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Oregon Administrative Rules

Construction Contractors Board
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Chapter 812: Construction Contractors

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CONSTRUCTION CONTRACTORS BOARD OF THE STATE OF OREGON
ADMINISTRATIVE RULES
OAR CHAPTER 812

DIVISION 1

ADMINISTRATION

[**812-001-0000** Amended and renumbered to 812-001-0100, 12/05]

[**812-001-0001** Amended and renumbered to 812-001-0110, 12/05]

[**812-001-0003** Amended and renumbered to 812-001-0120, 12/05]

[**812-001-0007** Amended and renumbered to 812-001-0130, 12/05]

[**812-001-0010** Amended and renumbered to 812-001-0140, 12/05]

[**812-001-0015** Amended and renumbered to 812-001-0160, 12/05]

[**812-001-0020** Amended and renumbered to 812-001-0200, 12/05]

[**812-001-0022** Amended and renumbered to 812-001-0300, 12/05]

[**812-001-0023** Amended and renumbered to 812-001-0305, 12/05]

[**812-001-0024** Amended and renumbered to 812-001-0310, 12/05]

[**812-001-0025** Amended and renumbered to 812-001-0051, 12/05]

812-001-0030
Ethics Policy

The Construction Contractors Board adopts the agency's ethics policy number 1-3 revised September 22, 1998.

Stat. Auth.: ORS 244.040
Stats. Implemented: ORS 244.040
(3/84, 5/84, 1/89, 11/89, 2/92, 4/92, 3/99, 12/05)

[**812-001-0040** Amended and renumbered to 812-001-0500, 12/05]

[**812-001-0050** Amended and renumbered to 812-001-0510, 12/05]

812-001-0051
Rules of Procedure for Board Meetings

The Construction Contractors Board adopts the following rules of procedure for Board and Committee meetings.

(1) The current edition of Sturgis Standard Code of Parliamentary Procedure shall govern the procedures of the Board and Committees in all parliamentary situations that are not otherwise provided for by law or by Board rules.

(2) A quorum must be present for the Board or Committee meeting to be called to order and to make decisions. A majority of affirmative votes among the members present are required for any official action or decision. Except in cases where a member's vote would result in a prejudiced, biased, or unfair decision or action, no member shall abstain from voting.

(3) In accordance with applicable governing statutes, the chair shall establish the time, date, and place for the Board and Committees to convene. Proper notice of all meetings, hearings, and matters requiring notice shall be given to the members of the Board, the news media, and all interested persons requesting notice.

(4) The chair shall work with the Board Administrator to determine the substance of the agenda for each meeting. The order of business for Board meetings, unless otherwise determined by the chair, shall be:

(a) Call to order.
(b) Approval of agenda and order of business.
(c) Approval of minutes of previous meetings and previous Appeal Committee meetings.
(d) Consideration of cases on appeal and oral argument, if any.
(e) Report of Administrator and staff.
(f) Unfinished business.
(g) New business.
(h) Public comment.
(i) Announcements.
(j) Adjournment.

(5) Members of the public wishing to testify shall sign an attendance form.

(6) If any person engages in disruptive conduct at a meeting, such conduct shall be grounds for the chair to expel the person from the meeting.

(7) All actions and decisions of the Board and Committees shall be fully and accurately recorded on tape. Records are a part of the public record, and shall be available for inspection by the public.

(8) Board members and guests shall address the chair, identify themselves for the sound recording, and receive recognition before speaking.

(9) No motion shall require a second.

(10) The chair shall exercise all the rights and duties of other members, including the right to introduce motions and proposals and to speak and vote on them while presiding.

(11) No member of the Board shall speak or act on behalf of the Board without specific authorization by law or by the Board. The Board shall not delegate its statutory rulemaking authority, except to an officer or employee within the agency who shall be authorized in writing by the Board to adopt temporary rules.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 192.630 & 701.215

(3/84, 5/84, 3/87, 12/87, 1/88, 1/89, 11/89, 1/95, 11/97, 12/05)

(Amended and renumbered from 812-001-0025, 12/05)

812-001-0100
Notice of Proposed Rule

Except as provided in OAR 812-001-0110, before adopting, amending, or repealing any permanent rule, the Construction 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 or emailing a copy of the notice to persons on the Construction Contractors Board's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of rule.

(3) By mailing or emailing a copy of the notice at least 28 days before the effective date of the rule to the:

(a) Associated Press;

(b) Oregon Labor Press;

(c) Capitol Press Room, State Capitol;

(d) Oregon Consumer League; and

(e) Oregon Department of Health.

(4) By mailing or emailing a copy of the notice to legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.335, 183.341, 670.310 & 701.235

(12/75, 1/78, 5/78, 6/80, 11/80, 1/82, 3/82, 4/82, 3/87, 12/87, 1/88, 1/89, 11/89, 2/92, 4/92, 1/95, 11/97, 4/98, 10/98, 12/01, 2/04, 12/05, 6/08)

(Amended and renumbered from 812-001-0000, 12/05)

812-001-0110
Temporary Rule

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

Stat. Auth.: ORS 183.325 & 701.235

Stats. Implemented: ORS 183.325 & 701.235

(3/87, 12/87, 1/88, 1/89, 11/89, 12/05)

(Amended and renumbered from 812-001-0001, 12/05)

812-001-0120
Uniform and Model Rules

The Construction Contractors Board adopts the Attorney General's Model Rules of Procedure, OAR 137-001-0005 to 137-005-0070, revised January 31, 2012.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.341

(6/80, 11/80, 1/82, 3/82, 4/82, 10/82, 1/83, 2/83, 3/83, 7/83, 3/84, 5/84, 1/86, 5/86, 3/88, 11/88, 12/88, 1/89, 11/89, 4/90, 10/90, 11/90, 2/92, 3/92, 4/92, 5/92, 7/92, 8/92, 12/92, 1/94, 6/94, 7/94, 6/95, 6/96, 11/97, 3/99, 9/01, 10/04, 12/05, 3/06, 4/08, 4/12 eff. 5/1/12)

(Amended and renumbered from 812-001-0003, 12/05)

812-001-0130
Disposal of Large Objects Submitted as Exhibits

Large objects submitted with a complaint or as exhibits in a hearing or arbitration may be returned to the custody of the submitting party or disposed of by the agency after 90 calendar days following the date of the final order.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145

(10/98, 12/05, 12/06)

(Amended and renumbered from 812-001-0007, 12/05)

812-001-0135
Receipt Date of Documents

Any document delivered to the agency, including documents delivered by mail, fax, e-mail, or any other type of delivery, before or at 12:00:00 midnight will be considered received on the day of delivery ending at midnight. Any document delivered to the agency after 12:00:00 midnight will be considered received on the day of delivery beginning immediately after midnight.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(12/06)

812-001-0140
Response Time to Notices

(1) Time for response to a notice delivered pursuant to ORS 701.117 shall run from the date of mailing.

(2) OAR 137-003-0520(11) 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.

Stat. Auth.: ORS 183.415, 670.310 & 701.235

Stats. Implemented: ORS 183.415 & 701.117

(6/76, 7/76, 1/78, 5/78, 6/80, 11/80, 1/83, 3/83, 3/84, 5/84, 3/87, 12/87, 1/88, 1/89, 11/89, 1/91, 2/91, 2/92, 4/92, 10/98, 5/02, 10/04, 12/05, 6/08, 4/12 eff. 5/1/12)

(Amended and renumbered from 812-001-0010, 12/05)

812-001-0160
Requests for Information; Charges for Records

(1) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:

(a) License numbers.

(b) Name of licensed entity and any assumed business names on file with the agency.

(c) Type of business entity.

(d) Category of license.

(e) Class of independent contractor license status.

(f) Personal names of owner, partners, joint venturers, members, corporate officers, or trustees.

(g) The dates in the license history and the action that took place on those dates.

(2) The agency may make the following charges for records:

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

(b) $20 for certified copies of each file or of set of documents certified under one cover or of any other document.

(c) $5 for the first 20 copies made and 25 cents per page thereafter.

(d) $20 for duplicate audio recordings of, Board meetings and Appeal Committee meetings.

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

(f) $10 per half-hour unit or portion of a half-hour unit for researching, copying or preparing records for each request from a person beginning with the 31st minute of research or copying time.

(g) $40 for an electronic copy of computer-maintained data containing information on CCB licensees.

(h) $140 for a paper copy of computer-maintained data containing information on CCB licensees.

(i) $40/month for an electronic copy of computer-maintained data containing information on CCB mailings of application packets, provided once during the month.

(j) $50/month for electronic copies of computer-maintained data containing information on CCB mailings of application packets, provided on a weekly basis.

(k) $140/month for a paper copy of computer-maintained data containing information on CCB mailings of application packets, provided once during the month.

(l) $150/month for a paper copy of computer-maintained data containing information on CCB mailings of application packets, provided on a weekly basis.

(m) $5 for a 3.5-inch computer disk or compact disk (CD) if documents are stored on the agency's computer system. Requestors may not provide disks for electronic reproduction due to the possibility of computer viruses.

(n) The actual cost for material and equipment used in producing copies of non-standard sized records.

(o) The actual cost for delivery of records, for example, postage, courier fees or the cost of transmitting a facsimile long-distance.

(p) Actual attorney fees charged to CCB for the cost of time spent by its attorney (ordinarily provided by the Oregon Department of Justice) to review public records, redact materials from public records or segregate public records into exempt and nonexempt records. The charge will not include attorney fees incurred in determining the application of ORS 192.410 to 192.505.

Stat. Auth.: ORS 293.445, 670.310 & 701.235

Stats. Implemented: ORS 192.430, 293.445, 701.235 & 701.250

(1/83, 3/83, 3/84, 5/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 2/89, 6/89, 7/89, 11/89, 2/90, 5/90, 6/90, 2/92, 4/92, 2/95, 9/95, 5/96, 5/97, 4/98, 9/98, 3/99, temp. 6/99, 9/99, 6/00, 12/00, 12/01, 5/02, 2/04, 12/04, 8/05, 12/05, 5/06, 6/07, 4/08, temp. 8/08, 9/08)

(Amended and renumbered from 812-001-0015, 12/05)

812-001-0180
Refunds; NSF Check Charge

(1) The agency shall refund a fee or civil penalty paid to it in excess of the amount legally due if the agency, within three years of the date of payment, determines that it received excessive payment.

(2) After three years, the agency may refund a fee or civil penalty paid to it in excess of the amount legally due, if requested to do so by the person who made the excessive payment.

(3) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of $25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445, 670, 310 & 701.235

Stats. Implemented: ORS 293.445 & 701

(5/06, 6/10)

(formerly 812-001-0160(7))

812-001-0200
Consumer Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled "Information Notice to Owner About Construction Liens," as revised January 1, 2010. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under ORS 701.330(1), the board adopts the form "Consumer Protection Notice" as revised April 26, 2011.

(3) In order to comply with the requirement to adopt an "Information Notice to Property Owners About Construction Responsibilities" form under ORS 701.325(3), the board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised September 23, 2008.

(4) In order to comply with the requirement to adopt a notice of procedure form under ORS 701.330(2), the board adopts the form "Notice of Procedure" dated December 4, 2007.

(5) The board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as revised December 1, 2010.

(6) The board adopts the form "Model Features for Accessible Homes" dated December 4, 2007.

(7) The board adopts the form "Home Inspection Consumer Notice" dated October 27, 2009.

Stat. Auth.: ORS 87.093, 670.310, 701.235, 701.325, 701.330 & 701.530

Stats. Implemented: ORS 87.007, 87.093, 701.235, 701.325, 701.330 & 701.530

(4/81, 11/81, 1/82, 3/82, 6/82, 1/83, 1/83, 3/83, 3/83, 10/83, 2/87, 7/87, 1/89, 11/89, 5/92, 7/92, 8/92, 3/99, 9/99, temp. 5/00, 8/00, 6/02, 12/02, temp. 3/03, 6/03, 12/03, temp. 12/03, temp. 12/03, 2/04, 5/04, temp. 6/04, 8/04, 12/05, temp. 1/06, 3/06, 6/07, 12/07, temp. 1/08, 4/08, 9/08, temp. 2/09, 5/09, 11/09 eff. 1/1/10, 2/10, temp. 12/10, 4/11 eff. 5/1/11)

(Amended and renumbered from 812-001-0020, 12/05)

812-001-0220

Unpaid Court Judgment Form Adoption

The Construction Contractors Board adopts the form "Unpaid Court Judgment Filing With the CCB (ORS 701.109)".

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.109

(5/09)

[812-001-0240 Amended and renumbered to 812-012-0120 9/08)

[812-001-0300 Renumbered to 812-012-0140 9/08]

[812-001-0305 Amended and renumbered to 812-012-0145 9/08]

[812-001-0310 Renumbered to 812-012-0150 9/08]

812-001-0500

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 192.710. 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 Construction Contractors Board in which the parties to the mediation are parties to a complaint or arbitration filed under ORS 701.131 to 701.145, 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."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 812-001-0500(7) and this agreement. This agreement relates to the following mediation:

a) _____

(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 812-001-0500(7), mediation communications in this mediation are: (check one or more)

☐ Confidential and may not be disclosed to any other person.

☐ Not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding.

☐ 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 administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.

c) _____

Name of Agency

_____ _____

Signature of Agency's authorized representative (when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute) Date

d) _____

Name of party to the mediation

_____ _____

Signature of party's authorized representative Date

e) _____

Name of party to the mediation

_____ _____

Signature of party's authorized representative Date

(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 section (9) of this rule 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 the 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 17.095 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.

Stat. Auth.: ORS 36.224, 670.310 & 701.235

States. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

(3/99, 5/02, 12/04, 12/05, 12/06, 6/08)

(Amended and renumbered from 812-001-0040, 12/05)

812-001-0510

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 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) 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.

Stat. Auth.: ORS 36.224, 670.310 & 701.235

Stat. Implemented: ORS 36.230(4)

(3/99, 12/05)

(Amended and renumbered from 812-001-0050, 12/05)

DIVISION 2

DEFINITIONS

[**812-002-0000** Repealed 5/02]

812-002-0001
Applicant
"Applicant" has the same meaning as licensee.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701
(8/05)

812-002-0002
Application of Definitions
Unless other wise provided, definitions in this division apply to the rules in this chapter and statutes in ORS chapter 701.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS chapter 701
(5/02)

[**812-002-0010** Repealed 5/00]

812-002-0011
Administrative Law Judge
"Administrative law judge" means a person authorized to conduct hearings for the Office of Administrative Hearings.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.145 & 701.146
(8/03, 6/08)

812-002-0020
Agency
"Agency" means the administrative agency including the staff of the Construction Contractors Board.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.515
(4/98)

812-002-0035
Appeal Committee
"Appeal Committee" means the appeal committee appointed under ORS 701.260.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.260
(4/01)

812-002-0040
Appurtenance
"Appurtenance" means any accessory improvement to real estate associated with a structure.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 656.027, 701.005, 701.139, 701.145, 701.146 & 701.325
(4/98, 12/05, 6/08)

812-002-0060
Bid
"Bid" as used in ORS 701.021 does not include a prospectus for an art project.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 279C.460 & 701
(4/98, 12/05, 11/08, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-002-0080
Board
"Board" means the nine-member appointed Construction Contractors Board.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 87.058, 87.093 & 701
(4/98)

812-002-0100
Building Trades or Crafts
"Building trades or crafts", as used in ORS 701.005(7)(a) and these rules, means the following special trade contractors as defined by the four-digit codes in the 1987 Standard Industrial Classification Manual:
(1) Building trade contractors including:
(a) 1711 – Plumbing, Heating and Air Conditioning.
(b) 1721 – Painting and Paper Hanging.
(c) 1731 – Electrical Work.
(d) 1741 – Masonry, Stone Setting and Other Stone Work.
(e) 1742 – Plastering, Drywall, Acoustical and Insulation Work.
(f) 1743 – Terrazzo, Tile, Marble, and Mosaic Work.
(g) 1751 – Carpentry Work.
(h) 1752 – Floor Laying and Other Floor Work.
(i) 1761 – Roofing, Siding and Sheet Metal Work.
(j) 1771 – Concrete Work.
(k) 1791 – Structural Steel Erection.
(l) 1793 – Glass and Glazing Work.
(m) 1794 – Excavation Work.
(n) 1795 – Wrecking and Demolition Work.
(o) 1796 – Installation or Erection of Building Equipment Not Elsewhere Classified.
(p) 1799 – Special Trade Contractors, Not Elsewhere Classified.
(2) Heavy construction (other than building construction) contractors, when the contractor is performing as a subcontractor, including:
(a) 1611 – Highway and Street Construction.
(b) 1622 – Bridge, Tunnel and Elevated Highways.
(c) 1623 – Water, Sewer, Pipeline and Communication and Power Line Construction.
(d) 1629 – Heavy Construction, Not Elsewhere Classified.
(3) Other
(a) 0783 – Tree Service.
(b) 7342 – Pest Control.
(c) 7363 – Chimney and other structural cleaning.
(d) 7389 – Inspection Services.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005 & 701.013
(4/98, 9/01, 6/03, 12/05, 4/12 eff. 5/1/12)

812-002-0120
Casual, Minor or Inconsequential

(1) "Casual, minor or inconsequential" as used in ORS 701.010(4) means work:

(a) That does not require a permit;

(b) That does not affect the health or safety of the owner or occupant of the structure;

(c) For which the aggregate contract price for all work on one structure or project is less than $1,000; and

(d) That does not include work done as a subcontractor to a licensee.

(2) Work involving lead-based paint abatement, inspection, renovation or risk assessment of child-occupied facilities or target housing, as those terms are defined in OAR 812-007-0020, affects the health and safety of owners and occupants and is not "casual, minor or inconsequential" work.

Stat. Auth.: ORS 670.310 and 701.235
Stats. Implemented: ORS 656.027 and 701.010
(4/98, 6/00, 12/13 eff. 1/1/14, 6/14 eff. 7/1/14)

[**812-002-0130** Repealed 12/06]

812-002-0140
Complaint

"Complaint," as used in OAR chapter 812, means a complaint filed and processed under ORS 701.131-701.180. Complaints are classified by type as follows:

(1) "Construction lien complaint" is a complaint filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien filed by an employee, supplier or subcontractor because the primary contractor did not pay the employee, supplier or subcontractor.

(2) "Employee complaint" is a complaint for unpaid wages or benefits filed by an employee of a licensee or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a licensee for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 701.

(3) "Employee trust complaint" is a complaint for unpaid payments for employee benefits filed by a trustee with authority to manage and control a fund that receives the employee benefit payments.

(4) "Material complaint" is a complaint filed by a supplier who has not been paid for materials sold to a licensee to be used and installed in a specific structure located within the boundaries of the State of Oregon, or for the rental of equipment to a licensee to be used in the performance of the work of a contractor in connection with such a structure.

(5) "Owner complaint" is a complaint filed by an owner for breach of contract, or for negligent or improper work subject to ORS chapter 701, or a construction lien complaint.

(6) "Primary contractor complaint" is a complaint by a primary contractor against a licensed subcontractor.

(7) "Subcontractor complaint" is a complaint filed by a subcontractor arising out of a contract between the subcontractor and a primary contractor for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 87.058, 87.093 & ch. 701
(4/98, 6/00, 5/02, 10/04, 12/06, 12/07, 6/08, 6/10)

812-002-0143
Complainant

"Complainant" means a person who files a complaint against a contractor under ORS 701.131 to 701.180.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.131 to 701.180
(12/06, 12/07, 6/08)

812-002-0160
Construction Management

"Construction management" is the coordinating of a construction project, including, but not limited to, selecting contractors to perform work on the project, obtaining permits, scheduling specialty contractors' work, and purchasing materials. "Construction management" does not include consulting work performed by a registered engineer or a licensed architect when operating as provided by ORS 701.010(8).

