OAR 808-040-0020(1):

(a) For the first offense, \$200; and

(b) For subsequent offenses occurring after action taken on the first offense, \$500.

(33) Pursuant to ORS 671.610(1)(e) makes misleading statements when advertising services or materials:

(A) \$200; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading

advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

808-005-0030

Civil Penalty Collections

The agency may initiate its own collection proceedings, assign the matter to the Department of Revenue for collection, and/or commence an action as provided in ORS 671.955

**DIVISION 8
ARBITRATION BY THE AGENCY**

808-008-0020**Applicability of Rules; Application of ORS 36.600-36.740**

(1) The rules in this division shall apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 808-004-0590;

(b) The parties to the arbitration agree that the Landscape Contractors Board may arbitrate a landscape dispute and the agency accepts the dispute for arbitration under ORS 671.703;

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Landscape Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 671.703; or

(d) Arbitration by the Landscape Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 8 of this chapter, an arbitration conducted under this division shall be governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

(3) The amendments to the rules in division 8 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for an arbitration:

(a) On or after January 1, 2004; and

(b) Before January 1, 2004, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

808-008-0030**Incorporation of Office of Administrative Hearings Rules**

(1) The following rules related to the contested case hearings conducted by administrative law judges assigned to the Office of Administrative Hearings are incorporated into these rules by this reference and apply to arbitrations conducted under the rules in this division:

(a) OAR 137-003-0590 (Qualified interpreters); and

(b) OAR 137-003-0605 (Telephone testimony).

(2) In interpreting rules incorporated under section (1) of this rule:

(a) "Hearing" in the incorporated rule shall be given the same meaning as "arbitration" in these rules; and

(b) "Administrative law judges" in the incorporated rule shall be given the same meaning as "arbitrator" in these rules.

808-008-0040**Arbitration of Disputes Outside Jurisdictional Requirements**

A dispute involving a landscaping contractor that does not meet timeliness filing or other jurisdictional requirements under this chapter or ORS 671.690 to 671.710 may be arbitrated by the agency only if both parties agree in writing to submit the dispute to the Landscape Contractors Board for binding arbitration. At the discretion of the agency, the agency may refuse to accept a dispute submitted for binding arbitration under this rule.

808-008-0051**Application for Judicial Relief**

An application to the court for judicial relief under the rules in division 8 of this chapter or under ORS 36.600 to 36.740 shall be subject to ORS 36.615.

808-008-0060**Appointment of Arbitrator**

Appointment of arbitrator shall be as provided in ORS 671.703 and shall be subject to a request for a different administrative law judge to act as arbitrator under ORS 183.645 and OAR 471-060-0005.

808-008-0080**Delegation of Duties**

If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the duties of the agency under these rules may be carried out through representatives as directed by the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge, except that the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may not perform the

duties of the agency under OAR 808-008-0040, 808-008-0100 or 808-008-0440.

808-008-0085

Filing and Service of Pleadings and Other Documents

(1) Unless otherwise provided by these rules, documents, correspondence, motions, pleadings, rulings and orders filed in an arbitration under these rules shall be filed as follows:

(a) With the agency before a claim or dispute is referred by the agency to the Office of Administrative Hearings.

(b) With the Office of Administrative Hearings or assigned arbitrator after the agency refers the claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award.

(c) With the agency after the arbitrator issues an award.

(2) After the agency refers a claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document such as a correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration shall serve copies of the document filed on the parties to the claim or dispute or their counsel if the parties are represented. Service under this section shall be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 808-004-0210, after the agency refers the claim or dispute to the Office of Administrative hearings and before the arbitrator issues an award a party must notify the Office of Administrative Hearings or arbitrator, and other parties to the claim or dispute of any change in the party's address, withdrawal or change of party's attorney or change of address of the party's attorney.

808-008-0090

Request for Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings receives a request under OAR 808-004-0590 to conduct the hearing on a claim as a contested case, the Office of Administrative Hearings shall retain jurisdiction over the claim. The Office of Administrative Hearings shall hold the contested case hearing at the time scheduled for the

arbitration unless good cause exists to reschedule the hearing date and time.

(2) If the Office of Administrative Hearings receives notice under OAR 808-004-0590 that a party to the claim filed a complaint under that rule that requires that the claim be decided in court, the Office of Administrative Hearings shall return the claim to the agency.

808-008-0100

On-Site Investigation, Settlement Discussions

(1) At the discretion of the agency the arbitration hearing may be preceded by an on-site meeting or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site meeting prior to arbitration. The agency may grant or deny the request at its discretion.

808-008-0110

Declaration of Damages and Amendment to Declaration of Damages

(1) If the party asserting the claim has not previously filed a Statement of Claim or declaration under OAR 808-004-0340, 080-004-0540 or 808-004-0550, the party shall file with the agency on a form provided by the agency a declaration of damages stating the amount the party alleges any other party owes the party, together with any supporting documents required by the agency.

(2) If the parties to an arbitration have agreed in writing that the arbitration will bind all of them and if any other party to the proceeding asserts a counter claim, the counterclaiming party shall file with the agency on a form provided by the agency a declaration of damages stating the amount that the counterclaiming party alleges any other party owes to the counterclaiming party, together with any supporting documents required by the agency.

(3) Notwithstanding section (2) of this rule, a party is not required to file the declaration stating the amount that the party alleges any other party owes the party, if the party alleges only an offset.

(4) A party may amend the amount the party alleges another party owes the party by filing an

amended declaration of damages. An amended declaration of damages must be delivered to the arbitrator as required by OAR 808-008-0085. An amended declaration of damages filed under this section must be received by the arbitrator no later than 14 days prior to the scheduled date of an arbitration on the matter.

(5) An amended declaration of damages filed under section (4) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended declaration of damages must state the amount alleged to be owed to the party filing the amended declaration by the other party. If the subject of the arbitration is a claim, the amount alleged to be owed must be limited to items of complaint in the Statement of Claim. The amended declaration of damages must be signed by the party filing the amended declaration.

(6) An amended declaration of damages making a significant change in the amount a party alleges that another party owes the party may be good cause to postpone the scheduled arbitration under OAR 808-008-0220 if the time left before the arbitration is insufficient to prepare for arbitration on the amended amount.

808-008-0120

Time and Place of Arbitration Hearing; Notice

The Office of Administrative Hearings shall fix a time and place for the arbitration hearing. The Office of Administrative Hearings I will mail notice of the time and place of the arbitration at least 21 days prior to the arbitration, unless otherwise agreed to by the parties.

808-008-0140

Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of

the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under ORS 36.705(1)(b) for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under ORS 36.705(1)(b) may vacate an award.

(6) An arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under ORS 36.705(1)(b).

(7) Substantial compliance with the procedures in this division 8 of this chapter for challenges to an arbitrator before an award is made is a condition precedent to a petition to vacate an award on that ground under ORS 36.705(1)(b).

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final. Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final.

808-008-0160**Substitution of Arbitrator**

(1) The agency administrator or a person designated by the agency administrator may substitute another arbitrator at any time before the arbitration hearing begins.

(2) If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the Chief Administrative Law Judge or a person designated by the Chief Law Judge may substitute another arbitrator at any time before the arbitration hearing begins.

808-008-0180**Representation by Counsel**

Any party may be represented at an arbitration by an attorney. A corporation, partnership or other business entity may appear or be represented at an arbitration as provided under ORS 183.457.

808-008-0200**Attendance at Hearings**

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator may require the exclusion of any witness who is not a party during the testimony of other witnesses. The arbitrator shall determine whether any other person may attend the hearing.

808-008-0220**Postponement, Recess and Continuance**

An arbitration may postpone or recess and later continued by the arbitrator. A party requesting a postponement or continuance must show good cause. The arbitrator will determine whether to grant a postponement or continuance. The arbitrator's determination shall be final.

808-008-0240**Oaths**

An arbitrator shall take the oath provided by ORS 36.325.

808-008-0260**Recording of Arbitration**

(1) Unless otherwise agreed by the parties and the arbitrator, the arbitrator must make a recording of the hearing.

(2) The agency may dispose of recordings of arbitrations when 90 days have passed after

the arbitrator issues an award in the matter. However, if a party files timely exceptions to the award with the court, the agency may not dispose of the recordings of the hearing until the court makes a final determination of the matter.

808-008-0280**Conduct of Hearing; Authority of Arbitrator**

(1) An arbitrator may conduct arbitration in such a manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(2) The oral hearing may be waived and held by briefs and documents if the parties so stipulate. The arbitrator shall determine whether to grant waiver of oral hearing and that determination shall be final.

808-008-0291**Summary Disposition**

An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

808-008-0300**Arbitration in the Absence of a Party**

(1) Except as provided in section (2) of this rule, an arbitration may proceed in the absence of a party who, after due notice, fails to appear. An award shall not be made solely on the default of a party. The arbitrator may require the attending party to submit such evidence as the arbitrator may require for the making of an award.

(2) Notwithstanding section (1) of this rule, an arbitrator may dismiss a claim without an evidentiary hearing if the party making the claim fails to appear after due notice and without good cause.

808-008-0320**Discovery**

(1) Parties to an arbitration are encouraged to exchange information informally, prior to the hearing. After making reasonable attempts to obtain any of the following, a party may make written request of the arbitrator for an order directing the other party to comply:

(a) Production of documents, objects or other information relevant to the dispute;

(b) Permission to enter upon private property to inspect improvements relevant to the dispute; or

(c) Other forms of discovery.

(2) The arbitrator may, at the arbitrator's discretion, order compliance. This rule does not require discovery. If the arbitrator does order discovery, the arbitrator shall control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

808-008-0340**Subpoenas; Evidence**

(1) The arbitrator or an attorney for a party to the arbitration may issue subpoenas for witnesses and documents for the arbitration hearing.

(2) The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not required.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed with the agency prior to or at the hearing.

808-008-0360**Close of Hearings**

When satisfied that the parties have completed their presentations, the arbitrator shall close the hearing.

808-008-0380**Waiver of Right to Object to Noncompliance with These Rules**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections

prior to the close of the hearing shall be deemed to have waived the right to object.

808-008-0400**Services of Notices and Other Communications**

(1) Communication, including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice of the arbitration hearings, the notice of hearings shall be sent by registered, certified or post office receipt secured mail.

808-008-0420**Time, Form, and Scope of Award; Limitation on Award**

(1) The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award shall be in writing and shall be signed or otherwise authenticated by the arbitrator.

(4) The award shall fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award shall contain sufficient rulings on issues and explanations of the reasoning of the arbitrator so that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition for to modify or correct the award would be appropriate.

(5) Subject to section (10) of this rule an arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent declaration of damages or amended declaration of damages filed by the

party under OAR 808-004-0540, 808-004-0550 or 808-008-0110; or

(b) The Statement of Claim filed by the party under OAR 808-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 671.690 and the parties to an arbitration have not agreed that the arbitrator may award damages against the claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

(7) An arbitrator shall consider any amounts owed by a party claiming damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party claiming the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a declaration of damages. If the party asserting the offset did not file a declaration of damages, the amount of the offset may not exceed the amount of the award.

(8)(a) Except as provided in section (4) of this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond required under ORS 671.690 and other amounts that are not payable from the bond under OAR 808-004-0250 or any other law, the award shall segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract as issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(9) If a limitation on damages under section (5) of this rule is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the

limitation on damages shall be based on the larger of the two totals.

(10) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must comply with ORS 36.685(1).

808-008-0425

Petition to Modify or Correct an Award; Issuance

(1) A party to an arbitration may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule as stated in subsection (13) of this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator within 21 days of mailing the proposed award.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator shall mail copies of the petition to the other parties to the arbitration and the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the claims submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

(d) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator shall issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

- (a) Affirm the original award and incorporate it in the amended award by reference; or
- (b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

(11) If the arbitrator who prepared the award is not available to consider a petition to modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

(12) Arbitration awards are not considered issued for the purposes of ORS 671.703(9) until:

- a. the time to file a petition to modify the award has expired with no request for modification; or
- b. the arbitrator has determined to modify the award or not, if there was a timely petition for modification of the award filed by one or both parties.

(13) Each party may file one petition to modify an initial Arbitration Award within 21 days after the award is signed by the arbitrator. Once the arbitrator makes a determination on all timely petitions filed, no additional petitions for modification may be requested. Neither party may file a petition to modify an Amended Arbitration Award. For procedures to respond to petitions for modification or seek judicial review of Amended Arbitration Awards, see OAR 808-008-0430.

808-008-0430
Form of Petition to Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 808-

008-0425 shall conform to the following requirements:

(a) The petition shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition shall be titled "Petition to modify or correct an Arbitration Award" and shall show the names of the parties to the arbitration and the party submitting the petition at the top of the page. If the petition is filed in a claim, the first page shall show the claim number.

(c) Each page of the petition shall be numbered at the bottom of the page.