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005, 701.021, 701.026 & 701.238
(4/98, 12/05, 6/08, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-002-0170
Contractor

"Contractor" has the same meaning as that term is given in ORS 701.005. Contractors include persons who are and who are not licensed under ORS chapter 701.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(12/07)

812-002-0180
Contractor Became Aware of the Requirement

"Contractor became aware of the requirement" (to license) as used in ORS 701.131 includes but is not limited to the date a letter or a proposed order is mailed to the address of record from the agency indicating that the contractor was performing the work of a contractor and must be licensed with the Construction Contractors Board.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.131
(4/98, 6/00, 6/08)

812-002-0190
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.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183.415, 183.460 & 701.131-701.180
(10/98, 10/04, 12/05, 6/08)

812-002-0200
Date the Contractor Becomes Aware of a Lapse in License

"Date the contractor becomes aware of a lapse in license" includes but is not limited to the date a notice is mailed to the address of record from the Construction Contractors Board that his/her license has been suspended, terminated or lapsed for any reason.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063 & 701.131
(4/98, 6/00, 12/03, 6/08)

812-002-0220
Date Contractor Incurred Indebtedness

"Date the contractor incurred the indebtedness" as used in ORS 701.143, has the following meanings:

(1) For a material complaint, this date is the date of delivery or the date the purchaser takes possession of the materials that are the subject of the complaint. If the delivery date is unknown, the date of the invoice applies except in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness.

(2) For an employee complaint or employee trust complaint, this date is the date the employee performed the work that is the subject of the complaint.

(3) For a subcontractor complaint, this date is the date the subcontractor ceases to perform the work at issue in the complaint, substantially completes the work or submits a request for payment for the work, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.143 & 701.145
(4/98, 12/01, 6/05, 6/07)

812-002-0230
Days

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS chapter 701
(5/02)

[**812-002-0240** Repealed 12/03]

812-002-0250
Direct Contractual Relationship

"Direct Contractual Relationship" as used in OAR 812-004-0320 or 812-004-1320 has the following meanings:

(1) For an owner, construction lien or primary contractor complaint, "direct contractual relationship" means a relationship created by a contract between the complainant and the respondent providing that the respondent perform construction work in return for valuable consideration conveyed directly from the complainant to the respondent.

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.235
(10/04, 12/06, 4/12 eff. 5/1/12)

812-002-0260
Dishonest or Fraudulent Conduct

"Dishonest or fraudulent conduct", as used in ORS 701.098(1)(L) and (4)(a)(D) includes, but is not limited to, the following:

(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or

(2) Failing to pay monies when due for materials or services rendered in connection with the applicant's or licensee's operations as a contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide 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

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

(5) Submitting a license application that includes false or misleading information; or

(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; or

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

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279C.800 to 279C.870; or

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

(10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.

(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.

(12) 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.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.098
(4/98, 6/00, temp. 9/00, 12/00, 12/01, 5/02, 6/03, 12/04, 12/05, 5/06, 6/08, 12/11 eff. 1/1/12)

812-002-0262
Engaged in the Commercial Harvest of Forest Products

"Engaged in the commercial harvest of forest products" as used in ORS 701.005(5)(e) means engaged in buying or selling fallen trees, logs, poles or pilings. "Engaged in the commercial harvest of forest products"

does not mean masticating, chipping or mulching trees or brush on site.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(1/09 eff. 2/1/09)

812-002-0265
Exercises Management or Supervisory Authority Over the Construction Activities of the Business

"Exercises management or supervisory authority over the construction activities of the business" as used in ORS 701.005 means meaningfully participating in:

(1) The administration of construction contracts performed by the business; or

(2) The administration of the day-to-day operations of the business.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(12/07)

812-002-0275
Family Members

"Family members" mean members of the same family and are parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, or grandchildren.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701
(8/05)

812-002-0280
For Compensation or With the Intent to Sell

"For compensation or with the intent to sell" as used in ORS 701.005 is not intended to include real estate licensees engaged in professional real estate activities as defined in ORS 696.010(13).

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005, 701.010, 701.021, 701.026 & 701.131
(4/98, 6/03, 6/08, 9/11 eff. 10/1/11)

812-002-0300
Gardener

"Gardener" as used in ORS 701.005 means a person who cares for plots of ground where herbs, fruits, flowers, or vegetables are cultivated, including the removal of trees up to 15 feet in height when the diameter of the tree is four inches or less at ground level, and removal of tree limbs up to 15 feet above ground level when the diameter of the limb is three inches or less.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(4/98, 12/01)

812-002-0320
General Contractor

"General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises, subcontracts to be performed or performs in whole or in part.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701
(4/98, 2/08, 12/10 eff. 1/1/11)

812-002-0325
Good Cause

"Good cause" as used in ORS 279C.585 exists if the prime contractor that substituted an undisclosed first-tier subcontractor can show that a reasonable person with the knowledge possessed by the prime contractor when the substitution was made would have concluded that:

(1) The substitution was consistent with, and did not violate, public policy expressed in ORS 279C.305, that public agencies shall make every effort to construct public improvements at the least cost to the public; and

(2) One or more of the following facts was true:

(a) The subcontractor was financially unstable.

(b) The subcontractor had an unacceptable performance history on past contracts.

(c) The subcontractor had an unacceptable history of untimely performance.

(d) The subcontractor had an unacceptable history of filing excessive claims and lawsuits on past contracts.

(e) The subcontractor had an unacceptable work safety record.

(f) The subcontractor did not have sufficient human resources to do the work required under contracts entered into by the subcontractor.

(g) The subcontractor failed or refused to meet insurance requirements of the prime.

(h) The subcontractor failed or refused to meet requirements of ORS 279C.505(2).

(i) The subcontractor's ability to successfully perform the project and protect the guarantees placed by the prime contractor was substantially jeopardized.

Stat. Auth.: ORS 670.310 & ORS 701.235
Stats. Implemented: ORS 279C.585
(12/01, 3/02, 12/05)

[**812-002-0330** Repealed 8/03]

[**812-002-0335** Repealed 8/03]

[**812-002-0340** Repealed 12/05]

812-002-0345
Hours of Training

"Hours of Training" as used in OAR 812-006-0200 to 812-006-0250 of these rules refers to clock hours, not credit hours. "Hours of training" does not include time spent for registration or breaks.

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.091 & 701.122
(9/06, 6/08)

812-002-0350
Individual

"Individual", as used in ORS chapter 701, means a natural person.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701
(12/05)

812-002-0360
Inspect

"Inspect", as used in ORS 701.005(5), means the examination of a structure or its appurtenances for the purposes of determining the condition of the structure, identifying construction faults, exposing potential maintenance problems, assessing life expectancy, and/or estimating repair costs, and does not include pest control examinations for non-wood-destroying organisms and does not include pest control examinations for wood destroying organisms except when conducted as part of an inspection for the transfer of real estate.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(4/98, 12/05, 4/12 eff. 5/1/12)

812-002-0380
Insurance

"Insurance" required under ORS 701.073 means public liability, personal injury and property damage insurance covering the work of the contractor, including coverage of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 670.600, 701.073
(4/98, 2/04, 2/08)

812-002-0390
Key Employee

"Key employee" means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson, lead person or any other person who exercises management or supervisory authority over the construction activities of the business.

Stat. Auth.: ORS 670.310, 701.124 & 701.235
Stats. Implemented: 701.124
(temp. rule 5/10, 8/10 eff. 9/1/10)

812-002-0400
Labor

"Labor" as used in ORS 701.140 means work subject to ORS chapter 701 performed as an employee of a licensee.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.140 & 701.150
(4/98, 6/00, 12/01)

812-002-0420
Lapse in License

"Lapse in license" as used in ORS 701.063(4), 701.131(2)(b), 701.225(6)(b) and OAR chapter 812 commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed, reissued or reinstated by the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063, 701.131 & 701.225
(4/98, 6/00, 6/03, temp. 7/03, 12/03, 12/05, 12/07, 6/08, 11/08, 5/09)

812-002-0430
Large Commercial Structure

"Large commercial structure" has the meaning given that phrase in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005 & 701.146
(12/01, 12/05)

812-002-0440
Last-Known Address of Record

(1) "Last-known address of record" for a contractor, as used in ORS 701.117, or for a complainant means the most recent of:

(a) The mailing address provided by the contractor or complainant in writing to the agency, designated by the contractor or complainant as the contractor's or complainant's mailing address; or

(b) The forwarding address for the contractor or complainant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a "last known address of record" until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.117
(4/98, 3/99, 12/03, 12/06, 6/08)

812-002-0443
Legal Capacity to Enter into Contracts

"Legal capacity to enter into contracts" as used in ORS 701.046(3)(b), means the attaining of the age of 18 for any sole proprietor, partner of any general partnership, limited liability partnership, limited partnership or joint venture, corporate officer, member, or any other persons similarly situated who holds or could hold the authority to enter into a contract on behalf of the licensed entity.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.046
(12/01, 12/05, 6/08, 3/12)

812-002-0450
Licensee

"Licensee" shall include the:

(1) Sole proprietor that makes application to license or subsequently operate the sole proprietorship;

(2) Partnership or limited liability partnership and the partners who make application to license or subsequently operate the partnership or limited liability partnership;

(3) Joint venture and the joint venturers who make application to license or subsequently operate the joint venture;

(4) Limited partnership and the general partners who make application to license or subsequently operate the limited partnership;

(5) Limited liability company and the members who make application to license or subsequently operate the limited liability company;

(6) Corporation and the corporate officers who make application to license or subsequently operate the corporation; or

(7) Trust and the trustees who make application to license or subsequently operate the trust.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(6/00, 8/05)

812-002-0460

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 complainant what was agreed to be provided under the terms of the contract minus any amount due and unpaid the licensee; or

(2) The dollar amount paid to the licensee less the reasonable value of any work properly performed by the licensee, plus the cost to demolish work that has no value, and to restore the property to the condition it was in before work began.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.068 & 701.140

(4/98, 6/00, 6/08)

812-002-0480

Nature or Complexity

"Nature or complexity" 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 construction complaint;

(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.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

(4/98, 3/03, 12/06)

812-002-0500

Nurseryman

"Nurseryman" as used in ORS 701.005 means any person who cares for nursery stock for sale, as defined in ORS 571.005(5).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005 & 571.005

(4/98, 12/01)

812-002-0520

Occupancy

"Occupancy" may occur at the time of but not be limited to the first occurring of any of the following events: a majority of furniture and personal belongings is moved in, utility service begins, certificate of occupancy is issued, resident prepares meals and remains overnight.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.143

(4/98, 12/05)

812-002-0530

Office of Administrative Hearings

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.146

(8/03, 5/04, 10/04, 6/08)

812-002-0533

Officer

(1) "Officer", as used in ORS chapter 701 and these rules means:

(a) A person described as an "officer" in ORS 701.005;

(b) A partner in a partnership, or limited liability partnership;

(c) A responsible managing individual described in ORS 701.091; or

(d) A person who has a financial interest in a business and manages or shares in the management of the business; or

(2) "Officer", as used in ORS chapter 701 and these rules, includes an individual who has a financial interest in another business and who is an officer of that other business if that other business owns more than fifty percent of the particular business.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.091

(12/05, 5/06, 6/08)

812-002-0537

Owner

"Owner", as used in ORS 701.005, 701.046, 701.094, 701.098, 701.102, 701.227 and OAR 812-005-0210, means:

(1) A person described as an "owner" in ORS 701.094;

(2) A general partner in a limited partnership;

(3) A majority stockholder in a corporation;

(4) A manager in a manager-managed limited liability company;

(5) A member in a member-managed limited liability company; or

(6) A person who has a financial interest in a business and manages or shares in the management of the business.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, 701.010, 701.046, 701.094, 701.098 & 701.227

(12/05, 6/06, 12/06, 6/08)

812-002-0540
Owner of a Structure

(1) "Owner of a structure" means a person not required to be licensed under ORS chapter 701 who:

(a) Has a structure built by contractor;

(b) Purchases or enters into an agreement to purchase a structure from a contractor or developer; or

(c) Owns, leases, or rents a structure on which alterations or repairs are being or have been made.

(2) "Owner of a structure" may also include:

(a) An association of unit owners that files a complaint related to the common elements of a condominium, as those phrases are defined in ORS 100.005.

(b) The following agents of persons described in section (1) of this rule:

(A) Property managers licensed under ORS chapter 696; or

(B) A person who is acting on behalf of an incapacitated person, based on guardianship, power of attorney, or other legal representation.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010, 701.140 & 701.225

(4/98, 6/00, 9/01, 5/02, temp. 9/03, 12/03, 12/05, 12/06)

[**812-002-0555** Repealed 12/05]

[**812-002-0560** Repealed 12/01]

812-002-0580
Person

"Person" means:

(1) An individual, including, but not limited to a self-employed individual;

(2) A partnership, joint venture, limited liability partnership, or limited partnership;

(3) A corporation;

(4) A trust;

(5) A limited liability company; or

(6) Other entity.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.005, 87.093, 445.080, 656.021, 656.029 & 701

(4/98, 9/98, 8/05, 12/07)

812-002-0600
Primary Contractor

"Primary contractor" is an entity who has a contract, either oral or written, with the owner of a structure to perform work subject to ORS chapter 701, or who is building a structure speculatively, or who is holding itself out to be a licensed contractor in connection with a structure 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.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(4/98, 10/98, 6/00)

812-002-0620
Registrant

"Registrant" has the same meaning as licensee.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(4/98, 9/98, 6/00, 8/05)

812-002-0630
Reinstate

A license is reinstated when licensure is approved by the Board after a lapse that occurred because the license was suspended. A reinstated license is effective from the date that the suspension ends.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063, 701.068 & 701.098(4)

(12/07, 6/08)

812-002-0635
Reissue

A license is reissued when licensure is approved by the Board after a lapse that occurred because the licensee failed to renew the license and failed to provide proof of bonding, letter of credit, or cash deposit coverage and insurance coverage during the lapse. A reissued license is effective from the date that the lapse ends.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063 & 701.068

(12/07, 6/08)

812-002-0640
Renewal

"Renewal" (of license) as used in ORS 701.063, 701.068, and 701.131 includes but is not limited to the act of submitting a replacement bond, a bond rider, or letter of credit or cash deposit, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any pre-licensure training.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 670.310, 701.056, 701.063, 701.068, 701.073, 701.088, 701.131 & 701.238

(4/98, 9/98, 6/00, 6/03, 12/05, 12/07, 6/08, 4/11 eff. 5/1 11, 4/13 eff. 5/1/13, 4/30/14)

812-002-0660
Residential Structure

"Residential structure" has the meaning given that term in ORS 701.005. A residential structure includes, but is not limited to:

(1) A structure or work associated with placing a manufactured dwelling on support blocking or permanent foundations, connecting modular elements of the dwelling

together and constructing appurtenances to the dwelling at the location where the dwelling will be occupied as a residence.

(2) Work associated with tree pruning, tree and stump removal, and tree and limb guying regardless of whether the tree or stump is associated with a residential, small commercial or large commercial structure.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(4/98, 12/01)

812-002-0670
Respondent

"Respondent" means a contractor that a complaint is filed against under ORS 701.131 to 701.180 or that the board proposes to impose a civil penalty against under ORS chapter 701, including but not limited to 701.992.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.131-701.180
(temp. 1/00, 5/00, 4/01, 12/01, 12/05, 12/06, 6/08)

812-002-0673
Signed by Respondent

"Signed by respondent," as used in OAR 812-004-0340 or 812-004-1340, means signed by the respondent, if the respondent is a sole proprietorship, or an owner, officer, employee or authorized agent of the respondent.

Stat. Auth.: ORS 670.310, 701.133 & 701.235
Stats. Implemented: ORS 701.133
(6/07, 6/08, 4/12 eff. 5/1/12)

812-002-0675
Small Commercial Structure

"Small commercial structure" has the meaning given that term in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005, 701.021, 701.139, 701.145, 701.146, 701.150 & 701.153
(12/01, 12/05, 6/08)

812-002-0677
Specialty Contractor

"Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose business operations:

(1) Require the use of two or fewer unrelated building trades or crafts; or

(2) If a residential contractor, require the use of more than two unrelated building trades or crafts that the specialty contractor supervises, subcontracts to be performed or performs, provided that the sum of all contracts (including labor and materials) on any single property does not exceed $2,500.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701
(12/10 eff. 1/1/11)

812-002-0680
Speculative

"Speculative" means in anticipation of or with the intent of selling to another entity during or after construction.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
(4/98)

812-002-0700
Structure

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, or an improvement attached to real estate or any part thereof as described in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 87.058, 279C.460, 646.605 & 701
(4/98, 12/05, 4/11 eff. 5/1/11, 4/12 eff. 5/1/12)

812-002-0720
Subcontractor

"Subcontractor" is an entity who has a contract, either oral or written, with a contractor but not with the owner of the structure to perform work subject to ORS chapter 701 and who is responsible for a specific portion of the entire project.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 279C.555 & 701
(4/98, 12/05)

812-002-0740
Substantial Completion

(1) For purposes of ORS 701.143, "Substantial completion" occurs when a person in the position of the owner would reasonably conclude that the contractor had fulfilled its obligations under the contract and that final payment was due.

(2) In the absence of evidence to the contrary, the agency may find that substantial completion occurred at the time of the first occurring of any of the following events: final inspection is completed, certificate of occupancy is issued, the structure or portion of structure is in a habitable or usable condition, **or** most or all of payment is made if all of the payment was not advanced before work was complete.

(3) Work under a warranty provision of a contract or repair to already completed work does not extend the date of substantial completion, except that removal and replacement of completed work may extend the date of substantial completion to the date the replacement work was substantially complete for purposes of a complaint arising from the replacement work only.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.143
(4/98, 4/01, 12/05, 6/10)

812-002-0760
Work as a Contractor Includes

"Work as a contractor", as used in ORS 701.021 includes, but is not limited to:

(1) Except as modified by section (8) of this rule, construction, alteration, repair, improvement, inspection, set-up, erection, moving, or demolition of a structure or any other improvement to real estate, including activities performed on-site in the normal course of construction, or receiving and accepting any payments for the above.

(2) Concrete, asphalt and other testing that involves structural modifications, and soils testing associated with planned or existing structures.

(3) Construction management.

(4) Excavation, backfill, grading, and trenching for the structure or its appurtenances or to accomplish proper drainage and not for landscaping.

(5) Improvement of lots with the intent of selling lots with structure(s). This may include contracting with a primary contractor to construct, alter or improve structures.

(6) Inspection of cross connections and testing of backflow prevention devices performed by persons licensed under ORS 448.279 by the Health Division except when performed by a person licensed as a landscape contracting business as provided under ORS 671.510 through 671.710 or when performed by an employee of a water supplier as defined in ORS 448.115.

(7) Labor only, regardless of whether compensated by the hour or by the job.

(8) Pest control, if in the course of that work any structural modifications are performed. Structural modifications do not include the following when performed by a pesticide operator licensed under ORS 634.116. Installation of soil vapor barriers; sealing of holes, cracks, construction junctures or other small openings that allow the ingress of pests with mortar, plaster, caulking, or similar materials; installation of screens, bird netting and bird repellent devices; installation of rodent shields around utility entrances, doorways and other points of rodent ingress; and drilling of holes equal to or smaller than 3/8 inch in diameter for the purpose of injecting insecticides into small voids, removal and replacement of floor tiles for the purpose of drilling a slab floor for the control of subterranean termites; and the drilling of slab floors for control of termites.

(9) Shoring.

(10) Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 448.115, 448.279, 671.510-671.710, 701.005, 701.021 & 701.026

(4/98, 6/05, 12/07, 6/08, 9/11 eff. 10/1/11)

812-002-0780
Work as a Contractor Does Not Include

"Work as a contractor", as used in ORS 701.021, does not include:

(1) Sign painting unless the total area of all signs is more than 60 square feet.

(2) Work performed by persons engaged in creating objects, which exist exclusively for aesthetic reasons and have no other function, for example, murals, sculptures, etc., if said work by such person does not incorporate electrical or plumbing.

(3) Work performed by government agencies, except a school district.

(4) Work performed in setting, placing, removing, or repairing grave markers or monuments in cemeteries.

(5) Work by an employee when both the employer and employee are in compliance with applicable employer/employee requirements of ORS chapters 305, 314, 316, 317, 318, 656, 657, and state and federal wage and hour laws.

(6) Concrete pumping.

(7) Utility connections done by utility company employees when the connection is owned by a utility company.

(8) Installation or repair of stand-alone industrial equipment when such activities are exempt from the requirement for a building permit under the Oregon Structural Specialty Code.

(9) Inspections done under contract with government agencies.