(d) For each modification or correction sought by petitioner, the following information should be included in the petition:

- (A) The page or pages that petitioner asks to be modified or corrected;
- (B) The text that petitioner asks to be modified or corrected; and
- (C) An explanation or argument supporting petitioner's request for the modification or correction.

(e) The party submitting the petition shall sign and date the petition. The date shall be the date the petition is served on the arbitrator and on the other parties to the arbitration.

(2) The arbitrator may refuse to consider a petition that does not substantially meet the requirements of section (1) of this rule.

808-008-0440
Payments from Licensee's Bond

If an award or amended award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond or deposit of the business to the extent payment is authorized under ORS 671.710. Payments from the bond or deposit shall be subject to the laws in ORS chapter 671 and rules in division 4 of this chapter, including but not limited to OAR 808-004-0600.

808-008-0460
Filing with Court; Exceptions

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party shall serve the agency with a copy of a petition filed under this section.

(2) A party may petition the court to vacate, modify or correct an award under ORS 36.705 or 36.710. The petitioning party shall serve the

agency with a copy of the petition filed under this section.

(3) Failure of a party to serve the agency under section (2) and (3) of this rule constitutes a waiver of any objection to transmittal of the award to respondent's surety company for payment under OAR 808-004-0600

808-008-0480

Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules shall be interpreted and applied by the agency administrator or a person designated by the agency administrator.

808-008-0500

Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to ORS 36.660(1) to (3).

808-008-0511

Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to ORS 36.660(4).

808-008-0521

Attorney Fees and Costs

If a person commences a civil action against an arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings, arising from the services of the arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings or if a person seeks to compel an arbitrator or representative of the Office of Administrative Hearings to testify or produce records in violation of OAR 808-008-0-510, the court may award attorney fees and costs as provided in ORS 36.660(5).

DIVISION 9**CONTESTED CASE HEARINGS AND APPEAL COMMITTEE****808-009-0010****Application of Rules**

Contested case hearings on claims arising under ORS 671.690, 671.710 shall be governed by OAR 808-009-0020 through 808-009-0220 and OAR 137-003-0501 through 137-003-0700.

808-009-0020**Amendment to Declaration of Damages**

(1) If the agency refers a claim to the Office of Administrative Hearings for a hearing on the amount that the respondent owes the claimant, the claimant may amend the amount the claimant alleges the respondent owes the claimant by filing an amended declaration of damages form. An amended declaration of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and 808-009-0085. An amended declaration of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings no later than 14 days prior to the scheduled date of a hearing on the matter.

(2) An amended declaration of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially conforms to the form provided by the agency. The amended declaration of damage must state the amount alleged to be owed by the respondent, limited to items of complaint in the Statement of Claim. The amended declaration of damages must be signed by the claimant.

(3) An amended declaration of damages making a significant change in the amount the claimant alleges that the respondent owes the claimant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

808-009-0050**Providing Required Information to Parties**

The agency delegates to the Office of Administrative Hearings or the law judge assigned to hear a claim the responsibility to provide the information required to be given to

each party under ORS 183.413(2) and 137-003-0510(1).

808-009-0060**Hearing Postponement**

If a party requests postponement of a hearing, the request may be granted:

(1) The request is promptly made after the party receives the notice of hearing or is promptly made after emergency or unforeseen circumstances arise; and

(2) The party establishes circumstances that prevent attendance by the party at the scheduled hearing; and

(3) The circumstances preventing attendance at the hearing are beyond the reasonable control of the requesting party.

808-009-0070**Suspending Processing**

(1) An administrative law judge may suspend or cancel a hearing at any time if the administrative law judge finds that the nature or complexity of the issues is such that a court is a more appropriate forum for adjudication. If a administrative law judge suspends or cancels a hearing under this rule, the administrative law judge shall refer the claim to the agency with a memorandum recommending that processing of the claim be suspended under ORS 671.703 and OAR 808-004-0520 and stating the basis of the recommendation. A copy of this memorandum shall be served on the parties.

(2) If a claim is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the claim; or

(b) Refer the claim back to the administrative law judge with instructions to resume the hearing.

808-009-0080**Administrative Law Judge**

A contested case hearing may be held before an administrative law judge of the agency.

808-009-0085**Filing of Documents**

Unless otherwise provided in these rules, the agency waives the right to receive copies of documents served under OAR 137-003-0520(2).

808-009-0090**Authorized Representation of a Party**

A party or limited party participating in a claim contested case hearing before the agency may be represented by an authorized representative, as provided in OAR 137-003-0555.

808-009-0095

Discovery and Subpoenas

(1) The agency delegates to the hearing officer assigned to hear a claim the authority to:

(a) Order and control discovery under OAR 137-003-0570 related to the hearing on the claim, except an hearing officer may not authorize a party to take a deposition that must be paid for by the agency.

(b) Issue subpoenas under OAR 137-003-0585 that are related to the hearing on the claim.

(2) The agency waives receipt of notice that a party seeks to take the testimony of a witness by deposition under OAR 137-003-0570.

808-009-0100

Burden of Proof and Failure to Meet Burden

(1) A claimant must submit sufficient credible evidence into the record to prove that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(2) If the claimant fails to carry the burden of proof described in section (1) of this rule, the administrative law judge shall dismiss the claim.

808-009-0120

Determination of Validity of Claim

In determining the validity of the claim, the administrative law judge shall determine:

(1) Whether the claim arose out of a transaction within the scope of ORS 671.510 to 671.710;

(2) Whether the agency has jurisdiction over the matters at issue;

(3) Whether:

(a) Claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

808-009-0140

Failure to Appear

(1) "Order" as used in this rule means a proposed and final order a law judge is authorized to issue under OAR 808-009-00160.

(2) If the administrative law judge notified the parties to a claim of the time and place of a hearing on the claim, and a party failed to appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that :

(a) Is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3); or

(b) Dismisses the claim based on a lack of evidence in the record supporting claimant's claim, but only if:

(A) The agency did not designate the agency file as the record for purposes of an order by default in the contested case notice issued under OAR 808-004-0560; and

(B) The claimant failed to appear at the hearing.

Authorized for use by Attorney General order dated December 13, 2002. (Section (1) based on former OAR 808-004-0030(13) (1999); section (2) based on former OAR 808-004-0030(14) (1999))

808-009-0160

Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order a administrative law judge is authorized to issue under section (6) of this rule.

(2) If a claim is referred for a hearing to determine the amount, if any, that a respondent owes a claimant, the administrative law judge may not issue an order in an amount greater than the total amount claimant alleges respondent owes claimant in:

(a) The most recent declaration of damages or amended declaration of damages filed under OAR 808-004-0540, 808-004-0550 or 808-009-0020; or

(b) The Statement of Claim filed under OAR 808-004-0340, if no declaration of damages was filed.

(3) If a claim is referred for a hearing to determine whether any portion of a judgment is within the jurisdiction of the agency, the administrative law judge may not issue an order

requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the claimant or dismiss the claim.

(5) An administrative law judge shall consider any amounts due to the respondent from the claimant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in OAR 808-009-0200, an administrative law judge shall issue a proposed and final order under OAR 137-003-0645(4) that shall automatically become a final order 21 days after the date of issue without further notice unless;

(a) A party files timely exceptions under OAR 808-009-0400;

(b) The agency requests that the administrative law judge hold a further hearing or revise or amend the proposed order under OAR 137-003-0655(1);

(c) The agency issues an amended proposed order under OAR 137-003-0655(3); or

(d) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) is based on a declaration of damages or Statement of claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

808-009-0180

Recording of Hearing

The record of agency hearings will include a tape recording of the proceeding. The agency may dispose of tape recordings of agency hearings when ninety days have passed after issuance of a final order in the matter. However, if a petition for judicial review is timely filed, the agency may not dispose of tape recordings of agency hearings until the Court of Appeals has completed its judicial review.

808-009-0200

Final Order without a Proposed Order

If the parties voluntarily agree to a settlement of a claim in accordance with ORS 183.415(5) and the settlement agreement includes an agreement for future performance, the administrative law judge shall issue an intermediate order containing any necessary findings of fact and return the claim to the agency for further processing and issuance of the final order.

808-009-0220

Petition for Reconsideration or Rehearing; Request for Stay

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a claim issued by an administrative law judge under this division must be filed with the agency.

Contested Case Hearings, Enforcement 808-009-0300

Hearing Notice and Limitation on Final Civil Penalty Order

A notice of hearing shall contain the amount of the civil penalty sought by the agency. The administrative law judge shall not issue a final civil penalty order in an amount greater than that shown in the notice of hearing.

OAR 808-009-0315

Hearing Request and Answers; Consequences of Failure to Answer

(1) A hearing request and answer must be made in writing to the board by the party or the party's attorney within 60 days of the board's issuance of a notice of license denial and within 21 days of the board's issuance of any other notice.

(2) Failure to raise an affirmative defense in the answer shall be considered a waiver of such defense. New matters alleged in the answer (affirmative defenses) shall be presumed denied by the Board.

(3) Evidence at a hearing shall not be taken on any issue not raised in the notice and answer.

(4) The party or party's attorney may amend the response and answer, but no later than 10 days before the scheduled contested case hearing.

(5) For certain complex cases, the hearing request and answer must include specific elements. The types of cases that for which a special hearing request and answer are required are:

(a) Unlicensed performance of landscaping work as a landscape construction professional or operating as a landscape contracting business;

(b) Unlicensed advertisement or representation of a landscape contracting business or landscape construction professional;

(c) Violations of failure to comply with ORS 671.510 to 671.760 and/or OAR Chapter 808.

(6) The specific elements required when a hearing request and answer are made for a type of case listed in subsection (2) are:

(a) An answer must include an admission or denial of each factual matter alleged in the notice;

(b) An answer must include a short and plain explanation of each denial;

(c) Factual matters alleged in the board's proposed order and not denied in the answer shall be presumed admitted.

808-009-0320

Administrative Law Judge; Entry of Agency Evidence

Contested case enforcement hearings may be held before an administrative law judge of the agency. The agency's evidence may be entered into the record by the administrative law judge or by another representative of the agency.

808-009-0335

Authorized Representation of a Party

A party or limited party participating in an enforcement contested case hearing before the agency may be represented by an authorized representative, as provided in OAR 137-003-0008.

808-009-0340

Agency Representation by Officer or Employee

(1) Subject to the approval of the Attorney General as provided in ORS 183.452, agency officers and employees may appear, but not make legal argument, on behalf of the agency in the following types of hearings conducted by the agency:

(a) Hearings involving the possible imposition of civil penalties for violations of statutes or regulations;

(b) Hearings involving refusal to issue, refusal to renew or suspension, where the license would be issued or renewed or the

suspension lifted upon correction of the deficiency or payment of the penalty;

(c) Hearings involving a refusal to issue, refusal to renew or suspension of a license for failure to pay a civil penalty, failure to pay a claim or for violations of employer status regulations, including ORS chapters 656, 657 and 316, where the license would be issued or renewed or the suspension lifted upon correction of the deficiency or payment of the penalty;

(d) Hearings involving the placement of a licensee on probation and for hearings involving suspension, revoking or refusal to renew for failing to fulfill the terms of the probation per ORS 671.614;

(e) Hearings involving suspensions without prior hearing as stated in ORS 671.610(2), where the suspension would be lifted upon correction of the deficiency or payment of the penalty; and

(f) In other compliance hearings as approved in writing by the Attorney General on an individual case basis.

(2) The agency representative may not make legal argument on behalf of the agency.

(a) ~~Legal argument~~+includes argument on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) ~~Legal argument~~+does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual argument or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statute or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an agency officer or employee represents the agency in a hearing, the presiding officer shall advise the representative

of the manner in which objections may be made and matters preserved for appeal. This advice is of a procedural nature and does not change applicable law on waiver on the duty to make timely objection. Where an objection may involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit the legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Exceptions

808-009-0400

Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or licensee may file written exceptions if they believe that the administrative law judge has made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2) To be considered:

(a) The first exceptions must be received by the agency within 21 days of the date of mailing the proposed order.

(b) If one party files timely exceptions, exceptions by the opposing party, if that party chooses to file them, must be received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 808-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board at a regularly scheduled Board meeting for which agenda space is available.

(4) The exceptions must substantially conform to the requirements set forth in OAR 808-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days prior to the Board meeting date if the original exceptions were timely received.

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party must include in the exceptions:

(A) A notice of the intention to rely on oral testimony, and

(B) A request for a copy of the recording of the hearing with the fee required under OAR 808-001-0020.

(b) After the agency receives a party's exceptions containing a notice of an intention to rely on oral testimony under subsection (a) of this section, the agency must send a copy of the recording of the hearing to the other party to the claim at no charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony must prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions filed. The party must deliver the transcript to the agency 21 days after the date of mailing of the recording of the hearing by the agency to the party.

(d) The agency must mail a copy of the transcript to the other party to the claim.