(10) Cable television work done by cable television franchise holders.

(11) Operation of a crane, including the lifting and placement of trusses or other construction materials onto the structure.

(12) Improvement of lots with the intent of selling the lots without structures when contracting with licensed contractors to perform the improvement of lots.

(13) Arranging for work to be performed by a licensed construction contractor when the person who arranges for the work is a real estate licensee, licensed under ORS chapter 696; the real estate licensee is representing the seller of the property; and the real estate licensee is acting as the agent for the seller, as evidenced by a contract or agreement between the real estate licensee and the seller.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 634.116, 701.010, 701.021 & 701.026

(4/98, 6/00, 4/01, 12/05, 6/08, 9/11 eff. 10/1/11)

812-002-0800
Work Period

"Work Period" as used in, OAR 812-003-0150, 812-004-0320, 812-004-0600, 812-004-1320 and 812-004-1600 means the time period from the date a contractor accepts a payment, offers a written proposal, enters into a contract or begins construction, whichever occurs first, until the date the contractual work is substantially completed by the contractor, or if not substantially completed, the date the work by the contractor ceased.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.143

(4/98, 10/98, temp. 5/00, 8/00, 12/04, 12/05, 4/12 eff. 5/1/12)

[**812-002-0820** Repealed 12/01]

[**812-002-0840** Repealed 12/07 effective 1/1/08]

DIVISION 3

LICENSING

[**812-003-0000** Repealed 12/04]

[**812-003-0002** Amended and renumbered to 812-003-0250, 12/04]

[**812-003-0005** Amended and renumbered to 812-003-0320, 12/04]

[**812-003-0010** Repealed 1/88]

[**812-003-0012** Repealed 12/04]

[**812-003-0015** Repealed 12/04]

[**812-003-0020** Repealed 12/04]

[**812-003-0025** Repealed 12/04]

[**812-003-0030** Amended and renumbered to 812-003-0390, 12/04]

[**812-003-0040** Amended and renumbered to 812-003-0400]

[**812-003-0050** Repealed 12/04]

812-003-0100
Licensing Generally

(1) A license and its identifying license number will be issued to one entity only. Other entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No entity may perform work subject to ORS chapter 701 through the use of another entity's license.

(2) Entities shall include but not be limited to the following:

(a) Sole proprietorship;

(b) Partnership, limited liability partnership or joint venture;

(c) Limited partnership

(d) Corporation;

(e) Limited liability company; or

(f) Trust. For purposes of licensing, a trust will be treated the same as a corporation.

(3) All partners or joint venturers listed in subsection (2)(b) of this rule shall be on record with the agency.

(4) All general partners listed in subsection (2)(c) of this rule shall be on record with the agency. The agency shall not maintain a record of limited partners.

(5) If an entity listed in section (2) of this rule seeks to change to another entity, the former license may be terminated. The new entity must license anew.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.021
(12/04, 8/05, 4/30/14)

812-003-0110
Standards of Behavior

(1) A contractor shall not engage in dishonest or fraudulent conduct injurious to the welfare of the public.

(2) A contractor shall cooperate fully with any investigation undertaken by the Board pursuant to ORS 701.225.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.098 & 701.225
(12/04, 6/08)

812-003-0120
License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) All advertisements by audio-only media, such as radio commercials, must contain an audible statement of the contractor’s license number.

(e) All advertisements by video media or video and audio combined media, such as television commercials, must show visually the contractor’s license number.

(f) All advertising by internet media, including but not limited to, website advertising must show visually the contractor’s license number.

(g) All business cards, business letterhead, business signs at construction sites and all other written or visual advertising shall show the contractor's license number. Written or visual advertising does not include permanently affixed or attached signs at a contractor’s place, or places, of business that primarily and prominently display the contractor’s name.

(h) This section does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(i) This section does not apply to promotional gifts, including, but not limited to, pencils, pens, cups and items of clothing.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.010 & 701.021
(12/04, 6/08, 5/09, 11/09 eff. 1/1/10, 6/14 eff. 7/1/14)

[**812-003-0130** Repealed 12/13 eff. 1/1/14]

812-003-0131
License Endorsements

The following are license endorsements for new and renewal licenses:

(1) Residential General Contractor. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on residential or small commercial structures.

(2) Residential Specialty Contractor. A licensee holding this endorsement may:

(a) Bid or perform work involving two or less unrelated building trades or crafts on residential or small commercial structures.

(b) If three or more unrelated trades or crafts are performed or subcontracted out, the entire contract price cannot exceed $2,500.

(3) Residential Limited Contractor. A licensee holding this endorsement may bid or perform work involving residential or small commercial structures, as long as all of the following conditions are met:

(a) The licensee's annual gross business sales do not exceed $40,000.

(b) The licensee does not enter into a contract in which the contract price exceeds $5,000.

(c) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed $5,000.

(d) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (3)(a) of this rule.

(e) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(4) Residential Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a residential or small commercial structure as long as the licensee meets the conditions in ORS 701.042.

(5) Residential Locksmith Services Contractor. A licensee holding this endorsement may operate a business that provides the services of locksmiths for residential or small commercial structures. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified locksmith.

(6) Home Inspector Services Contractor. A licensee holding this endorsement may operate a business that provides the services of home inspectors. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified home inspector.

(7) Home Services Contractor. A licensee holding this endorsement may operate a business that provides service, repair or replacement pursuant to the terms of a home service agreement. The licensee may not, however, engage in any other contractor activities.

(8) Home Energy Performance Score Contractor. A licensee holding this endorsement may operate a business that assigns home energy performance scores. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified home energy assessor.

(9) Commercial General Contractor – Level 1. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(10) Commercial Specialty Contractor – Level 1. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(11) Commercial General Contractor – Level 2. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(12) Commercial Specialty Contractor – Level 2. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(13) Commercial Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a small or large commercial structure as long as the licensee meets the conditions in ORS 701.042.

(14) A contractor's license may contain:

(a) One residential endorsement;

(b) One commercial endorsement; or

(c) One residential endorsement and one commercial endorsement.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.042, 701.081 and 701.084

(2/08, 12/13 eff. 1/1/14)

[**812-003-0140** Repealed 12/13 eff. 1/1/14]

[**812-003-0141** Repealed 12/13 eff. 1/1/14]

812-003-0142
License Application Fees

(1) The application fee for all new, renewal, or reissued licenses is $325.

(2) Except as provided in section (3) of this rule, application fees will not be refunded.

(3) If a licensee submits an application to renew a license and the agency cannot renew the license because the applicant has formed a new business entity, the agency may refund the renewal application fee, less a $40 processing fee.

(4)(a) Any licensee in the United States armed forces need not pay a license renewal fee if such fee would be due during the licensee's active duty service.

(b) A licensee in the United States armed forces shall pay the next license renewal fee that will become due after the licensee is discharged from active duty service.

(c) The agency may request that the licensee provide documentation of active duty status and of discharge.

(d) Section (4) of this rule applies to licensees that are sole proprietors or partners in a general partnership.

Stat. Auth.: ORS 670.310, 701.238 & 701.235
Stats. Implemented: ORS 701.056, 701.063, & 701.238
(temp. 5/5/14, 6/14 eff. 7/1/14)

[**812-003-0150** Repealed 12/13 eff. 1/1/14]

812-003-0152
Residential Bonds Generally

(1) A properly executed residential bond must:

(a) 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.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Residential Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.068 or 701.088 is in effect, the security must be held until final disposition of the complaint.

(3) 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.

(4) A residential bond is available only for payments determined by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

Stat. Auth.: ORS 670.310 and 701.235
Stats. Implemented: ORS 701.068 and 701.081
(2/08, 6/08, 12/13 eff. 1/1/14)

812-003-0153
Commercial Bonds Generally

(1) A properly executed commercial bond must:

(a) 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.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Commercial Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.068 is in effect, the security must be held until final disposition of the complaint.

(3) 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.

(4) A commercial bond is available only for payments determined by the agency involving small or large commercial structures or for the development of property zoned or intended for use compatible with large or small commercial structures.

Stat. Auth.: ORS 670.310 and 701.235
Stats. Implemented: ORS 701.068 and 701.084
(2/08, 6/08, 12/13 eff. 1/1/14)

812-003-0155
Letters of Credit or Cash Deposits, Generally

(1) A general or specialty contractor that is a qualifying nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may provide a properly executed letter of credit as adopted by the Construction Contractors Board in the form entitled "Letter of Credit for Licensee Rehabilitating Illegal Drug Manufacturing Site" dated December 18, 2007.

(2) A general or specialty contractor that is a qualifying nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may provide a properly executed cash deposit as adopted by the Construction Contractors Board in the form entitled "Assignment of Savings Account or Certificate of Deposit for Licensee Rehabilitating Illegal Drug Manufacturing Site," dated December 18, 2007.

(3) If a complaint is filed against a licensee for work done during the work period of a contract entered while the letter of credit or cash deposit is in effect, the agency shall provide notice to the bank or financial institution that issued the letter of credit or cash deposit. The bank or financial institution must hold the letter of credit or cash deposit until final disposition of the complaint.

(4) Letters of credit or cash assignment documents received at the agency office from a bank or financial institution via electronic facsimile may be accepted as original documents. The bank or financial institution must provide the original documents to the agency upon request.

(5) References in other provisions of chapter 812 to letters of credit or cash deposits apply only to licenses issued under ORS 701.088 and this section.

Stat. Auth.: ORS 670.310, ORS 701.088 & 701.235
Stats. Implemented: ORS 701.088
(12/07, 2/08)

812-003-0160
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 application and 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) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

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

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.068 & 701.088

(12/04, 12/06, 12/07, 6/08, 4/30/14)

[**812-003-0170** Repealed 12/13 eff. 1/1/14]

812-003-0171
Bond, Letter of Credit or Cash Deposit

For all new and renewal license applications, a surety bond as required under ORS 701.068, or a surety bond, letter of credit or cash deposit as required under ORS 701.088, must be in one of the following amounts:

(1) Residential General Contractor - $20,000.

(2) Residential Specialty Contractor - $15,000.

(3) Residential Limited Contractor - $10,000.

(4) Residential Developer - $20,000.

(5) Residential Locksmith Services Contractor -- $10,000.

(6) Home Inspector Services Contractor -- $10,000.

(7) Home Services Contractor -- $10,000.

(8) Home Energy Performance Score Contractor - $10,000.

(9) Commercial General Contractor Level 1 - $75,000.

(10) Commercial Specialty Contractor Level 1 - $50,000.

(11) Commercial General Contractor Level 2 - $20,000.

(12) Commercial Specialty Contractor Level 2 - $20,000.

(13) Commercial Developer - $20,000.

Stat. Auth.: ORS 670.310, 701.068, 701.088 and 701.235

Stats. Implemented: ORS 701.068, 701.088

(2/08, 12/13 eff. 1/1/14)

812-003-0175
Increased Bond, Letter of Credit or Cash Deposit Requirement, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond, letter of credit or cash deposit in an amount up to five times the amount required for the category of license under OAR 812-003-0171, if:

(a) The business has unpaid debts under a final order, arbitration award or determination of the board;

(b) An owner or officer of the business has unpaid debts under a final order, arbitration award or determination of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order, arbitration award or determination of the board and such debt remains unpaid.

(2) A business, including an individual person, licensed as a residential general contractor or residential specialty contractor that applies to be licensed as, or seeks to change its endorsement to, a residential limited contractor must file a bond, letter or credit or cash deposit in an amount of five times the amount of the residential limited contractor bond, namely $50,000, if:

(a) The business has unpaid debts under a final order, arbitration award or determination of the board;

(b) An owner or officer of the business has unpaid debts under a final order, arbitration award or determination of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order, arbitration award or determination of the board and such debt remains unpaid.

(3) For purposes of this rule, “owner” means an “owner” as defined in ORS 701.094 and OAR 812-002-0537.

(4) For purposes of this rule, “officer” means an “officer” as defined in ORS 701.005(12).

(5) Debts due under a final order or arbitration award of the board include amounts not paid by a surety or financial institution on complaints.

Stat. Auth.: ORS 670.310, 701.068, 701.088 and 701.235

Stats. Implemented: ORS 701.068, 701.088

(temp. 3/06, 9/06, 12/06, 12/07, 2/08, 6/08, 8/10 eff. 9/1/10, 12/13 eff. 1/1/14)

812-003-0180
Effective and Cancellation Dates of the Bond, Letter of Credit or Cash Deposit

(1) The surety bond, letter of credit or cash deposits effective date is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

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

(3) A surety 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) The letter of credit or cash deposit shall remain in effect and be continuous until released by the agency.

(5) Immediately 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 send an emergency suspension notice to the contractor as provided for in ORS 701.098(4)(a)(A), informing the contractor that the license has been suspended.

(6) The bond, letter of credit or cash deposit shall be subject to final orders or arbitration awards as described in OAR 812-004-0600 or determinations as described in OAR 812-004-1600.

(7) The surety or financial institution will be responsible for ascertaining the bond, letter of credit or cash deposit's effective date.

Stat. Auth.: ORS 670.310, 701.068, 701.088 and 701.235

Stats. Implemented: ORS 701.068, 701.088 and 701.098

(12/04, 5/06, 12/07, 6/08, 12/13 eff. 1/1/14)

812-003-0190
New Bond, Letter of Credit or Cash Deposit Required for Change in Entity

(1) If an entity licenses 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, 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 changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.068 & 701.088

(12/04, 12/07, 6/08, 4/30/14)

812-003-0200
Insurance Generally

(1) An applicant for a license, renewal or reissue shall certify that the applicant:

(a) Has procured insurance from an insurer transacting insurance in Oregon; and

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

(2) Licensees shall provide a certificate of insurance or other evidence of insurance as required by the agency upon request or prior to the expiration date of their insurance.

(3) A certificate of insurance must include:

(a) The name of the insurer;

(b) Policy or binder number;

(c) Effective dates of coverage;

(d) Coverage in at least the amount required in OAR 812-003-0221;

(e) A statement that products and completed operations coverage is included as required by ORS 701.073(1).

(f) The agent's name, and agent's telephone number; and

(g) The CCB listed as the certificate holder.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073 & 701.098

(12/04, 5/06, 9/06, 12/07, 2/08, 5/09)

812-003-0210
Entity Name Required on Insurance Certification

(1) The name of the entity as it appears on the certificate of insurance or other evidence of insurance must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

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

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

(c) If the entity is a limited liability partnership, the certificate of insurance or other evidence of insurance 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 of insurance or other evidence of insurance 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 of insurance or other evidence of insurance;

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

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

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073

(12/04, 6/08)

[**812-003-0220** Repealed 12/13 eff. 1/1/14]

812-003-0221
Insurance Amounts

For all new and renewal license applications, insurance amounts as required under ORS 701.073, 701.081, and 701.084, must be in one of the following amounts:

(1) Residential General Contractor - $500,000 per occurrence.

(2) Residential Specialty Contractor - $300,000 per occurrence.

(3) Residential Limited Contractor - $100,000 per occurrence.

(4) Residential Developer - $500,000 per occurrence.

(5) Residential Locksmith Services Contractor - $100,000 per occurrence.

(6) Home Inspector Services Contractor - $100,000 per occurrence.

(7) Home Services Contractor - $100, 000 per occurrence.

(8) Home Energy Performance Score Contractor - $100,000 per occurrence.

(9) Commercial General Contractor Level 1 - $2,000,000 aggregate.

(10) Commercial Specialty Contractor Level 1 - $1,000,000 aggregate.

(11) Commercial General Contractor Level 2 - $1,000,000 aggregate.

(12) Commercial Specialty Contractor Level 2 - $500,000 per occurrence.

(13) Commercial Developer - $500,000 per occurrence.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.073, 701.081 and 701.084

(2/08, 12/13 eff. 1/1/14)

812-003-0230
Effective and Cancellation Dates of the Insurance

(1) For purposes of licensing, the effective date of the insurance required under ORS 701.073, 701.081 and 701.084 is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

(2) The insurance described in section (1) of this rule shall remain in effect until the license is suspended, terminated, revoked, expired, lapsed, or inactive, or until the insurance expires or a cancellation notice is provided by the insurer.

(3) Immediately upon cancellation or expiration of the insurance described in section (1) of this rule, the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.098(4)(a)(B), informing the contractor that the license has been suspended.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073, 701.081, 701.084 & 701.098

(12/04, 2/08)

812-003-0240
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 registered under ORS 671.010 to 671.220;

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

(C) Landscape contracting 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 forklifts) 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 shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

(6) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under 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.

(7) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.046(1)(k).

Stat. Auth.: ORS 670.310, 670.605 and 701.235

Stats. Implemented: ORS 670.600, 670.605, 701.005 and 701.046

(12/04, 12/05, temp. 1/06, 3/06, 1/07, 12/07, 6/08, 12/13 eff. 1/1/14)

812-003-0250
Exempt and Nonexempt Class of Independent Contractor Licenses

Contractors shall license as either nonexempt or exempt as provided in ORS 701.035.

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

(a) Sole proprietorships with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(b) Partnerships or limited liability partnerships with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members;

(d) Joint ventures with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(e) Joint ventures with more than two joint venturers if any of the joint venturers are not family members;

(f) Limited partnerships with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(g) Limited partnerships with more than two general partners if any of the general partners are not family members;

(h) Corporations with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(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 or that utilize one or more workers supplied by a worker leasing company;

(k) Trusts with more than two trustees if any of the trustees are not family members.

(l) Limited liability companies with one or more employees or that utilize one or more workers supplied by a worker leasing company; or

(m) Limited liability companies with more than two members if any of the members are not family members.

(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 contractor may work with the assistance of individuals who are employees of or workers supplied by a worker leasing company to a nonexempt contractor as long as the nonexempt contractor or the nonexempt contractor's worker leasing company:

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

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

(4) Except as provided in sections (5) through (8) of this rule, entities shall supply the following employer account numbers as required under ORS 701.046:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation 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 are not required to supply employer account numbers under section (4) of this rule except as follows:

(a) Partnerships, joint ventures, limited liability partnerships, and limited partnerships that have no employees and are not directly involved in construction work may be classed as exempt when the entity certifies that all partners or joint venturers qualify as nonsubject workers under ORS 656.027. Such partnerships or joint ventures must supply the Internal Revenue Service employer identification number or federal identification number.

(b) Corporations qualifying as exempt under ORS 656.027(10) must supply the Oregon Employment Department and Oregon Department of Revenue combined business identification number unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation.

(c) Corporations qualifying as exempt must supply the Internal Revenue Service employer identification number or federal identification number.

(d) Limited liability companies must supply the Internal Revenue Service employer identification number or federal identification number unless the limited liability company has only one member and has no employees.

(6) Nonexempt entities that utilize volunteers that qualify under ORS 656.027 (20) or that utilize one or more workers supplied by a worker leasing company need not supply an Oregon workers' compensation account number or workers' compensation insurance carrier name and policy or binder number.

(7) Nonexempt entities that utilize one or more workers supplied by a worker leasing company and have no other applicable tax reporting obligations need not supply:

(a) An Internal Revenue Service employer identification number or federal identification number; or

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

(8) Out-of-state applicants with no Oregon subject workers as provided in ORS 656.126 and OAR 436-050-0055 must supply their home state account numbers, and need not supply an Oregon workers' compensation account number.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 and 701.992

Stats. Implemented: ORS 701.035 and 701.098

(1/89, 11/89, 3/91, 9/91, 5/92, 7/92, 8/92, 12/92, 4/93, 8/93, 1/94, 6/94, 7/94, 9/95, 5/97, 6/97, 4/98, 9/98, 6/99, 6/03, 12/04, 8/05, 5/06, 12/07, 6/08, 12/13 eff. 1/1/14)

(Amended and renumbered from 812-003-0002, 12/04)

812-003-0260
Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name and address (which may be the business address) of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph**;** or

(I) The responsible managing individual designated by the applicant.

(d) Except for a public company, the date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(J) For purposes of this subsection, a "public company" means any business entity that offers securities registered for sale by the federal Securities and Exchange Commission to the general public.