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency 21 days after the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency must mail a copy of the transcript prepared under this section to the party that filed the exceptions.

(8) The Board may refuse to consider evidence of oral testimony submitted by a party if the party fails to comply with the requirements of sections (6) and (7) of this rule.

(9) Claimant and respondent may appear before the members of the Board to argue for or against the proposed order.

(10) The agency may waive or extend the time limitations in sections (5) through (7) of this rule on its own motion or on a showing of good cause by the person requesting the waiver.

808-009-0420

Exceptions to Agency Orders, Enforcement

(1) After a contested case enforcement hearing, the respondent may file written exceptions if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the agency within 21 days of the date of mailing of the proposed order. If written exceptions are not timely received, the agency may issue a final order as proposed.

(2) Exceptions must substantially conform to the requirements of OAR 808-009-0430.

(3) If exceptions are timely received, the matter will be set for consideration by the Board at a regular meeting of the Board. Written argument in opposition to the proposed order will be accepted up to 15 days before the Board meeting date if the original exceptions were

timely received. The Board may waive the 15-day requirement.

(4) The respondent may appear before the Board to argue against the proposed order, if the agency receives written notice of intent to do so before the Board meeting date. Oral argument will be permitted only if the original exceptions were timely received.

808-009-0430

Form of Exceptions to Agency Order

(1) Exceptions to an agency order filed by a party to a claim under OAR 808-009-0400 or a respondent under 808-009-0420 shall conform to the following requirements:

(a) Exceptions shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a claim, the first page shall show the claim number, the names of the parties to the claim and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page shall show the name of the respondent at the top of the page.

(c) Each page of the exceptions shall be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information shall be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the evidence in the record does not support the finding of fact.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or

application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information shall be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony shall be included in the exceptions.

(h) The party submitting the exceptions shall sign and date the exceptions.

(2) The Board may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

808-009-0440

Meeting of Board to Consider Appeals

(1) Claimant and respondent may appear before the members of the Board to argue for or against the proposed order.

(2) The Board may limit the time allowed for oral argument by a party before the Board to ten minutes.

(3) At the Board meeting, the Board will consider documentary evidence received at the hearing and exceptions and written or oral argument for or against the proposed order, but the Board will not consider new or additional evidence.

(4) After hearing oral argument, the Board may conduct its deliberations privately, under authority of ORS 192.690(1). If the Board conducts its deliberations privately, it will return to public meeting for any motions and voting.

(5) The Board may affirm the findings and proposed order, modify either or both, or send the case back to a new hearing to receive additional evidence. Unless the case is sent back to a new hearing, the agency shall issue a final order after the Board meeting.

(6) Final orders are subject to judicial review as provided under ORS chapter 183.

**DIVISION 30
OWNER/ MANAGING EMPLOYEE, COURSE,
AND TESTING**

808-030-0010**Owner/Managing Employee**

(1) As used in these rules, a managing employee has that meaning as provided in OAR 808-002-0625 and owner has the meaning as provided in OAR 808-002-0734

(2) Upon initial application, an applicant for a landscape contracting business license shall designate at least one managing employee or owner and provide evidence that this individual has completed the course and passed the test as provided for in ORS 671.595.

(3) An employee who is not an owner may not be designated as the managing employee of more than one landscape contracting business.

OAR 808-030-0015 Managing Employee Requirements

(1) An employee that is designated as the managing employee of a landscape contracting business must:

- (a) Be a employee of the landscape contracting business.
- (b) Manages the day to day activities of the landscape operations of the landscape contracting business which would include but not be limited to:
 - (A) planning, bidding and offering landscaping work,
 - (B) writing and signing contracts for landscaping work,
 - (C) hiring and firing of employees who perform landscaping work,
 - (D) signing of checks for payments of labor or materials associated with landscaping work, and
 - (E) organizing, scheduling, monitoring and evaluating the performance of landscaping work

(2) In the event a designated managing employee no longer is employed by or fulfills the role of managing employee for a landscape contracting business the managing employee must notify the board within 10 days of the change in employment or role.

ORS 671.595(1)(a)(B)

OAR 808-030-0018 Managing Owner Requirements

(2) An owner that is designated as the managing owner of a landscape contracting business must manage the day to day activities of the landscape operations of the landscape contracting business which would include but not be limited to:

- (a) planning, bidding and offering landscaping work,
 - (b) writing and signing contracts for landscaping work,
 - (c) hiring and firing of employees who perform landscaping work,
 - (d) signing of checks for payments of labor or materials associated with landscaping work, and
 - (e) organizing, scheduling, monitoring and evaluating the performance of landscaping work
- (2) In the event a designated managing owner no longer fulfills the role of managing owner for a landscape contracting business the managing owner must notify the board within 10 days of the change in role.

808-030-0020**Course Requirements**

(1) The course required in ORS 671.595(4)) shall cover the subjects listed in OAR 808-030-0040.

(2) The course shall consist of 16 class room hours. For the purposes of this rule a class room hour is a minimum of 50 minutes in length.

(3) The Course must be offered by a provider approved by the agency as provided in OAR 808-030-0030

808-030-0030**Requirements of Course Provider**

(1) In order for individuals or organizations to be listed as a provider of approved courses the individual or organization must submit an application to the agency on forms provided by the agency. Information provided on the application must include, but not be limited to:

- (a) Name and address and contact information of the course provider;
- (b) Instructor resumes and work summaries that demonstrate that all instructors have at least two years experience either teaching in the subject areas related to the course material or working in subject areas related to the course material.

(2) All providers must receive written agency approval prior to offering or providing the course.

(3) A provider must comply at all times with the following requirements:

(a) The provider will provide 16 classroom hours of course material under OAR 808-030-0040;

(b) The provider will use agency-approved course materials;

(c) The provider will send electronic records of completion to the agency within 14 days in a format approved by the agency and keep records of completion for a minimum of three years;

(d) The provider will communicate law changes and program procedural changes received from the agency to the providers, instructors and will implement these changes within 30 calendar days;

(e) The provider will request and receive, in writing, agency approval of all instructors at least 20 calendar days before instructors are scheduled to teach; and

(f) The provider will comply with all applicable federal and state laws.

(4) The agency may publicize a provider's test passage rate for its students

(5) The agency may revoke a provider's approval and right to offer the course at any time for the following:

(a) The provider fails to comply with these rules;

(b) If more than 10% of the total students who have received instruction from a provider fail to pass the examination administered by the board by their third attempt; or

(c) The provider acquires or attempts to acquire agency test questions by unauthorized means, including but not limited to, photographing, photocopying or videotaping any part of the agency's test or paying or offering incentives to employees or business entities to write down, photograph or videotape any part of the agency's test.

808-030-0040

Course Material and Subjects

(1) The course required under ORS 671.595 must consist of the following subjects:

(a) Landscape Contractors Board:

(A) Role and authority;

(B) Application and licensing requirements;

(C) Dispute resolution processes (Claims);

(D) Types of Business entities;

(E) Rights and responsibilities of consumers and Landscape Contracting Businesses;

(F) Address change and employment change notification;

(G) Enforcement processes;

(H) Supervision requirements;

(I) Statutes and rules that govern individual and business licensees; and

(J) How to become a member of the Board.

(b) Employer requirements and employees' rights:

(A) Information and resources on employer requirements, employees' rights, workers' compensation insurance, and required workplace postings;

(B) Civil rights;

(C) State and Federal laws that include but are not limited to: Title VII, child labor, minimum and prevailing wage laws and state and federal wage and hour laws; and

(D) Employees versus independent contractors.

(c) Taxes, record keeping, accounting, budgeting, and pricing:

(A) Required employment forms;

(B) Identification numbers;

(C) Cost of employees;

(D) Importance of good record keeping;

(E) Ways to organize records;

(F) Required tax forms and reporting times;

(G) Professional help; and

(H) Profit, budgeting and cash flow;

(d) Building codes:

(A) Applicable codes and revisions;

(B) Required Specialty licenses and inspections;

(C) Permit and Inspection procedures;

(D) Stop work orders.

(e) Oregon Occupational Safety and Health Division:

(A) OR-OSHA regulations, job site inspections and resources;

(B) Equipment basics and maintenance;

(C) General safety practices; and

- (D) Responsibilities of landscape contracting businesses, general contractors and subcontractors on a job site.
- (f) Environmental practices and laws:
 - (A) Laws and regulations governing handling and disposal of environmentally hazardous material;
 - (B) Proper handling and disposal of job site debris;
 - (C) Laws and regulations that govern environmental conditions at a job site that include but is not limited to: impact of construction on rivers, wetlands, water quality, sewage, underground storage/heating oil tanks and erosion control.
- (g) Contract law:
 - (A) Written Contract Requirement;
 - (B) Ten Elements of Contracts for Landscape Work;
 - (C) Minor and major breach of contract;
 - (D) Written change orders;
 - (E) Subcontracting and relationship to subcontractor;
 - (F) Negotiation;
 - (G) Mediation, arbitration and litigation clauses; and
 - (H) Buyer's Right to Cancel.
- (h) Oregon construction lien law:
 - (A) Purpose;
 - (B) Required notices;
 - (C) Lien law procedures;
 - (D) Steps and timelines to perfect a lien and foreclose; and
 - (E) Important lien law differences of other states.
- (i) Project management, estimating and scheduling:
 - (A) Importance of project management and consequences for failing to do so;
 - (B) Simple written estimates that include cost, overhead and profit; and
 - (C) Simple project schedules and consequences of improper job scheduling.
- (j) Business Practices:
 - (A) Customer Communication;
 - (B) Listening Skills;
 - (C) Employee retention;
 - (D) Meeting Customer expectations; and
 - (E) Hiring and Firing.

808-030-0050**Testing Requirements**

- (1) The test required in ORS 671.595: Effective date January 1, 2008 shall cover the subjects listed in OAR 808-030-0040.
- (2) A person seeking to take the test shall:
 - (a) Apply on a form provided by the agency;
 - (b) Pay any fees required by the agency;
 - (c) Provide approved government-issued picture identification to the agency; and
 - (d) Complete the test within a time limit approved by the agency.
- (3) A person taking the test shall be allowed to use material acquired from the agency and one language translation book or device during the examination.
- (4) A person taking the test shall not be accompanied by anyone while taking the test, except a board approved interpreter.
- (5) There are no reciprocal agreements with other states or organizations that test owners or managing employees of landscape contracting businesses.

808-030-0060**Testing Subversion**

- (1) Testing subversion is the use of any means to alter the results of a test to cause the results to inaccurately represent the competency of an examinee. Testing subversion includes, but is not limited to:
 - (a) Communication between examinees inside the testing room
 - (b) Giving or receiving any unauthorized assistance on the test while the test is in process;
 - (c) Having any printed or written matter or other devices in the examinee's possession during the test except a provided copy of:
 - (A) The Oregon Landscape Contractors Board Owner/Managing Employee Study Guide & Manual; Laws and Rules; and
 - (B) One language translation book or device.
 - (d) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured test questions or other secured examination material prior to, during or after the administration of the examination;
 - (e) Copying another examinee's answers or looking at another examinee's materials while a test is in process;

(f) Encouraging anyone to copy answers to the test;

(g) Copying or removing any test questions from the testing area;

(h) Allowing another person to take the test in the examinee's place;

(i) Writing notes or questions in the Oregon Landscape Contractors Board Owner/Managing Employee Study Guide & Manual or language translation book during the test; or

(j) Leaving the room during the test for an unapproved purpose.

(2) At the discretion of the agency or its designees, if there is evidence of testing subversion by an examinee prior to, during, or after the administration of the test, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the test if testing subversion is detected before the administration of the test;

(b) If the testing subversion detected has not yet compromised the integrity of the test, such steps as are necessary to prevent further testing subversion shall be taken, and the examinee may be allowed to continue with the test;

(c) The examinee may be requested to leave the testing facility if testing subversion is detected during the test. If the examinee does not leave the facility, the examinee will be deemed a trespasser;

(d) The examinee's test results may be invalidated and the application fee forfeited; or

(e) The examinee may not be allowed to sit for an examination for up to one year.

(3) If testing subversion is detected after the administration of the test, the agency or its designee shall make appropriate inquiry to determine the facts concerning the testing subversion and the agency or its designee may take any of the actions described in this rule.

(2) In lieu of complying with section (1) of this rule, a managing employee may satisfy the requirements of ORS 671.595 provided that the managing employee:

(a) Has completed the course and passed the test; and

(b) Has been the managing employee of another licensed landscape contracting business within two years of the date of application by the new applicant; and

(c) The license of the landscape contracting business that was previously owned by or that previously employed the managing employee has not lapsed or, if lapsed, has lapsed for not more than 24 months.

808-030-0070

Course Taking and Testing Period

(1) For course taking and testing completed on or after March 2008, the course and testing required under ORS 671.595 shall be valid for 24 months from the date the course was completed. Course taking and testing that is past the 24-month period from the date of the completed course will not be considered for the purposes of fulfilling the requirements set forth in ORS 671.595.