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

(f) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(g) License endorsement sought, as provided for under OAR 812-003-0131;

(h) The identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.122 or is otherwise exempt under division 6 of these rules;

(i) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(j) Names and certification numbers of all certified locksmiths if the entity is a Residential Locksmith Services Contractor or will do work providing locksmith services under ORS 701.475 to 701.490;

(k) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(L) Names and certification numbers of all certified home energy assessors if the entity is a Home Energy Performance Score Contractor providing home energy performance scores under ORS 701.527 to 701.536 or will do work providing home energy performance scores.

(m) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) If unsatisfied on the date of application, a copy of a final judgment by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body;

(B) If unsatisfied on the date of application, a copy of a final order by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or public body;

(C) If pending on the date of application, a copy of a court complaint filed in any state that alleges that the person owes money to another person or public body; or

(D) If pending on the date of application, a copy of an administrative notice of action issued in any state that alleges that the person owes money to another person or public body.

(n) For each person described in subsection (1)(c) of this section, the following information if related to construction activities;

(A) A copy of a judgment of conviction for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date; or

(B) A copy of an indictment for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date.

(C) In addition to documents required in paragraphs (1)(l)(A) and (B) of this section, copies of police reports, parole or probation reports indicating parole or probation officer's name and phone number, and letters of reference.

(o) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

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

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0142;

(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0152, 812-003-0153, or 812-003-0155; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing.

All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.050, 701.056, 701.068, 701.073, 701.081, 701.088 and 701.122

(12/04, 8/05, 5/06, 9/06, 12/06, 8/07, 12/07, 2/08, 3/08, 6/08, 9/08, 12/13 eff. 1/1/14, 4/30/14, temp. 5/5/14, 6/14 eff. 7/1/14)

812-003-0270
Effective Dates of New License; License Term

(1) A completed application as required under OAR 812-003-0260 shall be on file with the agency before a new license may be issued.

(2) Licenses will be issued for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

(12/04, 2/08)

812-003-0280
Renewal and Reissue of License

Each entity must complete a form prescribed by the agency. Notwithstanding OAR 812-003-0300(4), a license may be renewed or reissued upon:

(1) The applicant's completion of the renewal form or application form prescribed by the agency including, but not limited to, the information provided in OAR 812-003-0260;

(2) Payment of the fee or fees,

(3) Receipt of the required certification of insurance coverage, and

(4) Receipt of a commercial and/or residential bond, letter of credit or cash deposit. If it appears to the agency that the required letter of credit or cash deposit has terminated or expired, the applicant must submit a new bond, letter of credit or cash deposit.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063, 701.068, 701.073 & 701.081

(12/04, 5/06, 12/06, 12/07, 2/08)

812-003-0290
License Renewal, Reissue, New Issue; Effective Dates; Term

(1) Except as provided in section (3) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

(2) In order to obtain a renewed or reissued license, a contractor must provide the following:

(a) A completed application form;

(b) Proof of insurance;

(c) A commercial or residential bond, or both (as indicated by the contractor's endorsement(s));

(d) Where authorized by ORS 701.088, a letter of credit or cash deposit in lieu of the bond; and

(e) An application fee.

(3) If agency error causes the delayed receipt of the required documents or fee, the agency may renew or reissue the license with an effective date before the date on which all requirements were satisfied. Otherwise, all documents and fees must be received by the agency before the agency may renew or reissue the license.

(4) If a contractor satisfies all requirements for license renewal before the expiration date:

(a) The license is renewed; and

(b) The effective date of the license is the expiration date.

(5) If a contractor continuously maintains a bond and insurance and satisfies all requirements for renewal within two years after the expiration date:

(a) The license is renewed and backdated; and

(b) The effective date of the license is the expiration date.

(6) If a contractor fails to continuously maintain a bond or insurance but satisfies all requirements for renewal within two years after the expiration date:

(a) The license is reissued; and

(b) The effective date of the license is the date when all requirements for reissue are met.

(7) If a contractor satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The contractor must apply for a new license under OAR 812-030-0260.

(8) Licenses will be reissued or renewed for a period of two years.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.063

(12/04, 12/07, 2/08, temp. 6/4/10 eff. 6/4/10, 8/10 eff. 9/1/10, 2/11 eff. 3/1/11, 12/13 eff. 1/1/14)

812-003-0300
Consequence of Lapse in License

(1) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred unless or until the date the license is:

(a) Backdated and renewed;

(b) Reissued; or

(c) Reinstated.

(2) During a period of lapse, the entity shall not perform the work of a contractor.

(3) Except as provided in OAR 812-003-0290, a period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse.

(4) A license that has lapsed for 24 months or more must be issued a new identifying license number.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.026, 701.063 & 701.098

(12/04, 12/06, 12/07, 2/08)

812-003-0310
License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety bond, letter of credit or cash deposit remains in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS 701.073 remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a limited partnership, the composition of the general partners remains unchanged, by death or otherwise.

(f) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

(3) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(4) If a license becomes invalid, the agency may require the return of the license and pocket card.

(5) There is no charge for the original license and pocket card issued by the agency.

(6) There is a $10 fee to replace a license and pocket card.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.063 and 701.088

(12/04, 12/07, 6/08, 4/11 eff. 5/1/11, 12/13 eff. 1/1/14)

812-003-0320
Record Changes

(1) Every licensed entity that changes its name, including any assumed business name under which it may operate, must notify the agency within 30 days of assuming, filing or registering the new name. This section also applies to sole proprietors that change their surname.

(2) Except as provided in OAR 812-003-0190, requests for business name amendments of a partnership, joint venture, corporation, limited liability company, limited partnership or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

(3) With the exception of record changes due to agency error, a record change request shall be submitted in writing or, if the agency permits, electronically.

(4) Except as provided in sections (5) and (6) of this rule, requests for record changes that require a new license card shall be accompanied by a $20 fee.

(5) No charge will be made for an address change.

(6) No charge will be made for changing independent contractor license class under ORS 701.035 if the licensed entity makes the change electronically.

Stat. Auth.: ORS 670.310, 701.235 and 701.238

Stats. Implemented: ORS 701.056, 701.068, 701.088 and 701.238

(6/76, 7/76, 11/77, 1/78, 5/78, 5/80, 6/80, 10/80, 11/80, 1/83, 3/83, 10/83, 3/84, 5/84, 1/89, 11/89, 9/99, 6/00, 8/00, 12/04, 6/08, 5/09, 4/11 eff. 5/1/11, 12/13 eff. 1/1/14)

(Amended and renumbered from 812-003-0005, 12/04)

812-003-0321
Notification of Change of Independent Contractor Status

(1) When a contractor's license status changes from nonexempt to exempt or from exempt to nonexempt, the contractor must notify the board. The contractor must file a Notification of Changed Contractor License Status within 30 days of the effective date of the change.

(2) There is no charge to file the Notification under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.035

(4/11 eff. 5/1/11)

812-003-0325
Change of Corporate Officer, LLC Manager, LLC Member, Trustee

When a contractor notifies the agency of any change in the identity of a person who holds a position with the contractor that is described in ORS 701.046(1)(h), (E), (F), (G), or (I), or 701.046(1)(i) (D), (E), or (F), the contractor must provide at least one of the following.

(1) For the addition, removal or resignation of a corporate officer as described in ORS 701.046(1)(h)(E) or 701.046(1)(i)(F):

(a) A copy of the corporation's board minutes evidencing the addition or removal of the corporate officer;

(b) A copy of the corporation's board consent evidencing the addition or removal of the corporate officer;

(c) A letter from the corporation's attorney advising the agency of the addition or removal of the corporate officer;

(d) A letter from the corporation's manager of personnel or human resources advising the agency of the addition or removal of the corporate officer; or

(e) In the case a resignation, a copy of the corporate officer's letter of resignation.

(2) For the addition, removal or resignation of a manager of a manager-managed limited liability company, as described in ORS 701.046(1)(h)(F) or 701.046(1)(i)(D):

(a) A copy of the limited liability company's minutes evidencing the addition or removal of the manager;

(b) A copy of the limited liability company's consent evidencing the addition or removal of the manager;

(c) A letter from the limited liability company's attorney advising the agency of the addition or removal of the manager;

(d) A letter from the limited liability company's manager of personnel or human resources advising the agency of the addition or removal of the manager; or

(e) In the case a resignation, a copy of the manager's letter of resignation.

(3) For the addition, expulsion or withdrawal or other cessation of a member of a member-managed limited liability company, as described in ORS 701.046(1)(h)(G) or 701.046(1)(i)(E):

(a) A copy of the limited liability company's minutes evidencing the addition or expulsion of the member;

(b) A copy of the limited liability company's consent evidencing the addition or expulsion of the member;

(c) A letter from the limited liability company's attorney advising the agency of the addition or cessation of the member;

(d) A letter from the limited liability company's manager of personnel or human resources advising the agency of the addition or cessation of the manager;

(e) In the event of a member's withdrawal, a copy of the written notice of withdrawal.

(4) For the addition, removal or resignation of a trustee of a trust, as described in ORS 701.046(1)(h)(I):

(a) A copy of the trust's minutes evidencing the addition or removal of the trustee;

(b) A copy of the trust's consent evidencing the addition or removal of the trustee;

(c) A letter from the trust's attorney advising the agency of the addition or removal of the trustee;

(d) A letter from the trust's manager of personnel or human resources advising the agency of the addition or removal of the trustee; or

(e) In the case a resignation, a copy of the trustee's letter of resignation.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.114

(9/09)

812-003-0330

Inactive Status Generally

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2)(a) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(b) Subsection (a) of this section does not apply to members of the United States armed forces serving on active duty provided that they perform work as a contractor only as part of their military duties.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status a license must have:

(a) A current active license;

(b) A current suspended license; or

(c) A license that has expired no more than two years.

(5) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline in order to be eligible for the inactive status.

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

(7) The licensee must comply with OAR 812-003-0340, 812-003-0350, and 812-003-0360.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.056 & 701.063

(12/04, 6/08, 5/09, 9/09, temp. 6/4/10 eff. 6/4/10, 8/10 eff. 9/1/10)

812-003-0340

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 812-003-0142.

(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. An inactive license, if renewed, shall expire two years after its effective date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

(12/04, 2/08, temp. 5/5/14, 6/14 eff. 7/1/14)

812-003-0350

Inactive Status Request at Interim Renewal Period

(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 required under OAR 812-003-0142 and 812-003-0320.

(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 at the upcoming expiration date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

(12/04, 6/05, 6/08, temp. 5/5/14, 6/14 eff. 7/1/14)

812-003-0360

Inactive Status Request after Lapse

(1) A request to renew a license and convert it to inactive status made after a lapse due to the expiration of the license must be accompanied by fees required under OAR 812-003-0142.

(2) If a license is renewed and converted to inactive status after a lapse due to expiration of the license, the agency will establish the effective date of the license. An inactive license, if renewed, shall expire two years after its effective date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

(12/04, 2/08, temp. 5/5/14, 6/14 eff. 7/1/14)

812-003-0370
Renewal of Inactive Status
To renew an inactive license in an inactive status:
(1) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;
(2) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and
(3) The licensee must submit the fees required under OAR 812-003-0142.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.056 & 701.063
(12/04, 6/08, temp. 5/5/14, 6/14 eff. 7/1/14)

812-003-0380
Converting From Inactive Back to Active Status
(1) To convert from an inactive status to an active status, the licensee must:
(a) Submit a request to convert to an active status on forms provided by the agency; and
(b) Comply with section (3), (4) or (5) of this rule as applicable.
(2) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:
(a) Submit the fees required under OAR 812-003-0142;
(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and
(c) Comply with all other licensing requirements prescribed by the Board.
(3) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:
(a) Submit all fees to date as required by OAR 812-003-0142 and 812-003-0320;
(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and
(d) Comply with all other licensing requirements prescribed by the Board.
(4) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:
(a) Request the conversion within two years from the date of lapse;
(b) Comply with all licensing requirements prescribed by the Board;
(c) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and
(d) Submit all fees required under OAR 812-003-0142.
(5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.056, 701.063 & 701.088
(12/04, 6/05, 12/07, 6/08, temp. 5/5/14, 6/14 eff. 7/1/14)

812-003-0390
Revocation or Suspension of License
(1) Except as provided in section (2) of this rule, if the agency issues a final order, arbitration award, or determination directing a licensee to pay monetary damages and the licensee or the licensee's surety fails to pay the order, award or determination in full, the agency will revoke, suspend, or refuse to issue or reissue a license.
(2) Section (1) of this rule shall not apply if the licensee submits proof to the agency that:
(a) A United States Bankruptcy Court issued an automatic stay under Title 11 of the United States Bankruptcy Code and that stay is currently in force; or
(b) The order, award or determination described in section (1) of this rule arises from a debt that:
(A) Is included in an order of discharge issued by a United States Bankruptcy Court; or
(B) Is included in a chapter 11 plan and order conforming the plan issued by a United States Bankruptcy Court that prohibits the agency from revoking, suspending, or refusing to issue or reissue the licensee's contractor's license and the licensee is in compliance with the terms of the plan and order.
(3) The agency shall revoke, suspend, or refuse to issue or reissue a license under section (1) of this rule if:
(a) The agency previously was prevented from revoking or suspending a license or was required to issue or reissue a license under section (2) of this rule; and
(b) The licensee's bankruptcy discharge is revoked or the bankruptcy stay is lifted.
Stat. Auth.: ORS 183.310 to 183.545, 670.310, 701.235 & 701.280
Stats. Implemented: ORS 701.098
(6/76, 7/76, 1/78, 5/78, 6/80, 11/80, 5/81, 12/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/87, 12/87, 1/88, 2/95, 6/00, 5/02, 12/04, 6/08, 12/13 eff. 1/1/14, 4/30/14)
(Amended and renumbered from 812-003-0030, 12/04)

812-003-0400
Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Complaint
If a surety company or financial institution pays all or part of a complaint against a licensed contractor from the contractor's surety bond, letter of credit or cash deposit, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:
(1) A properly executed bond, letter of credit or cash deposit in the amount required under ORS 701.068 or 701.088 unless the agency requires a higher amount under ORS 701.068; or
(2) A certificate from the contractor's 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.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.068 and 701.088

(5/02, 12/04, 12/06, 12/07, 6/08, 12/13 eff. 1/1/14)

(Amended and renumbered from 812-003-0040, 12/04)

812-003-0410
Social Security Number

(1) The agency will not issue or renew a license issued to a sole proprietorship unless the owner provides his or her social security number on the application or renewal form. The owner need not provide the social security number on the application for renewal, if the owner's social security number has previously been provided to the agency and is in the record.

(2) If the owner of a sole proprietorship has not been issued a social security number by the United States Social Security Administration, the agency will accept a written statement from the owner to fulfill the requirements of section (1) of this rule. The owner may submit the written statement on a specified agency form with the requisite information. Any written statement must:

(a) Be signed by the owner;

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

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

Stat. Auth.: ORS 25.990, 183.310, 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 183.310 & 701.046

(12/04, 9/06, 6/08)

812-003-0420
Davis Bacon Act

(1) On all construction projects regulated under the state Prevailing Wage Law, ORS 279C.800 to 279C.870 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.345, to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland OR 97232.

(2) The initial list of subcontractors will be submitted to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries on the same date that the initial Payroll and Certified Statement form (WH-38) is due. Instructions for submitting form WH-38 are contained in OAR 839-016-0010.

(3) The primary contractor will prepare and submit updated lists of subcontractors with each submittal of the Payroll and Certified Statement form (WH-38).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 279C.800 to 279C.870, 701.345

(12/0, 12/05, 2/08)

812-003-0430
Time Period for Perfecting a Lien or Complaint

For liens perfected and complaints:

(1) The time period under ORS 701.131(2)(a)(A) and 701.131(2)(b)(C) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(2) The time period under ORS 701.131(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.131

(12/04, 12/06, 6/08, 12/13 eff. 1/1/14)

812-003-0440
Notification of Conviction of a Crime

A licensee or applicant, or an owner or officer of the licensee or applicant who has been convicted of a crime listed in ORS 701.098(1)(i) must notify the agency in writing within 30 days from the date of the entry of the judgment of conviction.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 701.098

(9/06, 2/08, 12/13 eff. 1/1/14)

[**812-003-0450** Repealed and incorporated into 812-005-0280 11/08]

DIVISION 4

COMPLAINTS

General

[**812-004-0000** Repealed 1/88]

For Complaints Filed Before July 1, 2011

812-004-0001
Application of Rules

(1) The rules in division 4 of OAR chapter 812 apply to a complaint involving work on a residential structure or an appurtenance to the structure and any other complaint filed under ORS 701.145 before July 1, 2011.

(2) Except as provided in section (4) of this rule, the following rules apply to a complaint involving work on a large commercial structure or an appurtenance to the structure and any other complaint filed under ORS 701.146:

(a) OAR 812-004-0001 through 812-004-0240;

(b) OAR 812-004-0260 through 812-004-0320;

(c) OAR 812-004-0340, except 812-004-0340(2)(c), (2)(i) and (8);

(c) OAR 812-004-0420;

(d) OAR 812-004-0520; and

(e) OAR 812-004-0550 through 812-004-0600.

(3)(a) Except as provided in subsection (3)(b) of this rule, the rules that apply to a complaint involving work on a residential structure under section (1) of this rule apply to a complaint involving work on a small commercial structure or an appurtenance to the structure.

(b) The rules that apply to the complaint involving work on a large commercial structure under section (2) of this rule apply to a complaint involving work on a small commercial structure or an appurtenance to the structure if the complainant files the complaint under ORS 701.146.

(4) The rules that apply to a complaint involving work on a residential structure under section (1) of this rule apply to a complaint involving work on a large commercial structure or an appurtenance to the structure if:

(a) The complaint is filed by the owner of the structure;

(b) The total contract for the work is $25,000 or less; and

(c) The complainant files the complaint under ORS 701.145.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.145 & 701.146

(1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 5/93, 12/93, 1/95, 2/95, 10/95, 11/97, 4/98, 9/98, 10/98, 3/99, 12/01, 3/03, 12/04, 12/06, temp. 7/8/11, 9/11 eff. 10/1/11)

[**812-004-0005** Repealed 10/98]

[**812-004-0010** Repealed 10/83]

[**812-004-0015** Renumbered to 812-004-0042, 10/98]

[**812-004-0020** Renumbered to 812-004-044, 10/98]

[**812-004-0025** Repealed 10/98]

[**812-004-0035** Repealed 10/98]

[**812-004-0040** Repealed 1/88]

[**812-004-0042** Renumbered to 812-004-0440, 10/98]

[**812-004-0044** Renumbered to 812-004-0200, 10/98]

[**812-004-0045** Repealed 1/88]

[**812-004-0046** Renumbered to 812-004-0220, 10/98]

[**812-004-0050** Repealed 1/88]

[**812-004-0055** Renumbered to 812-004-0035, 1/88]

[**812-004-0060** Repealed 10/98]

[**812-004-0065** Repealed 1/88]

[**812-004-0070** Renumbered to 812-004-0600, 10/98]

[**812-004-0100** Repealed 10/98]

Effective Prior to 7/1/11

812-004-0110
Complaint Processing Fee; Waiver of Fee

(1) The complaint processing fee authorized under ORS 701.133 is $50 for a complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.

(2) The agency must collect the processing fee under OAR 812-004-0400.

(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

(a) The complainant is an individual;

(b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and

(c) The complainant's gross income does not exceed the 2011 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 76, No. 13, January 20, 2011, pp. 3637 – 3638.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of $97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133 & 701.146

(12/03, temp. 12/03, 2/04, 5/04, 12/06, 6/07, 6/08, 9/11 eff. 10/1/11)

812-004-0120
Liability of Licensee

A licensee, as defined in OAR 812-002-0450, participating in a corporation wholly-owned by the licensee, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held individually liable for complaints brought under ORS 701.131 to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership, or partnership was licensed as required by ORS chapter 701.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.102, 701.139, 701.140 & 701.145.

(10/98, 6/00, 12/01, 8/05, 12/06, 6/08, 9/11 eff. 10/1/11)

812-004-0140
Liability of Contractor for Complaint Related to Contractor's Property

(1) If an employee complaint, material complaint or subcontractor complaint arises from property owned by a licensed contractor, the licensed contractor is a contractor subject to ORS chapter 701 unless the contractor supplies pre-contract written notice to suppliers, subcontractors, and other potential complainants that the property is for the contractor's personal use and that the contractor is not subject to ORS chapter 701, as provided in ORS 701.010(7).