**DIVISION 40
CONTINUED EDUCATION REQUIREMENT**

808-040-0010**Continued Competency**

(1) To ensure continuing efforts on the part of licensed landscape construction professionals to remain current with new developments in landscape technology and to encourage better business practices and safety in the profession continuing education is required as a condition of license renewal.

(2) Continuing education requirements apply whether the renewal applicant is living or working within Oregon or outside of the state so long as Oregon licensure is maintained.

(3) It is the obligation of each licensee to select a course of study that contributes to the licensee's professional competence in landscaping work. The licensee may take programs in a variety of topics that are relevant to the licensee's area of practice.

808-040-0020**Continuing Education Biennial and Reporting Requirement**

(1) Biennial CEH requirement. To maintain licensing, a landscape construction professional:

(a) licensed for six (6) years or less must complete sixteen (16) hours of continuing education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4) and OAR 808-040-0070.

(b) licensed for more than six years must complete eight (8) hours of continuing education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4) and OAR 808-040-0070.

(2) The required hours must be completed during the two-year period immediately preceding the renewal date of the landscape construction professional license.

(3) The required hours must conform to OAR 808-040-0040.

(4) Reporting Requirement at Renewal. As a requirement of renewal of an active landscape construction professional license,

licensees are required to certify that the licensee has fulfilled the CEH requirement. (5) Licensees with even numbered licenses must report the CEH requirement by the license expiration date in even numbered years.

(46) Licensees with odd numbered licenses must report the CEH requirement by the license expiration date in odd numbered years.

(7) New Licensees. CEH requirements for new licensees are as follows:

(a) New licensees who receive an even numbered license in an odd numbered year must report 8 CEH the first reporting cycle.

(b) New licensees who receive an even numbered license in an even numbered year must report 16 CEH the first reporting cycle.

(c) New licensees who receive an odd numbered license in an even numbered year must report 8 CEH the first reporting cycle.

(d) New licensees who receive an odd numbered license in an odd numbered year must report 16 CEH the first reporting cycle.

(e) CEH obtained by new licensees during the two-year period immediately preceding the renewal date of the landscape construction professional license will be eligible to meet the initial CEH requirement.

808-040-0025**Continued Education Programs**

In order to qualify for CEH credit under these rules, a CEH program must be a formal program or board approved program of learning that contributes directly to the professional competence of the licensee

(1) Eligible Programs and Activities. The following programs will qualify for CEH credit provided they also meet the requirements of section (2) through (5) of this rule:

(a) Programs presented by national, state or local landscape industry organizations.

(b) Programs offered by a business to licensees.

(c) Programs sponsored by organizations that provide professional educational programs.

(d) Correspondence courses or other individual independent study programs and activities do not qualify for CEH credit unless both the CEH sponsor and the specific CEH program or activity are approved by the Board prior to the offering of, presentation of, attendance of, or participation in the program or activity.

(e) Volunteering activities for industry related boards, commissions, and designated committees.

(f) Making presentations or teaching courses related to approved subjects for the CEH credit.

(2) Sponsored Program and Activity requirements. Sponsored CEH programs must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider;

(e) The program is conducted by a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(f) Evidence of completion is provided to participating licensees in the form of a certificate that must include:

(A) Name of sponsoring institution, association or organization;

(B) Title of the presentation;

(C) Name of instructor or presenter;

(D) Date of presentation;

(E) Type of CEH;

(F) Number of approved CEH; and

(G) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and/or completion of the course.

(3) Correspondence and Independent Study courses. Correspondence courses or other individual independent study programs and activities must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider; and

(e) The provider of the correspondence or independent study course is a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular course.

(4) Volunteering. Education opportunities that engage the licensee in volunteering must meet the following requirements to qualify for CEH credit:

(a) One CEH credit is allowed for every three hours of qualifying volunteer work;

(b) The maximum CEH credit allowed for volunteering under this section may not exceed 4 hour in a two year period;

(c) The volunteer activity must be directly related to the landscape construction industry, such as, but not limited to:

(A) serving on industry related boards, commissions or committees; or

(B) Providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment to natural resources through landscape planning, installation and maintenance.

(5) Teaching and Presenting. Activities that engage the licensee in teaching and presenting courses must meet the following criteria to qualify for CEH credit:

(a) The licensee must be an actively licensed landscape construction professional;

(b) The licensee must have been actively licensed for a period of not less than five(5) years;

(c) An outline of the course is prepared in advance and preserved;

(d) The course must cover at least one of the topic areas listed in 808-040-0040;

(e) The course is at least one hour (fifty-minute period) in length;

(f) A record of attendance is maintained by the licensee;

(g) The course is presented for an education provider; a school, university or college; a landscape contracting business, or any industry related organization or association

(h) CEH credit is allowed for each 50 minute period completed as an instructor or discussion leader of the subject material;

(i) CEH credit for preparation and research time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CEH hours of preparation and research in the CEH type of the presentation for each hour of presenting or teaching.

(j) The maximum CEH credit allowed for preparation and research under this section must not exceed one-half of the total number of CEH hours required for the renewal period;

(k) Preparation and research CEH may be available one time only for teaching a course or making a presentation. CEH credit may be allowed for additional preparation and research if the substantive content of the program was substantially changed and the licensee provides evidence that such change required significant additional study or research.

808-040-0030

Continuing Education Credit Criteria. CEH are measured by participation time and program length with one **50-minute class period equal to one CEH credit** in most cases and will be based on the following criteria:

(1) CEH credit will be awarded for established courses taken from a recognized college or university at the rate of 1 semester course credit is equal to 15 CEH and 1 quarter course credit is equal to 10 CEH.

(2) Professional courses which meet academic requirements in content, instruction and evaluation will be assigned 1 CEH for each 50-minute class period attended. These courses must be pre-approved by the board prior to the actual presentation of the course.

(3) Courses or activities which do not meet standards as set forth in subsection (1) and (2) of this section, such as workshops, symposiums, seminars, volunteering, independent education, or any applied experience with or without formal classroom work may receive CEH credit at a rate determined by the Board during the approval process. These courses or activities must be pre-approved by the board prior to the actual presentation or participation in the course or activity.

(4) Partial completion by the licensee for programs, courses or classes will not be granted CEH and are not subject to being prorated.

808-040-0040

Acceptable Subject Matter

The subjects listed in this rule serve as examples only, and are not all-inclusive.