(2) If a licensed contractor files a complaint against another licensed contractor arising from property owned by the contractor filing the complaint, the contractor filing the complaint is a contractor subject to ORS chapter 701 unless the property is for the contractor's personal use and occupancy.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(10/98, 6/00, 12/06, 9/11 eff. 10/1/11)

812-004-0160
Establishment of Co-Complainant

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.455, 701.140 & 701.145

(10/98, 12/01, 12/06)

812-004-0180
Complainant's Responsibility to Pursue Complaint

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

(2) The agency may close a complaint under OAR 812-004-0260 if:

(a) The complainant does not respond to a written request from the agency, or to provide requested information or documents within a time limit specified in that request; or

(b) The complainant does not 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 812-004-0260.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145

(10/98, 4/01, 12/05, 12/06)

812-004-0195
Exhibits

(1) If a party to a complaint 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.

(2) The disposal of large exhibits is subject to OAR 812-001-0130.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.450 & 183.460

(10/04, 12/05, 12/06)

[**812-004-0200** Amended and renumbered to 812-004-510, 12/01]

812-004-0210
Address of Complainant and Respondent

(1) Initial notice of a contested case or of arbitration conducted by the agency directed to the last known address of record of a party to a complaint is 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 know address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 10 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 complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.117

(12/03, 12/ 06, 6/08)

[**812-004-0220** Amended and renumbered to 812-004-0530, 12/01]

812-004-0240
Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

The agency may continue processing a complaint even though the surety bond, letter of credit or cash deposit related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.068, 701.085 (2005), 701.088, 701.145 & 701.150

(10/98, 12/04, 12/05, 12/06, 12/07, 6/08)

812-004-0250
Award of Complaint Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a complaint that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005), 701.068 or 701.088, including, but not limited to an order of the board arising from a 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 complaint;

(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 complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005), 701.068 or 701.088 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien complaint may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

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

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a complaint processing fee paid by the complainant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbitrator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the 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 complainant to initiate under ORS 701.145.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.068, 701.088, 701.145, 701.146

(10/98, 4/01, 12/01, 8/03, temp. 12/03, 2/04, 10/04, 8/05, 12/05, 12/06, 12/07, 6/08, 6/10)

812-004-0260
Order Closing a Complaint

(1) The agency may close a complaint because:

(a) The complainant did not act in response to a request from the agency;

(b) The complaint was not filed within the time allowed under ORS 701.143;

(c) The complainant failed to pay the complaint processing fee as required under OAR 812-004-0400(1)(f);

(d) The complaint contains a mediation or arbitration agreement as provided in OAR 812-004-0440;

(e) The complainant does not comply with the on-site meeting requirements as provided in OAR 812-004-0450;

(f) The complainant and respondent settle the complaint as provided in OAR 812-004-0500;

(g) The complainant fails to provide documents to the agency as required by OAR 812-004-0520; or

(h) The agency does not timely receive evidence of a stay or counter-suit on a construction lien complaint, as provided in OAR 812-004-0530(11).

(2) The agency may close a complaint under section (1)(a) of this rule only if it complies with the following:

(a) The agency must include notice in its request to the complainant that failure to act as requested may result in closure of the complaint and that closure of the complaint will prevent access to the bond, letter of credit or cash deposit.

(b) The agency may not close the complaint sooner than 14 days after giving the notice required in subsection (2)(a) of this rule.

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

(3) The agency may reopen a complaint closed under section (1)(a) of this rule if the record of the complaint contains evidence that shows that the reason the complainant did not act as requested by the agency was due to excusable neglect by the complainant. The agency may reopen the complaint:

(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 complaint.

(4) Except as provided in section (5), the agency's determination to close a complaint is an order in other than a contested case.

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

(6) An order to close a complaint is subject to judicial review under ORS 183.484.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.480, 701.140, 701.145, 701.146

(04/01, 9/01, 5/02, 8/03, 12/04, 12/05, 12/06, 12/07, 6/08, 8/10 eff. 9/1/10)

Filing of Complaints

812-004-0300
Filing Date of Complaint

(1) Except as provided under section (3) of this rule, a complaint submitted to the agency for processing under ORS 701.139 is deemed to have been filed when a Breach of Contract Complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-0340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a Breach of Contract Complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a Breach of Contract Complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-0340(2)(m) related to pre-complaint notice, that person may resubmit the Breach of Contract Complaint with the required evidence. If the resubmitted Breach of Contract Complaint satisfies the agency that the person met the requirements under OAR 812-002-0340(2)(m), before the agency received the original Breach of Contract Complaint, the complaint is deemed to have been filed on the date the Breach of Contract Complaint was first received by the agency.

(4) A Breach of Contract Complaint that does not fully comply with the requirements of OAR 812-004-0340 is subject to OAR 812-004-0350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.133(1) and 701.146(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.143, 701.145 & 701.146

(10/98, 3/03, 10/04, 12/05, 12/06, 6/08, 9/11 eff. 10/1/11)

812-004-0320
Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.021 in order to perform the work; and

(B) The complaint does not arise from defects, deficiencies or inadequate performance of construction work.

(b) As used in section (4) of this rule, “properly licensed” means the complainant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the complaint;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant’s license status as an “exempt” or “nonexempt” contractor; and

(D) Complied with any other requirements and restrictions on the complainant’s license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;

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

(c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or

(d) A real estate purchase conditioned upon repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a

breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed without a determination on the merits before the on-site meeting;

(c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least $150 in amount, not including the processing fee required by 812-004-0110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(10/98, 6/00, 12/01, 5/02, 3/03, 8/03, 12/03, 10/04, 12/04, 12/05, 12/06, 6/08, 11/09 eff. 1/1/10, 6/10, 9/11 eff. 10/1/11)

[**812-004-0325** Repealed 12/05]

812-004-0340
Form of Complaints, Pre-Complaint Notice

(1) A complaint must be submitted on a complaint form provided by the agency. The complaint form shall be entitled "Breach of Contract Complaint." The agency may require the use of the most recent revision of the complaint form.

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

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

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

(c) The amount, if known at the time the complaint is filed, that the complainant alleges is due from the licensee after crediting payments, offsets and counterclaims in favor of the respondent to which the complainant agrees;

(d) Identification of the type of complaint;

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

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the complaint, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

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

(i) Payments, offsets and counterclaims of the respondent, if known;

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the complainant that the information provided on the complaint form is true;

(l) If a court judgment or arbitration award is the basis for the complaint, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the complaint filed in the court action or arbitration;

(m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS 701.133.

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

(3) A subcontractor complaint must include copies of each original invoice relating to the complaint.

(4) An employee complaint must include evidence that an employee worked for a contractor and evidence of the amount of unpaid wages or benefits. Evidence may include:

(a) Time cards;

(b) Paycheck stubs;

(c) W-4 forms; or

(d) A sworn affidavit or written declaration under perjury of a third-person stating facts that indicate the employee worked for the contractor. A written declaration under perjury must contain the following statement, "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

(5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

(a) The hours worked without payment of employee benefits;

(b) The amount of the unpaid benefits;

(c) The address of the job site where the employee worked; and

(d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien complaint must include evidence that the complainant paid the primary contractor, 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.

(7) A material complaint must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the complaint.

(8) A complaint involving negligent or improper work must include a list of the alleged negligent or improper work. A complaint involving a breach of contract must describe the nature of the breach of contract.

(9) A complaint must include one of the following:

(a) A copy of the pre-complaint notice required under ORS 701.133 and of the certified or registered mail receipt for the pre-complaint notice; or

(b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:

(A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or

(B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.

(c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:

(A) Copies of a complaint or answer in the court action; or

(B) Copies of a document that initiated the mediation or arbitration.

(d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

(10/98, 6/00, 4/01, 12/01, 5/02, 3/03, 12/03, 12/05, 12/06, 6/08, 4/10, 9/11 eff. 10/1/11)

812-004-0350
Procedure if Information on Complaint Form is Incomplete

If the agency receives a complaint form that does not meet the requirements of OAR 812-004-0340, the agency may close the complaint if the complainant does not provide the missing information in response to a written request for the information from the agency. The written request and closure must comply with OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

(3/03, 12/06)

812-004-0360
Addition of Complaint Items at On-Site Meeting

If the agency holds an on-site meeting, the complainant may add new complaint items up to and through the initial on-site meeting. New items added to a timely filed complaint under this rule are considered timely filed.

Stat. Auth.: ORS 670.310, 701.140, 701.145 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

(10/98, 11/02, 12/05, 12/06)

Administrative Processing of Complaint

812-004-0400
Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

(b) Verify that the complainant has provided information required under OAR 812-004-0340 and request additional information from the complainant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the complaint based on the information provided by the complainant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee. Except as provided in section (2) of this rule, the agency may suspend processing of the complaint until complainant pays this fee.

(e) Except as provided in subsection (g), if the agency determines that the complaint should be dismissed based on the information submitted by complainant, the agency must issue a proposed order to dismiss under OAR 812-004-0550.

(f) If the complainant requests a hearing on the proposed order of dismissal and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee and may not transmit the

complaint to the Office of Administrative Hearings for a hearing until the fee is paid.

(g) If the agency determines that the complaint should be closed for lack of jurisdiction due to failure to file the complaint within the time allowed under ORS 701.143, the agency will issue an order under OAR 812-004-0260 closing the complaint.

(h) If the complainant does not pay the fee required under OAR 812-004-0110 within 30 days of written notification that the fee is due, the agency may close the complaint. The request for payment and closure must comply with OAR 812-004-0260. The agency may extend the time for payment of the fee upon a showing of good cause by the complainant.

(2) The agency may initiate an investigation to determine the validity of the complaint. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a complaint even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.133, 701.140, 701.145 & 701.146

(10/98, 6/00, 12/01, 6/03, 12/03, 12/06, 6/08, 6/10, 8/10 eff. 9/1/10)

812-004-0420
Processing Owner and Primary Contractor Complaints Together

If an owner complaint based on the same facts and issues is received at any time during the processing of a primary contractor complaint, the two complaints will be processed together.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

(10/98, 12/05, 12/06)

812-004-0440
Contracts With Arbitration Agreements

(1) If a complaint is based on 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 set forth in ORS 701.180. Unless the contract requires mediation or arbitration by the agency, the agency must take the following action:

(a) The agency must inform the complainant by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the complaint unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the complainant; or

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

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (1)(a) of this rule from the complainant within 30 days from the date of the written notice described in subsection (1)(a) of this rule, the agency may close the complaint under OAR 812-004-0260. The agency may not close the complaint under section (1) of this rule if the respondent initiates mediation or arbitration under the contract before the expiration of the 30-day period for providing the waiver or evidence that mediation or arbitration was initiated.

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

(A) If the respondent wants the issues in the complaint mediated or arbitrated under the contract, respondent must initiate the mediation or arbitration process under the contract within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that the respondent initiated mediation or arbitration under the contract.

(B) If the respondent does not initiate mediation or arbitration and submit evidence within the time provided in paragraph (1)(c)(A) of this subsection, the respondent waives the right to mediation or arbitration under the contract;

(C) The agency will continue to process the complaint until the agency receives the evidence required under paragraphs (1)(c)(A) and (B) of this subsection; and

If the respondent submits timely evidence that the respondent began mediation or arbitration within the time allowed under ORS 701.180, the agency will suspend processing of the complaint pending the outcome of the mediation or arbitration under the contract.

(d) If mediation or arbitration under the contract is properly commenced under this section (1) of this rule, the agency must suspend processing the complaint until the mediation or arbitration is complete.

(2) If a complaint is based on a contract that contains an agreement by the parties to mediate and arbitrate disputes arising out of the contract, the complaint must be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the complaint is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the complaint mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.133 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under subsection (1)(c) of this rule.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.180
(6/80, 11/80, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 3/84, 5/84, 2/85, 3/85, 4/85, 2/87, 3/87, 7/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 10/98, 4/01, 12/01, temp. 12/03, 2/04, 10/04, 12/05, 12/06, 6/08)

812-004-0450
On-site Meeting and Attendance of the Complainant

(1) The agency may schedule one or more on-site meetings among the parties for the purpose of discussion of a settlement of a complaint and investigation of the complaint under ORS 701.145. The agency must mail notice of a meeting no less than 14 days before the date scheduled for the meeting. The notice must include notice of the requirements of section (2) and (3) of this rule and must comply with the requirements of OAR 812-004-0260.

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

(a) The complainant must allow access to the property that is the subject of the complaint.

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

(c) The complainant must allow the respondent to be present at the on-site meeting as required by ORS 701.145.

(3) If the complainant does not comply with the requirements of section (2) of this rule, the agency may close the complaint under OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 701.140 &701.145
(4/01, 12/01, 12/05, 12/06)

812-004-0460
Agency Recommendation of Resolution

If it appears that the respondent has breached a contract or performed work negligently or improperly, the agency may recommend to the complainant and respondent a resolution consistent with the terms of the contract, generally accepted building practices, and industry standards.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145
(10/98, 6/00, 12/01, 12/05, 12/06)
(Based on former OAR 812-004-0035(2), 1998)

812-004-0470
Challenge to Investigation Report

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183.415, 183.460, 701.145
(10/98, 6/00, 12/01, 5/02, 12/04, 12/05, 12/06, 6/08)
(Amended and renumbered from 812-004-0580, 12/01)

812-004-0480
Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the complainant and respondent for their consideration and agreement at an on-site meeting conducted under OAR 812-004-0450.

(2) If the complainant 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 complaint, the complainant accepts a promissory note from the respondent or other compromise as settlement of the complaint, the agency may consider the agreement to be a substituted contract, and base the continued processing of the complaint on the substituted contract.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145
(10/98, 6/00, 4/01, 12/01, 12/05, 12/06)

812-004-0500
Closure of Complaint After Settlement

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

(1) The agency must notify the complainant that the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days from the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 812-004-0260.

(2) If the complainant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency must close the complaint.

(3) If the complainant does not notify the agency as required under section (1) of this rule, the agency may close the complaint under OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.145
(10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 12/05, 12/06, 6/07)

812-004-0510
Court Judgments, Arbitration Awards and Other 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 complaint if a Breach of Contract Complaint is filed under OAR 812-004-0300 and 812-004-0340 within the time limit in ORS

701.143 and all or a portion of the judgment is within the jurisdiction of the board.

(3) Facts and issues within the jurisdiction of the Board 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 asserting 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 complaint based on a court judgment, arbitration award or other entity determination must be processed under OAR 812-004-0520. An award of damages on the complaint based on a court judgment, arbitration award or other entity determination may be limited under OAR 812-004-0250.

(5) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.470, 701.143, 701.145 & 701.146

(1/82, 3/82, 4/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/87, 12/87, 1/88, 11/89, 2/90, 4/90, 5/90, 6/90, 10/90, 2/92, 4/92, 1/95, 11/97, 10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 12/01, 10/04, 12/06)

(Amended and renumbered from 812-004-0200, 12/01)

812-004-0520
Processing of Complaint 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 complaint if:

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

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

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

(d) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

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

(a) The notice of suspension of processing must include notice of the requirements contained in subsections (3)(b) and (d) of this rule and must comply with the requirements of OAR 812-004-0260.

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

(c) The agency may, at any time, demand from the complainant a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect. The demand must be in writing and must comply with the requirements of OAR 812-004-0260. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(d) Within 30 days from the date of final action by the court, arbitrator or other entity, the complainant must 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 the complainant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the complaint. If the complainant does not comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the complaint under OAR 812-004-0260.

(4) If the agency suspends processing a complaint 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 must notify the complainant that the complainant must file the complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the complainant has done so within 30 days from mailing of the notice. The notice must comply with the requirements of OAR 812-004-0260.

(b) If the complainant does not submit the evidence as required under subsection (4)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(5) If the agency suspends processing a complaint 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 must notify the complainant, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the complaint and that the complainant must:

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

(B) Submit evidence, including a copy of the complaint, to the agency that the complainant complied

with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the complainant does not submit the evidence as required under subsection (5)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

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

(a) The agency must accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the complaint.

(b) Based on the judgment, award or decision, the agency must issue a proposed default order to pay damages or to dismiss or refer the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(b) of this rule:

(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under section (6) of this rule 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 complaint to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge must 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 complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-0450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.133, 701.145 & 701.146

(10/98, 6/00, 4/01, 5/02, 3/03, 8/03, 10/04, 8/05, 12/06, 6/07, 6/08)

812-004-0530

Construction Lien Complaints

(1) Upon acceptance of a construction lien complaint, the agency must send a copy of the complaint to the respondent and must initiate an investigation to determine the validity of the complaint.

(2) For a construction lien complaint to be valid, the following conditions must be met:

(a) The complainant must have paid the respondent for work performed or materials supplied or equipment rented subject to ORS chapter 701 and the primary contractor 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 complainant's property;

(b) The lienor must have delivered to the complainant 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.

(3) 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 complaint processed under this rule.

(4) 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 complaint. Before such dismissal, 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 complaint and to request arbitration or a hearing.

(5)(a) A construction lien complaint may include attorney fees, court costs, interest and service charges if these items are included as part of the construction lien or incurred as costs to discharge the lien. An award to the complainant for attorney fees incurred to discharge the lien must not exceed the amount of the lien.

(b) A construction lien complaint may not include excess interest paid as a result of the inability of the complainant to refinance at a lower interest rate due to the existence of the lien.

(6) The agency may reduce the amount awarded to the complainant by:

(a) Any amount the complainant owes the primary contractor; and

(b) Any amount included for tools or equipment not fabricated into the structure.

(7) If a complainant files two or more complaints against the respondent relating to work performed under the same contract and if the complainant has not paid the respondent the full amount of the contract, the amount awarded on each complaint will be reduced on a pro rata basis. A proposed or final order may not be issued on a complaint until all complaints involving the complainant and the respondent filed within the same 90-day period are ready for an order.

(8) If an action is filed to enforce a lien that is the subject of a complaint, the agency must send notice to the complainant that:

(a) The complainant has the right to request a stay of the proceedings until the agency's processing of the complaint is complete;

(b) The agency will hold the complaint open for 60 days from the date of the notice to allow the complainant to obtain a stay or to file a counter-suit or complaint in the foreclosure action; and

(c) The agency may close the complaint under section (11) of this rule if the agency does not receive evidence within 60 days from the date of the notice:

(A) That the complainant obtained a stay; or

(B) That the complainant filed the complaint as a counter-suit or complaint in the court.

(9)(a) Upon timely receipt of evidence that the complainant obtained a stay, the agency will resume processing the complaint.

(b) Upon timely receipt of evidence that the complainant filed a counter-suit or complaint in the court under paragraph (8)(c)(B) of this rule, the agency must suspend processing the complaint and send notice to the complainant of the requirements of OAR 812-004-0520(3). Further processing of the complaint must be under OAR 812-004-0520.

(10) Time limitations in this rule supersede conflicting time limitations in OAR 812-004-0520.

(11) The agency may close a construction lien complaint under OAR 812-004-0260 if the agency does not receive evidence that the complainant obtained a stay or filed a counter-suit or complaint required under subsection (8)(c) of this rule within the time limitation in the notice required under section (8) of this rule.

(12) If a construction lien complaint involves the same facts and issues as any other open complaint, the agency must process the complaints together.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.057, 87.058 & 701.145

(3/81, 10/81, 11/81, 1/82, 3/82, 4/82, 10/82, 1/83, 2/83, 3/83, 7/83, 10, 83, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 11/89, 11/97, 10/98, 6/00, 4/01, 12/01, 5/02, 6/02, 12/04, 12/05, 12/06)

(Amended and renumbered from 812-004-0220, 12/01)

812-004-0535
Elements of Complaint That Must Be Proved

The following provisions apply to OAR 812-004-0540(5) and (6), 812-004-0550(2), 812-009-0100 and 812-009-0120:

(1) Except as provided in section (3) of this rule, in order for the agency to award damages to the complainant the record of the complaint must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) The complainant suffered damages;

(b) The respondent caused those damages by acts or omissions within the scope of ORS 701.140; and

(c) The monetary value of those damages is substantiated on the record.

(2) The agency must dismiss the complaint if the evidence in the record of the complaint does not persuade the agency, arbitrator or administrative law judge of the existence of the facts described in section (1) of this rule.