(1) Technical Subjects. Subjects that may qualify for technical subjects include, but are not limited to:

(a) The construction and installation techniques for lawns, trees, vines, shrubs, nursery stock, erosion control, retaining walls, patios, decks, fences, driveways, walkways, arbors, landscape edging, drainage systems, water features, low voltage lighting, irrigation systems including backflow and backflow testing; and

(b) Subjects related to soil science, pesticide application; landscape design; landscape architecture; arboriculture; or horticulture; and

(c) Subjects related to landscape practices for sustainability and environmental issues including but not limited to:

(A) Storm water management,

(B) Living soils management;

(C) Water-wise site design and principles;

(D) Smart technologies;

(E) Low volume irrigation installation and management; or

(F) Integrated pest management.

(d) Preparation and Research for teaching or presenting; or

(e) Any other subject the Board determines applicable.

(2) Business Practice Subjects. Subjects that may qualify for business related subjects are:

(a) accounting (cash flow, budgeting, pricing);

(b) business law (liens, tax, employment, etc);

(c) production and operation management;

(d) client communication;

(e) human resource management;

(f) business management, marketing;

(g) business ethics;

(h) leadership;

(i) storm water management;

(j) smart technologies;

(k) integrated pest management; or

(L) Preparation and research for teaching or presenting; or

(m) Any other subject the Board determines applicable.

(3) Other Acceptable Subjects. Subjects that may qualify as other subjects include, but are not limited to:

- (a) safety meetings;
- (b) voluntary OSHA inspections;
- (c) first aid training;
- (d) classroom or seminar teaching of related subjects;
- (e) serving as a volunteer on landscape related Boards and Commissions or designated committees;
- (f) providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment or natural resources through landscape planning, installation and maintenance; or
- (g) any other subject the Board determines applicable.

808-040-0050

Program Approval Process.

(1) Pre-approval Process. Programs offered by any institution, agency, professional organization or association, which conducts educational meetings, workshops, symposiums, seminars and other such activities where a CEH credit is desired must be approved by the Board prior to the presentation of the program and prior to the attendance by a licensee. The written request for the issuance of CEH credit must:

- (a) Be received on a form provided by the Board at least 30 calendar days prior to the presentation date (unless otherwise approved by the agency Administrator) and include:
 - (A) Name of sponsoring institution, association or organization;
 - (B) Title of the presentation;
 - (C) Date of presentation;
 - (D) Topic covered from list in 808-040-0040;
 - (E) A written outline of the program;
 - (F) The length of the program in hours;
 - (G) Name of instructor or presenter;
 - (H) Type of CEH requested;
 - (I) Copy of the certificate to be given to each attendee with the signature of the instructor or presenter or the official stamp of the sponsor on the certificate. If more than one presenter is authorized to sign, then the signatures of each presenter must be on the certificate or on copies of the certificate; and
 - (J) Contact information for the provider which must include the address, phone number,

fax number and email (if available) for the provider.

(b) Upon receipt of all documentation required in subsection (1) of this rule the board will review the request and notify the provider by either email or regular mail the determination of the CEH allowed by the board.

(2) Other Approval Process. In the event a landscape construction professional attends a program that is not pre-approved as outlined in section (1) above, or claims credit for teaching/presenting or volunteering:

(a) The landscape construction professional may request approval of the attended program by submitting written documentation no later than 180 days after the date the program was attended that includes:

- (A) Name of sponsoring institution, association or organization;
- (B) Topic of the presentation;
- (C) Title of the presentation;
- (D) Name of instructor or presenter;
- (E) Date of presentation;
- (F) Length of presentation in hours;
- (G) Type of CEH; and
- (H) Number of CEH claimed.
- (I) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and completion of the course.

(b) The board, after reviewing the submitted documentation, will determine:

- (A) If the program meets the conditions for the CEH requirement; and
- (B) The number of CEH allowed for the program, if any.

808-040-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) To ensure adequate proof of continuing education course completion is available for audit or investigation by the Landscape Contractors Board the licensees shall maintain a record of attendance for two years following renewal.

(2) The Landscape Contractors Board will audit a select percentage of renewals determined by the Board to verify compliance with continued education hour requirement at intervals determined by the Board.

(3) Licensees notified of selection for audit of continuing education verification shall submit to the agency within 21 calendar days from the

date of issuance of the notification, satisfactory documentation of completing the required continuing education outlined in OAR 808-040-0020.

(4) **Documentation for a preapproved program** or preapproved course provided by any institution, agency, professional organization or association, must be a certificate issued by the program provider and approved by the Landscape Contractors Board which includes:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation;
- (c) Date of attendance;
- (d) Type of CEH;
- (e) Number of approved CEH; and
- (f) Instructor's, presenter's or sponsor's signature or official stamp signifying attendance and completion of the course.

(5) **Documentation for independent study course**, volunteering and other non-sponsored education must be an approval form issued pursuant to a CEH approval request made by the licensee under OAR 808-040-0050(2).

(6) **Documentation for attending an accredited educational institution** must be in the form of an official transcript showing the length of the academic term.

(7) Documentation for programs that were not pre-approved or claims for credit for teaching/presenting or volunteering must be an approval form issued pursuant to a CEH approval request made by the licensee under OAR 808-040-0050(2).

(8) The Board may perform an audit on any licensee at any time the board determines necessary to maintain compliance with the CEH requirement.

(c) Other good cause, to be demonstrated as the Board requests.

(2) Requests for waivers. A request for waiver of CEH requirements must be submitted in writing for each renewal period during which the conditions supporting the waiver exist.

808-040-0070

Waivers

(1) CEH waivers. The Board, in its discretion, may waive CEH requirements for:

- (a) Reasons of health, certified by a medical doctor, that prevents the licensee from complying with CEH requirements;
- (b) A licensee who is on extended active military duty, who does not practice as a landscape construction professional during the renewal period, and who provides a copy of orders to active military duty; or

808-040-0080**CEH Requirement for Reinstatement to Active Status**

- (1) Except as provided for in subsection (2) of this section any licensee that reinstates an inactive or expired landscape construction professional license to active status must:
- (a) Comply with OAR 808-003-0255;
 - (b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the required hours obtained within the two years immediately preceding the renewal date of the landscape construction professional license; and
 - (c) Meet the CEH requirement for each subsequent renewal period.
- (2) Any licensee that reinstates an expired landscape construction professional license to active status more than 14 days after the expiration of the license and the license was subject to audit prior to its expiration, the licensee must submit documentation as per the audit requirement of OAR 808-040-0060.