(3) Notwithstanding the presence of evidence described in section (1) of this rule, a complaint for damages must be dismissed if the record of the complaint contains evidence that persuades the agency, arbitrator or administrative law judge that the complainant is not entitled to recover the damages. Evidence that the complainant may not be entitled to recover all or part of the damages alleged includes, but is not limited to a valid release of liability or a valid limitation of damages.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(3/03, 8/03, 12/03, 2/04, 8/05, 12/06, 6/08)

812-004-0537
Standards of Care and Workmanship

(1) For purposes of this rule, "NASCLA Standards" mean the Residential Construction Standards, dated March 20, 2009, as adopted by the National Association of State Contractors Licensing Agencies.

(2) Except as provided in section (3) of this rule, the agency and the Office of Administrative Hearings shall apply NASCLA standards; to the extent such standards cover the work at issue, in order to determine if construction work performed on a residential structure meets the standards of care and workmanship in the industry.

(3) The agency or an Administrative Law Judge of the Office of Administrative Hearings may apply a standard different than the NASCLA standard if a party shows, by a preponderance of the evidence, that:

(a) The contract between the parties provides for a standard of care and workmanship that differs from the NASCLA standard; or

(b) The work involved installation of a product for which the manufacturer provided installation instructions that establish a standard that differs from the NASCLA standard.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(10/10 eff. 11/1/10)

812-004-0540
Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A complainant may seek monetary damages if the agency has not closed the complaint and:

(a) The complainant disagrees with the resolution recommended by the agency;

(b) The respondent cannot or will not comply with the recommended resolution; or

(c) The parties signed a settlement agreement but, through no fault of the complainant, the respondent failed to satisfy one or more terms of the settlement agreement, and the complainant so advises the agency in writing within 30 days from the date the settlement agreement was to have been completed.

(2) If the complainant seeks monetary damages or the agency so requests, the complainant must file a statement of damages stating the amount the complainant alleges the respondent owes the complainant, limited to complaint items listed in the Breach of Contract Complaint and those complaint items added up to and through any initial on-site meeting. The agency may require the complainant to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost to correct the complaint items; or

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the complaint for an arbitration or contested case hearing under section (4) of this rule after each party to the complaint has had an opportunity to provide evidence supporting its position with regard to the complaint. The

agency may require that the complainant file a statement of damages and supporting evidence described under section (2) of this rule, except that the statement of damages must be limited to complaint items listed in the Breach of Contract Complaint.

(4) After the agency receives documents required under sections (2) or (3) of this rule, the agency may:

(a) Issue a proposed default order proposing dismissal of the complaint under OAR 812-004-0550(2) or payment of an amount by the respondent to the complainant; or

(b) Refer the complaint to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the complaint and whether the amount of damages alleged, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to the complainant only if the record of the complaint supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the complaint contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6)(a) If the record of a complaint supports an award of damages to the complainant under OAR 812-004-0535 and the respondent pays the complainant the amount of those damages after the complainant submits to the agency the complaint processing fee required under OAR 812-004-0110, the agency may issue a proposed default order proposing that the respondent reimburse the complainant the amount of the processing fee paid.

(b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the complainant to satisfy a written settlement agreement that the complainant signed.

(c) Before issuing a proposed default order under subsection (6)(a) of this rule, the agency must notify the respondent of the agency's intent to issue the proposed order and allow the respondent 30 days to submit written evidence that the respondent reimbursed the complaint processing fee to the complainant.

(7) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.133 & 701.145

(10/98, temp. 1/00, 5/00, 4/01, 5/02, 11/02, 3/03, 8/03, 2/04, 12/04, 8/05, 12/06, 6/07, 6/08)

812-004-0550

Proposed Default Order to Dismiss, Other Resolution of Complaint by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a complaint if the evidence in the complaint record persuades the agency that one of the following grounds for dismissal exists:

(a) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140.

(b) The complainant did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(d).

(c) The complaint must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

(d) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the complainant is less than an amount due to the respondent from the complainant under the terms of the contract.

(e) The complainant contends that the respondent did not fulfill the terms of a settlement that resolved the complaint 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 complaint if the agency investigates the complaint and finds that the record of the complaint supports dismissal under OAR 812-004-0535.

(3) If the complainant 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 complaint for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the complainant file a statement of damages stating an amount the complainant alleges the respondent owes the complainant and refer the complaint for arbitration or a contested case hearing to determine if the complaint should be dismissed and if not, the validity of the complaint and whether the amount alleged, or some lesser amount is proper.

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.133 & 701.145

(temp. 1/00, temp. 3/00, 5/00, 4/01, 5/02, 3/03, 8/03, 2/04, 12/06, 6/08, 6/10, 8/10 eff. 9/1/10)

812-004-0560

General Requirements for Proposed Default Order or Referral to Office of Administrative Hearings, Hearing Request

(1) A proposed default order on a complaint issued by the agency must include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for arbitration or a contested case hearing must:

(a) Comply with OAR 812-004-0590, which regulates whether the complaint 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 before the agency's referral of the complaint to the Office of Administrative Hearings.

(3) If the agency refers a complaint to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the complainant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the statement of damages or the Breach of Contract Complaint that limits the amount that the respondent may be ordered to pay the complainant and state the amount that the order is limited to under OAR 812-009-0160 and 812-010-0420.

(b) The agency must serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a complainant under OAR 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new statement of damages under OAR 812-009-0020 and 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date the agency mails a proposed default order.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528.

(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 contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record for purposes of a default order under this rule and for purposes of a contested case hearing or arbitration on the complaint. For purposes of this rule, the agency's file consists of all documents submitted by parties, all agency correspondence with the parties and any other material designated by the agency as part of the record.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.417, 183.460, 183.470, 701.133 & 701.145

(1/86, 5/86, 11/89, 11/97, 10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 6/02, temp. 9/02, 11/02, 3/03, 8/03, 12/04, 12/06, 12/07, 6/08, 4/12 eff. 5/1/12)

[**812-004-0580** Amended and renumbered to 812-004-0470, 12/01]

812-004-0590
Referral of Complaint to Arbitration or Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings conducts a hearing on a complaint:

(a) The hearing must be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule 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 must be held as a contested case hearing under OAR 137-003-0501 to OAR 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the complaint makes a timely written request under section (4) of this rule that the complaint be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the complaint be heard as a contested case.

(2) Subject to section (3) of this rule, a complaint must be decided in court if:

(a) The complainant files a complaint in court that alleges the elements of the complaint in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the complaint and that allows the complainant to file a response alleging the elements of the complaint.

(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 limit in this rule constitutes waiver of the right to have the complaint 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 must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a complaint be heard as a contested case filed under subsection (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 must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a complaint to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the complaint be heard as a contested case under subsection (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 complaint.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (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 complaint being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the complainant in a complaint does not seek $1,000 or more, a hearing on the complaint may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (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 complaint under ORS 701.131 to 701.180 is at issue;

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the complaint; or

(c) The agency determines, in its discretion, that a contested case hearing is in the interest of one or more of the parties or of the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133 & 701.145

(9/99, temp. 1/00, 5/00, 6/02, 9/02, 8/03, 12/04, 8/05, 12/05, 12/06, 12/07, 6/08)

812-004-0600

Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency may notify the surety company or financial institution of complaints pending.

(2) The agency must notify the surety company or financial institution of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint.

(3) Complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

(4) If during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into.

(5) If the contractor holds a residential surety bond, that bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

(6) If the contractor holds a commercial surety bond, that bond is available only for payments ordered by the agency involving small or large commercial structures or for development of property zoned or intended for use compatible with small or large commercial structures.

(7) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (3) of this rule and the total amount due to be paid exceeds the total amount available from the surety bond, letter of credit or cash deposit, payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(8) The full penal sum of a bond is available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170 or 812-003-0171.

(9) 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 complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(10) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(11) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.081, 701.084, 701.088 & 701.150

(6/80, 11/80, 3/81, 10/81, 11/81, 1/83, 3/83, 6/84, 9/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 11/89, 11/97, 2/98, 10/98, 3/99, 6/00, 4/01, 12/01, temp. 5/02,

9/02, 6/04, 10/04, 12/04, 6/05, 12/06, 6/07, 12/07, 2/08, 6/08, 9/11 eff. 10/1/11)

For Complaints filed on or After July 2011

General

812-004-1001
Application of Rules

(1) The rules in 812-004-1001 to 812-004-1600 apply to all complaints filed under ORS 701.145 on or after July 1, 2011.

(2) The following rules apply to a complaint filed under ORS 701.146:

(a) OAR 812-004-1001 through 812-004-1240;

(b) OAR 812-004-1260 through 812-004-1320;

(c) OAR 812-004-1340, except 812-004-1340(2)(c), (2)(i) and (8);

(c) OAR 812-004-1420;

(d) OAR 812-004-1520; and

(e) OAR 812-004-1600.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133, 701.139, 701.140, 701.145, & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1110
Complaint Processing Fee; Waiver of Fee

(1) The complaint processing fee authorized under ORS 701.133 is $50 for a complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.

(2) The agency must collect the processing fee under OAR 812-004-1400.

(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

(a) The complainant is an individual;

(b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and

(c) The complainant's gross income does not exceed the 2011 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 76, No. 13, January 20, 2011, pp. 3637 - 3638.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of $97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1120
Liability of Licensee

A licensee, as defined in OAR 812-002-0450, participating in a corporation wholly-owned by the licensee, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held individually liable for complaints brought under ORS 701.131 to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership, or partnership was licensed as required by ORS chapter 701.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.102, 701.139, 701.140 & 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1140
Liability of Contractor for Complaint Related to Contractor's Property

(1) If an employee complaint, material complaint or subcontractor complaint arises from property owned by a licensed contractor, the licensed contractor is a contractor subject to ORS chapter 701 unless the contractor supplies pre-contract written notice to suppliers, subcontractors, and other potential complainants that the property is for the contractor's personal use and that the contractor is not subject to ORS chapter 701, as provided in ORS 701.010(7).

(2) If a licensed contractor files a complaint against another licensed contractor arising from property owned by the contractor filing the complaint, the contractor filing the complaint is a contractor subject to ORS chapter 701 unless the property is for the contractor's personal use and occupancy.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1160
Establishment of Co-Complainant

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1180
Complainant's Responsibility to Pursue Complaint

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

(2) The agency may close a complaint under OAR 812-004-1260 if:

(a) The complainant does not respond to a written request from the agency, or to provide requested

information or documents within a time limit specified in that request; or

(b) The complainant does not 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 812-004-1260(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1195
Exhibits

(1) If a party to a complaint 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.

(2) The disposal of large exhibits is subject to OAR 812-001-0130.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1210
Address of Complainant and Respondent

(1) All communications directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

(2) A party must notify the agency in writing within 10 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 complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.117

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1240
Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

The agency may continue processing a complaint even though the surety bond, letter of credit or cash deposit related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.068, 701.088, 701.145 & 701.150

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1250
Payments From the Bond for Court Costs, Complaint Processing Fee, Interest and Other Costs

(1) For complaints filed under ORS 701.145, the agency may include the following costs in the amount of a judgment that is subject to payment by a surety or financial institution:

(a) Court costs;

(b) Interest;

(c) Costs, other than attorney fees, to pursue litigation or the complaint; or

(d) Service charges or fees.

(2) For complaints filed under ORS 701.145, the agency's determination of payment due from a surety or financial institution may not include amounts arising out of claims for anything other than construction work involving negligence, improper work or breach of contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.068, 701.088, 701.133, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1260
Closing a Complaint

(1) The agency may close a complaint because:

(a) The complainant did not act in response to a request from the agency;

(b) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140;

(c) The complaint was not filed within the time allowed under ORS 701.143;

(d) The complainant failed to pay the complaint processing fee as required under OAR 812-004-1110 and 812-004-1400;

(e) The complaint contains a mediation or arbitration agreement that the complainant has not waived;

(f) The complainant does not comply with the on-site meeting requirements as provided in OAR 812-004-1450(2);

(g) The complainant and respondent settle the complaint as provided in OAR 812-004-1500;

(h) The complainant does not, within 30 days of the date of completion of the settlement agreement, notify the agency whether the terms of the settlement agreement have been fulfilled;

(i) The complainant fails to provide documents to the agency as required by OAR 812-004-1520; or

(j) The agency does not timely receive evidence of a stay or counter-suit on a construction lien complaint, as provided in OAR 812-004-1530.

(2) The agency may close a complaint under section (1) of this rule if the agency notifies the complainant that complainant must provide information or that complainant must comply with an agency rule and that:

(a) Failing to respond to the agency's request may result in closing the complaint; and

(b) Closing the complaint will prevent access to the bond, letter of credit or cash deposit.

(3) The agency may not close the complaint sooner than 14 days after giving the notice required in subsection (2) of this rule.

(4) The agency may, within 60 days after closing a complaint, reopen a complaint closed under section (1) of this rule if the complainant did not comply with the agency's request or failed to comply with an agency rule due to excusable neglect by the complainant. The agency may reopen the complaint after receiving evidence supporting reopening the complaint.

(5) The agency's determination to close a complaint is an order in other than a contested case.

(6) The agency's determination to close a complaint is subject to judicial review under ORS 183.484.

(7) A party must file a motion for reconsideration of the agency's determination to close a complaint before seeking judicial review of the order.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133, 701.140, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

Filing of Complaints

812-004-1300
Filing Date of Complaint

(1) Except as provided under section (3) of this rule, a complaint filed with the agency under ORS 701.139 is deemed to have been filed when a complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-1340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-1340(2)(m) related to pre-complaint notice, that person may resubmit the complaint with the required evidence. If the resubmitted complaint satisfies the agency that the person met the requirements under OAR 812-002-1340(2)(m) before the agency received the original complaint, the complaint is deemed to have been filed on the date the complaint was first received by the agency.

(4) A complaint that does not fully comply with the requirements of OAR 812-004-1340 is subject to OAR 812-004-1350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.133(1) and 701.146(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133, 701.139, 701.143, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1320
Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. A surety company or financial institution is only liable for payments for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant, or the employee that is the subject of the trust, performed work that was not paid for. A surety company or financial institution is only liable for payments for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.021 in order to perform the work; and

(B) The complaint does not arise from defects, deficiencies or inadequate performance of construction work.

(b) As used in section (4) of this rule, "properly licensed" means the complainant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the complaint;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-1250 as they applied to the complainant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on the complainant's license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;

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

(c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or

(d) A real estate purchase conditioned upon repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a

breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be closed if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed without a determination on the merits before the on-site meeting;

(c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110 or 812-004-1110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least $150 in amount, not including the processing fee required by 812-004-1110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1340

Form of Complaints, Pre-Complaint Notice

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

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

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

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

(c) The amount, if known at the time the complaint is filed, that the complainant alleges is due from the respondent after crediting payments, offsets and counterclaims in favor of the licensee to which the complainant agrees;

(d) Identification of the type of complaint;

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

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the complaint, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

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

(i) Payments, offsets and counterclaims of the respondent, if known;

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the complainant that the information provided on the complaint form is true;

(l) If a court judgment or judgment based on an arbitration award is the basis for the complaint, a copy of the judgment, arbitration award, the original complaint and any answers or counter-suits related to the parties to the complaint filed in the court action or arbitration;

(m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS 701.133.

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

(3) A subcontractor complaint must include copies of each original invoice relating to the complaint.

(4) An employee complaint must include evidence that an employee worked for a contractor and evidence of the amount of unpaid wages or benefits. Evidence may include:

(a) Time cards;

(b) Paycheck stubs;

(c) W-4 forms; or

(d) A sworn affidavit or written declaration under perjury of a third-person stating facts that indicate the employee worked for the contractor. A written declaration under perjury must contain the following statement, “I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.”

(5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

(a) The hours worked without payment of employee benefits;

(b) The amount of the unpaid benefits;

(c) The address of the job site where the employee worked; and

(d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien complaint must include evidence that the complainant paid the primary contractor, 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.

(7) A material complaint must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the complaint.

(8) A complaint involving negligent or improper work must include a list of the alleged negligent or improper work. A complaint involving a breach of contract must describe the nature of the breach of contract.

(9) A complaint must include one of the following:

(a) A copy of the pre-complaint notice required under ORS 701.133 and of the certified or registered mail receipt for the pre-complaint notice; or

(b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:

(A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or

(B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.

(c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:

(A) Copies of a complaint or answer in the court action; or

(B) Copies of a document that initiated the mediation or arbitration.

(d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-1350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1350
Procedure if Information on Complaint Form is Incomplete

If the agency receives a complaint form that does not meet the requirements of OAR 812-004-1340, the agency may close the complaint if the complainant does not provide the missing information in response to a written request for the information from the agency. The written request and closure must comply with OAR 812-004-1260.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1360
Addition of Complaint Items at On-Site Meeting

If the agency holds an on-site meeting, the complainant may add new complaint items up to and through the initial on-site meeting. New items added to a timely filed complaint under this rule are considered timely filed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

Administrative Processing of Complaint

812-004-1400
Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

(b) Verify that the complainant has provided information required under OAR 812-004-1340 and request additional information from the complainant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the complaint based on the information provided by the complainant;

(2) If the agency makes a preliminary determination under subsection (1)(c) of this rule that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-1110, the agency must request payment of the complaint processing fee. The agency may suspend processing of the complaint until complainant pays this fee.

(3) If the complainant does not pay the fee required under OAR 812-004-1110 within 14 days of written notification that the fee is due, the agency may close the complaint. The agency may extend the time for payment of the fee upon a showing of good cause by the complainant.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133, 701.140, 701.143, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1420
Processing Owner and Primary Contractor Complaints Together

If an owner complaint based on the same facts and issues is received at any time during the processing of a primary contractor complaint, the two complaints will be processed together.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1440
Contracts With Arbitration Agreements

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate disputes arising out of the contract, the specific terms of the mediation agreement supersede agency rules except as set forth in ORS 701.180.

(2) If the contract requires mediation, the agency will be the mediator unless the contract requires mediation by a specific mediator other than the agency.

(3) If the contract requires mediation by a specific mediator other than the agency, the agency must inform the respondent by written notice that, if the respondent wants to mediate under the terms of the contract, the respondent must initiate the contractual mediation process within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that respondent initiated mediation under the terms of the contract.

(4) If mediation under the contract is timely commenced under ORS 701.180, the agency must suspend processing the complaint until the mediation is complete.

(5) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.133 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

(temp. 7/8/11, temp. 9/9/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1450
On-site Meeting and Telephone Mediation; Attendance of the Complainant

(1) The agency may schedule one or more on-site meetings or telephone mediations among the parties for the purpose of discussing a settlement of a complaint under ORS 701.145. The agency must mail notice of an on-site meeting no less than 14 days before the date scheduled for the meeting. The notice must include notice of the requirements of section (2) and (3) of this rule and must comply with the requirements of OAR 812-004-1260(2).

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

(a) The complainant must allow access to the property that is the subject of the complaint.

(b) The complainant or an agent of the complainant must attend the meeting. An agent of the complainant must have knowledge of all complaint items included in the complaint and must have authority to enter into a settlement of the complaint.

(c) The complainant must allow the respondent to be present at the on-site meeting as required by ORS 701.145.

(3) If the complainant does not comply with the requirements of section (2) of this rule, the agency may close the complaint. OAR 812-004-1260 applies to closure of a complaint under this section.

(4) Notwithstanding subsection (2)(b), the agency may continue to process the complaint if the respondent does not appear at the on-site meeting.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140 & 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1460
Agency Recommendation of Resolution

If it appears that the respondent has breached a contract or performed work negligently or improperly, the agency may recommend to the complainant and respondent a resolution consistent with the terms of the contract, generally accepted building practices, and industry standards.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.130, 701.145 & 701.150

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1480
Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the complainant and respondent for their consideration and agreement at or after an on-site meeting or telephone mediation conducted under OAR 812-004-1450.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.130, 701.139, 701.140, 701.145 & 701.150

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1490
Subsequent On-Site Meetings; Determining Compliance; Closing Complaint

(1) If a dispute arises as to whether the respondent complied with the settlement agreement, the agency may schedule a subsequent on-site meeting.

(2) If the agency determines that the respondent complied with the terms of the settlement agreement, the agency may close the complaint.

(3) If the agency determines that the respondent did not comply with the terms of the settlement agreement, the complainant must obtain a judgment and submit the judgment to the agency in order to recover under the respondent's bond.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140 & 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1500
Closure of Complaint After Settlement

If the complainant and respondent agree to a settlement, within 30 days from the date the settlement agreement requires completion of the terms of the

settlement, the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1505
Complaint Not Settled

(1) For other than a BOLI final order, if the complainant and respondent do not settle the complaint, the complainant must obtain a court judgment, including a judgment on an arbitration award, in order to recover from the respondent's bond.

(2) The agency will process the judgment and issue its determination as to the amount of the judgment that complainant is entitled to recover from respondent's bond.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1510
Court Judgments, Arbitration Awards and Bureau of Labor and Industries Final Orders

(1) A judgment based on a court action or arbitration award or a Bureau of Labor and Industries (BOLI) final order constitute the basis for a complaint if:

(a) A complaint is filed under OAR 812-004-1300 and 812-004-1340 within the time limit in ORS 701.143; and

(b) All or a portion of the judgment or the BOLI final order is within the jurisdiction of the agency.

(2) A complaint based on a judgment or BOLI final order will be processed under OAR 812-004-1520.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.143, 701.145, 701.146 & 701.150

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1520
Processing of Complaint Based on Judgments and Bureau of Labor and Industries Final Orders

(1) The agency may suspend processing a complaint if:

(a) The complainant or respondent submits to a court, arbitrator or BOLI a complaint based on the same facts and issues contained in the complaint filed with the agency; or

(b) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(2) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the notice of defect or action before the court, arbitrator or BOLI.

(3) The agency may, at any time, demand from the complainant a written report describing the current status of the notice of defect or the action before the court, arbitrator or BOLI. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(4) Within 30 days from the date of final action by the court or BOLI, the complainant must deliver to the agency a certified copy of the final judgment or BOLI final order. The agency may extend the time in which to submit the final judgment or BOLI final order if it determines there is good cause to do so.

(5) If the complainant does not comply with sections (2), (3) or (4) of this rule, the agency may close the complaint under OAR 812-004-1260(1)(i).

(6) If the agency suspends processing a complaint because respondent filed a court action, the complainant must file its complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the countersuit, complaint or counter claim, to the agency. The complainant must provide this information within 30 days from the date that the agency suspended processing the complaint, unless the agency determines there is good cause to extend the permissible time period.

(7) If the complainant does to submit the evidence required under subsection (6) of this rule, the agency may close the complaint.

(8) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-1450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133, 701.140, 701.145 & 701.146

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1530
Construction Lien Complaints

(1) The agency may schedule one or more on-site meetings or telephone mediations among the parties to a construction lien complaint filed under ORS 701.145 for the purpose of discussing settlement of the complaint. Notice of the meeting must comply with OAR 812-004-1450(1). The agency may invite the lienor to participate in the settlement discussions. The on-site meeting may be held on the property of the complainant or another mutually agreeable site. OAR 812-004-1450(2), (3) and (4) apply to an on-site meeting held under this section.

(2) If the complaint does not settle, the complainant must:

(a) Join the respondent in an action to foreclose the lien if the lienor has filed such an action; or

(b) File an action against respondent to recover damages caused by respondent's failure to pay for material, rental services, labor or subcontractor services that gave rise to the lien.

(3) The agency will suspend processing the complaint while the complainant complies with section (2) of this rule. If complainant fails, within 60 days from the date of the last on-site meeting or telephone mediation, to comply with section (2) of this rule, the agency may close the complaint. The agency may extend the time to comply with section (2) for good cause.

(4) While the court action described in section (2) is proceeding, the complainant must comply with OAR 812-004-1520.

(5) If a construction lien complaint involves the same facts and issues as any other open complaint, the agency must process the complaints together.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.057, 87.058, 701.145 & 701.150

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1537
Standards of Care and Workmanship

(1) For purposes of this rule, "NASCLA Standards" mean the Residential Construction Standards, dated March 20, 2009, as adopted by the National Association of State Contractors Licensing Agencies.

(2) Except as provided in section (3) of this rule, the agency will apply NASCLA standards; to the extent such standards cover the work at issue, in order to determine if construction work performed on a residential structure meets the standards of care and workmanship in the industry.

(3) The agency may apply a standard different than the NASCLA standard if:

(a) The contract between the parties provides for a standard of care and workmanship that differs from the NASCLA standard; or

(b) The work involved installation of a product for which the manufacturer provided installation instructions that establish a standard that differs from the NASCLA standard.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

812-004-1600
Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency must notify the surety company or financial institution the agency's determination. The determination is the amount of the judgment that is subject to payment by the surety or financial institution.

(2) A complaint is ready for payment when there is a court judgment and 30 days have elapsed or there is a BOLI final order and 60 days have elapsed and:

(a) The respondent has not paid the judgment or BOLI order;

(b) A court has not granted a stay of judgment or BOLI has not granted a stay of its final order; and

(c) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 are resolved, closed or have reached the same state of processing as the subject complaint.

(3) For purposes of section (2), a BOLI final order is final except that the 60-day period for judicial review has not expired.

(4) Complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (4)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

(5) If during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into.

(6) If the contractor holds a residential surety bond, that bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

(7) If the contractor holds a commercial surety bond, that bond is available only for payments ordered by the agency involving small or large commercial structures or for development of property zoned or intended for use compatible with small or large commercial structures.

(8) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (4) of this rule and the total amount due to be paid exceeds the total amount available from the surety bond, letter of credit or cash deposit, payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(9) The full penal sum of a bond is available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170 or 812-003-0171.

(10) If two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or

cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(11) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(12) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.081, 701.084, 701.088 & 701.150

(temp. 7/8/11, 9/11 eff. 10/1/11, 4/12 eff. 5/1/12)

DIVISION 5

ENFORCEMENT

Contractor Discipline

[**812-005-0000** Renumbered to 812-005-0100 thru 812-005-0180, 12/05]

[**812-005-0003** Renumbered to 812-005-0500, 12/05]

[**812-005-0005** Renumbered to 812-005-0800, 12/05]

812-005-0100
Notice of Intent to Take Action

Except as provided under authority of ORS 701.098(4), if the agency intends to revoke or suspend a license, or assess a civil penalty, it shall issue and serve on the respondent a notice of intent to take an action, giving the opportunity for hearing. For cases the agency determines as potentially complex, unique or otherwise significant, the notice may include the statement that an answer to the assertions or charges will be required.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183.413, 183.415, 183.470 & 701.102

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08, 4/12 eff. 5/1/12)

812-005-0110
Hearing Request

A hearing request, and answer when required, shall be made in writing to the agency by the respondent or the respondent's attorney. An answer shall include:

(1) An admission or denial or each factual matter alleged in the notice.

(2) A short and plain statement of each relevant defense the respondent may have.

Except where it would be unduly prejudicial to do so, the respondent may amend its answer provided the amended answer is filed at least 30 days before the first scheduled hearing date.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183.413, 183.415 & 701.102

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 4/12 eff. 5/1/12)

812-005-0120
Default Orders

If the agency issues a notice of intent to take an action and no answer or written request for hearing is received by the agency within 21 days of the date of mailing the notice; the agency may issue a default order.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183.415, 701.102 & 701.135

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05)

812-005-0130
Hearing

If the agency issues a notice of intent to take an action and an answer or a written request for hearing is timely received, the agency will set an administrative hearing to determine whether the respondent has violated any provision of ORS chapter 701 or of these rules, and if so, the duration of any suspension and the amount of any civil penalty to be assessed.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 701.098 & 701.102

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

812-005-0140
Emergency Suspension

Effective January 1, 2008, the Administrator of the Board may immediately suspend or refuse to renew a license without a prior hearing, in accordance with ORS 701.098(4), in cases where the Administrator of the Board has in its possession a prima facie case of a wrongful act as described in ORS 701.098(4)(a)(A)-(E) having been committed by a contractor and upon a finding by the Administrator that the contractor is a serious danger to the public welfare. The respondent shall be entitled to a hearing on the Administrator’s action if the respondent requests such a hearing within 90 days after the date of the notice to the respondent, as provided in ORS 701.098(4)(b).

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 701.098 & 701.102

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08, Temp. 10/24/11, 3/12)

812-005-0150
Collection

The agency may initiate its own collection proceedings, assign the matter to another public or private agency for collection, or commence an action as set forth in ORS 701.992(2).

Stat. Auth.: ORS 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.102
(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05)

812-005-0160
Failure to Pay a Civil Penalty

The agency may revoke, suspend, or refuse to issue or reissue the license of any contractor who fails to pay on demand a civil penalty which has become due and payable.
Stat. Auth.: ORS 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.098 & 701.102
(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

812-005-0170
Status of Backdated License

Notwithstanding any back-dating of a renewal, a person shall be in violation of ORS 701.021 if, at the time a person undertakes, offers to undertake, or submits a bid to do work as a contractor, the person is not actively licensed with the Board.
Stat. Auth.: ORS 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.021, 701.026 & 701.102
(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

812-005-0180
Suspension of Civil Penalty

At the agency's discretion, all or part of a civil penalty may be suspended, if:
(1) The respondent provides written proof of having completed one or more pre-licensure training courses as provided by Division 6 of these rules; and/or
(2) The respondent makes timely payment of any agreed-upon reduced penalty amount; and/or
(3) The respondent provides other consideration found to be acceptable by the agency.
Stat. Auth.: ORS 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.102
(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 4/13 eff. 5/1/13)

812-005-0200
Unpaid Final Orders, Arbitration Awards or Determinations that Exceed the Contractor's Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.068(5), the agency must suspend the license of a licensee if the agency issues a final order, arbitration award or determination on a complaint that exceeds the amount of the bond, letter of credit or cash deposit available to pay the order, arbitration award or determination.
(2) A suspension issued under section (1) of this rule must remain in effect until the unpaid amount of the order, arbitration award or determination is paid or until the license of the licensee expires.
(3) The agency may not reinstate or renew a license suspended under section (1) of this rule until the final order, arbitration award or determination described in section (1) of this rule and any subsequently issued order, arbitration award or determination that is unpaid, is paid, or discharged in bankruptcy.
(4) As a condition of ending a suspension or renewing a license that was suspended under ORS 701.068, and section (1) of this rule, the agency may require a licensee to file a bond, letter of credit or cash deposit up to five times as much as the amount required of a licensee under ORS 701.081 or 701.084. The amount of the increased bond, letter or credit or cash deposit required must conform to the following schedule:
(a) If the sum of unpaid amounts on final orders, arbitration awards and determinations described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.081 or 701.084.
(b) If the sum of the unpaid final orders, arbitration awards and determinations described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084.
(c) If the sum of unpaid amounts on final orders, arbitration awards and determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.081 or 701.084.
(d) For purposes of this section, if a contractor has both residential and commercial bonds, the increased bond requirement will apply to both bonds, even if the unpaid amounts occurred only with respect to one of the two bonds.
Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.068 & 701.088
(12/04, 6/05, 12/05, 12/06, 12/07, 6/08, 4/12 eff. 5/1/12, 4/30/14)

812-005-0210
Conditions to Require an Increased Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.068(6), the agency may require a bond, letter of credit or cash deposit of up to five times the normally required amount, if it determines that a licensee or a current or previous owner, officer or responsible managing individual, as those terms are defined in division 2 of these rules, has:

(a) A history of unpaid final orders, arbitration awards or determinations consisting of two or more final orders, arbitration awards or determinations, which remain unpaid for longer than thirty (30) days following the date of issuance.

(b) Five or more complaints filed under ORS 701.140 and processed under ORS 701.145 or 701.146 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(4) or unpaid judgment arising from construction activity that exceeds the amount of the bond, letter of credit or cash deposit.

(d) Board final orders, arbitration awards or determinations issued in favor of one or more complainants under ORS 701.145 where the amount that must be paid exceeds the amount of the residential bond.

(e) Board final orders or determinations issued in favor of one or more complainants under ORS 701.146 where the amount that must be paid exceeds the amount of the commercial bond.

(2) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders, arbitration awards and determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.081 or 701.084.

(b) If the sum of the unpaid final orders, arbitration awards and determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084.

(c) If the sum of unpaid amounts on final orders, arbitration awards and determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.081 or 701.084.

(d) For purposes of this section, if a contractor has both residential and commercial bonds, the increased bond requirement will apply to both bonds, even if the unpaid amounts occurred only with respect to one of the two bonds.

(3) The amount of increased bond, letter of credit or cash deposit the agency may require under subsection (1)(b) of this rule will be based on the number of complaints filed and the time period that the complaints were received as follows:

(a) Two times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084 if five or more complaints are received in any twelve-month period.

(b) Three times the bond, letter of credit or cash deposit amount required under ORS701.081 or 701.084 if five or more complaints are received in any six-month period.

(c) Five times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084 if five or more complaints are received in any three-month period.

(d) For purposes of this section, if a contractor has both residential and commercial bonds, the increased bond requirement will apply to both bonds, even if the unpaid amounts occurred only with respect to one of the two bonds.

(4) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt or judgment exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084.

(b) If the sum of the unpaid construction debt or judgment exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084.

(c) If the sum of the unpaid construction debt or judgment exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit five times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084.

(d) For purposes of this section, if a contractor has both residential and commercial bonds, the increased bond requirement will apply to both bonds, even if the unpaid amounts occurred only with respect to one of the two bonds.

(5) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(d) of this rule must conform to the following schedule:

(a) If the amount of the board final orders, arbitration awards or determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require bonds, letter of credit or cash deposit two times the bond, letter of credit or cash deposit amount required under ORS 701.081 and 701.084.

(b) If the amount of the board final orders, arbitration awards or determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require bonds, letter of credit or cash deposit three times the bond,

letter of credit or cash deposit amount required under ORS 701.081 and 701.084.

(c) If the amount of the board final orders, arbitrations or determinations exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require bonds, letter of credit or cash deposit five times the bond, letter of credit or cash deposit amount required under ORS 701.081 or 701.084.

(6) Notwithstanding sections (2) through (5) of this rule, a business (including an individual person) licensed as a residential general contractor or residential specialty contractor that applies to be licensed as, or seeks to change its endorsement to, a residential limited contractor must file a residential bond, letter or credit or cash deposit in an amount of five times the amount of the residential limited contractor bond, namely $50,000, if the business or its previous owner, officer or responsible managing individual has:

(a) A history of unpaid final orders, arbitration awards or determinations consisting of two or more final orders, arbitration awards or determinations unpaid for longer than thirty (30) days following the date of issuance.

(b) Five or more complaints filed under ORS 701.140 and processed under ORS 701.145 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(4) that exceeds the amount of the residential bond, letter of credit or cash deposit previously held by the business.

(d) Board final orders, arbitration awards or determinations issued in favor of one or more complainants under ORS 701.145 where the amount that must be paid exceeds the amount of the residential bond previously held by the business.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.005, 701.068, 701.088 & 701.094

(12/04, 6/05, 12/05, 6/06, 9/06, 12/06, 8/07, 12/07, 6/08, 9/08, 8/10 eff. 9/1/10, 4/12 eff. 5/1/12, 4/30/14)

812-005-0250
Repeal of Increased Bond, Letter of Credit or Cash Deposit Requirement

(1) Under ORS 701.068 or 701.088 after three years of operating under the increased bond, letter of credit or cash deposit, an applicant or licensee may submit a written request to the agency to be relieved of that obligation after demonstrating three full years of acceptable business practices while having posted the increased bond, letter of credit or cash deposit.

(2) Petitions for return to normal bond, letter of credit or cash deposit requirements under ORS 701.068 or 701.088 must be made in writing and delivered to the agency. The petition should address each requirement set forth in section (3) of this rule.

(3) The agency shall consider the applicant's or licensee's petition. The agency shall grant the petition for return to a normal bond if, within three-years period in which the increased bond was in effect, applicant or licensee satisfies all of the following requirements.

(a) The applicant or licensee paid Dispute Resolution Services final orders, arbitration awards and determinations within thirty (30) days of its issuance.

(b) The applicant or licensee paid unpaid construction related court judgments issued against the applicant or licensee.

(c) The agency did not issue any enforcement final order against the applicant or licensee.

(d) There were no criminal convictions for any of the crimes set forth in ORS 701.098(i) entered against the applicant or licensee, its owners or officers.

(4) If the applicant or licensee fails to satisfy all of the conditions set forth in section (3), the agency will require the applicant or licensee to maintain the increased bond for an additional three years from the date of the agency's decision. After that three year period, the applicant or licensee may again petition to return to a normal bond.

(5) The agency shall notify the licensee or applicant in writing of the agency's decision within 30 days of receiving the petition.

(6) If the agency denies the petition, the agency shall notify the licensee or applicant of the reasons for the denial. The licensee or applicant may seek judicial review of the agency's denial as an order in other than a contested case.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.068 & 701.088

(9/06, 12/07, 6/08, 3/12, 4/30/14)

812-005-0270
Duty to Submit Evidence of Management or Supervisory Authority

Upon request from the agency, a licensee must submit evidence to support compliance with the requirement that a responsible managing individual of the licensee exercises management or supervisory authority over the construction activities of the business as defined under OAR 812-002-0265.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005(16)(b) & 701.091

(12/07, 2/08, 4/12 eff. 5/1/12)

812-005-0280
Fitness Standards

(1) In considering whether to revoke, suspend, or refuse to issue a license pursuant to ORS 701.098(1)(i)(A)-(I), 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 construction contracting.

(a) Fitness to engage in construction contracting includes, but is not limited to the ability to:

(A) Refrain from violent, threatening, intimidating or sexually predatory behavior;

(B) Refrain from dishonest or fraudulent conduct; or

(C) Be financially responsible.

(b) Factors to be considered in denying 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 evidenced 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.

(c) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by 701.098(1)(i)(A)-(I). 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.

(d) Failure to provide requested information in (1)(c) of this section may result in the denial of a license.

(2) The agency may revoke, suspend, or refuse to issue a license if the applicant, licensee, or an owner, officer or responsible managing individual of the applicant or licensee demonstrates a lack of financial responsibility pursuant to ORS 701.098(2) and ORS 701.102(2)(d).

(a) Lack of financial responsibility is evidenced by failure to pay a final order, arbitration award or determination of the board, issued under ORS 701.145 or 701.146, where the final order, arbitration award or determination, either alone or combined with any other unpaid final order, arbitration award or determination, exceeds the amount of the applicable bond and the final order, arbitration award or determination was issued against:

(i) The applicant or licensee; or

(ii) A business in which the owner, officer or responsible managing individual of the applicant or licensee is, or was, an owner, officer or responsible managing individual during the work period in which the business' obligation giving rise to the final order, arbitration award or determination arose or was incurred.

(iii) As used in subsection (a) of this rule, "officer" includes any person listed in ORS 701.005(11) or OAR 812-002-0533.

(b) Lack of financial responsibility is evidenced by failure to pay a civil penalty final order of the Director, Department of Consumer and Business Services, issued under ORS 654.086.

(c) Lack of financial responsibility is evidenced by failure to pay a judgment or civil penalty arising from construction activities within the United States, regardless of the fact that the judgment of civil penalty has not yet become final by operation of law.

(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if a contractor engages in conduct that harms a consumer by:

(a) Arranging for or undertaking work as a contractor that:

(A) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;

(B) The work causes damage to the consumer or to the consumer's property; and

(C) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.

(4) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0160 and 437-001-0165 for a fifth or subsequent repeat violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

(5) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0175 for a willful or egregious violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098 & 701.102

(6/08, 11/08, 5/09, 9/09, 4/12 eff. 5/1/12)

(Note: Section (1) was formerly 812-003-0450, 11/08)

Public Contracts

812-005-0500
Form of Complaint Regarding Public Contracts

(1) A person providing information to the agency must submit the information on a form provided by the agency if the information is submitted for purposes of:

(a) ORS 701.227 alleging that a contractor failed to pay a person who supplied labor or materials within 60 days after the date when the contractor received payment; or

(b) ORS 279C.590, in accordance with the subcontractor disclosure requirements pursuant to ORS 279C.370.

(2) The agency may require the use of the most recent version of a form submitted under section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.098, 701.235 & 701.227

Stats. Implemented: ORS 279C.590, 701.098 & 701.227

(temp. 5/00, 6/00, 12/01, 3/02, 12/05, 6/08)

Penalties

812-005-0800
Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) $600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.021 and OAR 812-003-0120, which may be reduced to $200 if the respondent becomes licensed or to $50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) $700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.021 and OAR 812-003-0120, when one or more previous violations have

occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) $1,000 per offense for performing work as a contractor in violation of ORS 701.021 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to $700 if the respondent becomes licensed within a specified time; and

(4)(a) $5,000 per offense for performing work as a contractor in violation of ORS 701.021, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to $700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(b) A "complaint for damages" as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) $5,000 per offense for performing work as a contractor in violation of ORS 701.021, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) $500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.345; and

(7) $1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, $200 for the first offense, $400 for the second offense, $600 for the third offense, $1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, $1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense $100, second offense $200, subsequent offenses $400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260 or 812-003-0280: First offense $50, second offense $100, subsequent offenses $200.

(11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense $50, second offense $100, subsequent offenses $200.

(12) Failing to use a written contract as required by ORS 701.305: $500 for the first offense; $1,000 for the second offense; and $5,000 for subsequent offenses.

(13) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; $100 first offense; $500 second offense; $1,000 third offense; and $5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below $100.

(14) Failure to conform to information provided on the application in violation of ORS 701.046(5), issuance of a $5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (14) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(15) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, $1,000.

(16) Failure to comply with any part of ORS chapters 316, 656, or 657 or with ORS 701.035, 701.046 or 701.091, $1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(17) Violating an order to stop work as authorized by ORS 701.225(6), $1,000 per day.

(18) Working without a construction permit in violation of ORS 701.098, $1,000 for the first offense; $2,000 and suspension of CCB license for three (3) months for the second offense; $5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(19) Failure to comply with an investigatory order issued by the Board, $500 and suspension of the license until the contractor complies with the order.

(20) Violation of ORS 701.098(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, $1,000, suspension of the license or both; second and subsequent offenses, $5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

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

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(22) Violation of ORS 701.098(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in sections (20) or (21), where more than two violations have occurred: $5,000 and revocation of the license.

(23) When, as set forth in ORS 701.098(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, 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: $1,000 for the first offense, $2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(24) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): $5,000.

(25) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): $5,000.

(26) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: $750 per offense.

(27) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(4): $750 per offense.

(28) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: $5,000 per offense.

(29) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0202(4): $400 per offense.

(30) Violation of work practice standards for lead-based paint (LBP) activity pursuant to OAR 812-007-0140 or 812-007-0240 first offense, $1,000; second offense, $3,000; and third offense, $5,000 plus suspension of license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(31) Violation of work practice standards for LBP renovation pursuant to OAR 812-007-0340 or violation of recordkeeping and reporting requirements pursuant to OAR 333-070-0110: first offense, $1,000; second offense, $3,000; and third offense, $5,000 and suspension of the certified LBP renovation contractor license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(32)Violation of OAR 812-007-0100, 812-007-0200 or 812-007-0300: first offense, $1,000; second offense, $3,000; and third offense, $5,000. The civil penalty is payable to the Construction Contractors Board Lead-Based Paint (LBP) Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(33) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to $1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(34) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: $1,000 for the first offense, $2,000 for the second offense, and $5,000 for the third and subsequent offenses.

(35) Violation of ORS 701.345, failure to maintain the list of subcontractors: $1,000 for the first offense; $2,000 for the second offense, and $5,000 for the third and subsequent offenses.

(36) Violation of 701.098(1)(f), knowingly providing false information to the Board: $1,000 and suspension of the license for up to three months for the first offense; $2,000 and suspension of the license for up to one year for the second offense; and $5,000 and permanent revocation of license for the third offense.

(37) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: $200 for the first offense; $500 for the second offense; and $1,000 for subsequent offenses.

(38) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(39) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or ORS 701.098(4)(a)(B): $5,000 for first offense, and revocation for second or subsequent offense.

(40) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(41) Failure to comply with ORS 701.106(1)(a); $1,000 for the first offense, $5,000 for the second offense; $5,000 and permanent revocation of CCB license for the third offense.

(42) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; $200 first offense, $400 second offense; $600 for the third offense; $1,000 for each subsequent offense.

(43) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss

submitted to the insurance company: first offense, $500; second offense, $1,000; third and subsequent offenses, $5,000.

(44) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, $2,000; second and subsequent offenses, $5,000.

(45) Undertaking, offering to undertake, or submitting a bid to work as a locksmith when an individual is not certified as a locksmith or otherwise exempt under ORS 701.490: first offense, $1,000; second offense, $3,000; third offense, $5,000.

(46) Undertaking, offering to undertake, or submitting a bid to provide locksmith services when a business is not a licensed construction contractor or otherwise exempt under ORS 701.490: first offense, $1,000; second offense, $3,000; third offense, $5,000.

(47) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the individual is a locksmith, unless an individual is certified as a locksmith or otherwise exempt under ORS 701.490: first offense, $1,000; second offense, $3,000; third offense, $5,000.

(48) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the business providing locksmith services, unless a business: (a) is a licensed construction contractor, and (b) is owned by or employs a certified locksmith or is otherwise exempt under ORS 701.490: first offense, $1,000; second offense, $3,000; third offense, $5,000.

(49) Violating any applicable provision of the rules in division 30, including violating any standard of professional conduct other than OAR 812-030-0300(4): first offense, $1,000; second offense, $3,000; third offense, $5,000 and revocation of the certificate.

(50) Violating OAR 812-030-0300(4): first offense, $200; second offense, $500; third offense, $1,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235, 701.515, 701.992 & 701.995

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.021, 701.026, 701.042, 701.046, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.480, 701.485, 701.510, 701.515, 701.992 & 701.995

(4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/85, 4/85, 1/87, 3/87, 1/88, 2/88, 6/88, 1/89, 11/89, 2/90, 3/90, 4/90, 5/90, 6/90, 7/90, 10/90, 11/90, 3/91, 9/91, 1/92, 2/92, 4/92, 6/92, 5/93, 12/93, 1/95, 9/95, 10/95, 8/96, 10/98), temp. 11/99, 5/00, 6/00, temp. 11/00, 4/01, 12/01, temp. 3/02, 3/02, 6/02, 9/02, 12/03, 6/04, 12/04, 12/05, 1/06, 6/06, 12/06, 6/07, 2/08, 6/08, 9/08, 11/08, 1/09 eff. 2/1/09, 5/09, 2/10, 4/10, temp. 7/10, 2/11 eff. 3/1/11, 6/11 eff. 7/1/11, 9/11 eff. 10/1/11, 12/11 eff. 1/1/12, 3/12, 4/12 eff. 5/1/12, 6/14 eff. 7/1/14)

DIVISION 6

RESPONSIBLE MANAGING INDIVIDUAL, PRE-LICENSURE TRAINING, AND TESTING

[**812-006-0010** Repealed 9/06]

[**812-006-0040** Repealed 5/00]

812-006-0100
Responsible Managing Individual

(1) As used in these rules, a responsible managing individual (RMI) has that meaning as provided in ORS 701.005(16).

(2) Upon initial application, an applicant for a contractor's license shall designate at least one individual as the applicant's RMI and;

(a) Provide evidence that the applicant's RMI has completed the pre-licensure training and passed the test, as provided for in ORS 701.122, OAR 812-006-0150 and 812-006-0300; or

(b) Document that the applicant's RMI has experience as required by OAR 812-006-0450.

(3) An individual who is not an owner may not be designated as the RMI of more than one licensee.

(4) An RMI may not be an approved pre-licensure training provider or the principal of an approved pre-licensure training provider or an approved pre-licensure trainer, as provided in OAR 812-006-0200, while serving as an RMI for a licensee. For purposes of this rule, the principal of an approved pre-licensure training provider includes any owner, partner, officer, member, manager or trustee of the provider.

(5) When an RMI leaves a business, the business shall:

(a) Immediately appoint another RMI; and

(b) Immediately notify the agency in writing of the name of the individual and the date the individual joined the business.

(6) An RMI appointed under section (5) of this rule must:

(a) Document completion of the pre-licensure training and testing requirements under ORS 701.122, OAR 812-006-0150 and 812-006-0300; or

(b) Document that the RMI has experience as required by OAR 812-006-0450.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.005, 701.091 & 701.122

(12/01, 8/05, 5/06, 9/06, 6/08, 11/08, 4/13 eff. 5/1/13)

(Amended and renumbered from 812-006-0011, 9/06)

812-006-0150
Pre-Licensure Training Requirements

(1) The pre-licensure training required in ORS 701.122 shall cover the subjects listed in OAR 812-006-0250.

(2) Pre-licensure training shall consist of at least 16 hours.

(3) Pre-licensure training must be provided by a Pre-licensure training provider approved by the agency as provided in OAR 812-006-0200.

(4) A person seeking to take the pre-licensure training shall:

(a) Pay any fees required by the pre-licensure training provider; and

(b) Provide approved government-issued picture identification to the pre-licensure training provider.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.122

(9/06, 6/08, 2/11 eff. 3/1/11, 4/13 eff. 5/1/13)

812-006-0200
Pre-Licensure Training Provider Approval

(1) No pre-licensure training shall meet the requirements of ORS 701.122 unless it is offered by a pre-licensure training provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the pre-licensure training.

(3) The pre-licensure training provider application shall include, but will not be limited to, provisions for:

(a) Recording the name, address, contact information, and name of responsible administrator of the pre-licensure training provider.

(b) Submitting trainer resumes or work summaries that demonstrate that all its trainers have at least four years work experience or four years education, or any combination of both, in subject areas that they instruct as outlined in the Oregon Contractors Reference Manual.

(4) No pre-licensure training provider may offer or provide any pre-licensure training until there is a fully executed agreement between the pre-licensure training provider and the agency.

(5) No pre-licensure training provider may offer or provide any pre-licensure training if, at the time of offering or providing the pre-licensure training, the pre-licensure training provider is an RMI of a licensee.

(6) A pre-licensure training provider must comply at all times with the following requirements:

(a) The pre-licensure training provider will provide 16-hours of training under OAR 812-006-0150.

(b) The pre-licensure training provider will verify that each student taking the pre-licensure training has a current agency-approved manual.

(c) The pre-licensure training provider will use agency-approved curriculum and the agency-approved Oregon Contractors Reference Manual.

(d) The pre-licensure training provider will send electronic records of completion to the agency in a format approved by the agency and keep records of completion for a minimum of six years.

(e) The pre-licensure training provider will communicate law changes and program procedural changes received from the agency to the pre-licensure training provider's trainers and will implement these changes within 30 business days.

(f) The pre-licensure training provider will use only approved trainers who have at least four years work experience or four years education, or any combination of both, in the subject that they instruct as outlined in the Oregon Contractors Reference Manual. CCB will not approve as a trainer any individual who, at the time of offering or providing the pre-licensure training, is an RMI of a licensee.

(g) The pre-licensure training provider will request and receive, in writing, agency approval of all trainers at least 10 business days before trainers are scheduled to teach.

(h) The pre-licensure training provider will provide a mechanism for students to contact their trainer(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment.

(i) The pre-licensure training provider will give all students information about how to contact trainers and hours of availability before the end of the pre-licensure training.

(j) The pre-licensure training provider will comply with all applicable federal and state laws.

(k) Except as provided in OAR 812-006-0205(2), the pre-licensure training provider will obtain and maintain a surety bond as described in OAR 812-006-0205 in the amount of $10,000 obligating the surety to pay the State of Oregon for the benefit of third-parties.

(7) The agency may publicize a pre-licensure training provider's test passage rate for its students.

(8) The agency may revoke a pre-licensure training provider's right to offer training and terminate the agreement of a pre-licensure training provider at any time the pre-licensure training provider fails to:

(a) Meet any requirement of the agreement; or

(b) Comply with these rules.

(9) The agency may revoke a pre-licensure training provider's right to offer pre-licensure training and terminate the agreement of a pre-licensure training provider:

(a) Whose students do not pass the agency test on their first attempt at least 70 percent of the time after the pre-licensure training provider has provided pre-licensure training for at least three months, or whose students fail to maintain the 70 percent first attempt test passing rate during the remaining period of the agreement; or

(b) Who 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 individuals or business entities to write down, photograph or videotape any part of the agency's test.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.122

(1/92, 2/92, 5/00, 12/01, 5/02, 6/03, temp. 1/05, 6/05, 8/05, 12/05, 9/06, 6/08, temp. 5/5/14, 6/14 eff. 7/1/14)

(Amended and renumbered from 812-006-0030, 9/06, 11/08, 4/13 eff. 5/1/13)

812-006-0205
Surety Bond to Assure Performance of Agency Agreements

(1) Providers approved under OAR 812-006-0200 will maintain a surety bond in the amount of $10,000, issued by a surety company authorized to do business in the State of Oregon, for the benefit of the State of Oregon, Construction Contractors Board. The bond must be in the form "Approved Pre-Licensure Training Provider Surety Bond," dated June 24, 2014.

(2) Section (1) of this rule does not apply to Oregon public community colleges or small business development centers (including BizCenter Online Learning).

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.122

(temp. 5/5/14, 6/14 eff. 7/1/14)

812-006-0250
Pre-Licensure Training Subjects

(1) The agency may evaluate and approve pre-licensure training based on written evaluation criteria approved by the Training and Education Committee and made available to pre-licensure training providers. The agency may revoke a pre-licensure training provider's right to offer pre-licensure training if a pre-licensure training provider's training does not meet the approved criteria.

(2) The hours of pre-licensure training required under OAR 812-006-0150 shall consist of the following topics:

(a) Construction Contractors Board:

(A) Role and authority, licensing requirements, application procedures and major divisions and functions;

(B) Dispute resolution processes;

(C) Business entities;

(D) Mandatory consumer notices;

(E) Rights and responsibilities of consumers and contractors;

(F) Independent contractor requirements;

(G) Exempt and non-exempt contractors;

(H) License endorsements and requirements for bonds and insurance;

(I) Special licenses;

(J) Written contract requirements;

(K) Warranty and maintenance schedule requirements;

(L) Enforcement program; and

(b) Employer requirements and employee's rights:

(A) State agencies that regulate workplace issues;

(B) Information and resources on employer requirements, employee's rights, workers' compensation insurance, and required workplace postings;

(C) Civil rights;

(D) Title VII, child labor, and important state and federal wage and hour laws;

(E) Current minimum wage rate requirements;

(F) Prevailing wage rate law; and

(G) Employees and independent contractors.

(c) Taxes, record keeping and business practices:

(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;
(H) Profit and cash flow; and
(I) Requirements for business licenses.
(d) Building codes:
(A) Applicable codes;
(B) Building codes books;
(C) Code revisions;
(D) Specialty licenses and inspections;
(E) Required and exempt permit work;
(F) Permit applications permit violation penalties;
(G) Required inspections;
(H) Inspection procedures;
(I) Final inspections and occupancy permits; and
(J) Red tag/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) Job site record keeping;
(D) General safety practices; and
(E) Responsibilities and relationships among contractors and subcontractors on a job site.
(f) Sound environmental practices and laws:
(A) Environmental friendly materials;
(B) Good recycling, reduction and reuse methods;
(C) Hazardous waste and special waste found in new and old construction;
(D) Laws and regulations governing environmental hazards, proper handling and disposal methods of environmental hazards and job site debris;
(E) Governmental agencies that regulate environmental conditions at a job site;
(F) Environmental violation penalties;
(G) Site preparation including construction activities that impact rivers;
(H) Soil erosion; and
(I) Wetlands, water quality, sewage and underground storage/heating oil tanks.
(g) Contract law:
(A) Clear and concise contracts;
(B) Four elements of contract law;
(C) Three elements of a construction contract;
(D) Breach of contract;
(E) Minor and major breach of contract;
(F) Written and verbal contracts and change orders;
(G) Contractor responsibilities for work of self and others;
(H) Partnering, negotiation, mediation, arbitration and litigation; and
(I) 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 budgets that include cost, overhead and profit; and
(C) Simple project schedules and consequences of improper job scheduling.
(j) Building Exterior Shell Training (BEST):
(A) Need for BEST;
(B) Contractor's responsibility to construct weather-resistant building exterior shell;
(C) Purpose of building exterior shell;
(D) Primary components of building exterior shell;
(E) Basic moisture management concepts;
(F) Exterior wall assemblies; and
(G) Best practices for building exterior shell construction.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.122
(1/92, 2/92, 4/92, 1/93, 2/93, 4/93, 5/93, 8/93, 12/93, 1/94, 6/94, 7/94, 1/95, 6/95, 10/97, 2/98, 5/00, 6/00, 4/01, 12/01, 3/03, 8/04, 5/06, 9/06, 6/08, 2/11 eff. 3/1/11, 4/13 eff. 5/1/13)
(Amended and renumbered from 812-006-0050, 9/06)

812-006-0300
Pre-Licensure Testing Requirements
(1) The test required in ORS 701.122 shall cover the subjects listed in OAR 812-006-0250.
(2) A person seeking to take the test shall:
(a) Pay any fees required by the test administrator;
(b) Provide approved government-issued picture identification to the test administrator;
(c) Pay for the authorized translator needed to take the test; and
(d) Complete the test within a time limit approved by the agency.
(3) A person taking the test shall be allowed to use an Oregon Contractor's Reference Manual and one language translation book during the test.
(4) A person taking the test shall not:
(a) Retake the same version of the test on consecutive attempts.
(b) Be accompanied by anyone while taking the test, except an authorized translator.
(5) After the test is completed, a person shall not review the test questions or answers.
(6) There are no reciprocal agreements with other states or organizations that test contractors.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.122
(5/00, 12/01, 3/03, 8/03, 12/05, 9/06, 3/07, 6/08, 5/09, 4/13 eff. 5/1/13)
(Amended and renumbered from 812-006-0012, 9/06)

812-006-0350
Pre-Licensure 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) The Oregon Construction Contractor's Reference Manual; and

(B) One language translation book.

(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) Permitting 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 Construction Contractor's Reference Manual or language translation book during the test; or

(j) Leaving the room during the test.

(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 permitted 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.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.122

(12/05, 9/06, 6/08, 4/13 eff. 5/1/13)

(Amended and renumbered from 812-006-0015, 9/06)

812-006-0400

Pre-Licensure Training and Testing Period

(1) The pre-licensure training and testing required under ORS 701.122 (1) and (3) shall be valid for 24 months from the date the pre-licensure training was completed. Pre-licensure training and testing that is past the 24-month period from the date of the completed pre-licensure training will not be considered for the purposes of fulfilling the requirements set forth in ORS 701.091.

(2) An RMI may satisfy the requirements of ORS 701.091 provided that the RMI:

(a) Has completed the pre-licensure training and passed the test;

(b) Has been the RMI of a licensee within two years of the date of application by the new applicant; and

(c) The license of the licensee that was previously owned by or that previously employed the RMI has not lapsed or, if lapsed, has lapsed for not more than 24 months.

(3) Sections (1) and (2) of this rule do not apply to an RMI that meets the experience requirements under 812-006-0450.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.122

(9/06, temp. 11/06, 3/07, 6/08, 5/09, 4/13 eff. 5/1/13)

812-006-0450

Pre-Licensure Experience

In order for a responsible managing individual to demonstrate experience under ORS 701.005(16)(c)(B):

(1) The individual must be listed on the agency's license records before July 1, 2000, as having been a sole proprietor, partner, venturer, member, corporate officer, trustee, or responsible managing individual of a business licensed under ORS chapter 701 before July 1, 2000;

(2) (a)The license of the business described in section (1) of this rule has not lapsed, or if lapsed, has lapsed for not more than the 24 month period prior to the date of the application; or

(b)(A) If the individual is listed on multiple license records as a sole proprietor, partner, venturer, member, corporate officer, trustee or responsible managing individual, the licensed business with which the individual is currently associated must not have lapsed for more than the 24-month period prior to the date of the application; and

(B) The individual must have been similarly and continuously associated with one or more licensed contractors during the time period beginning before July 1, 2000, until the date of the application.

(3) The individual must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or responsible managing individual of the business described in section (1) or (2)(b) of this rule within the 24 month period prior to date of the application.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.005 & 701.122

(1/92, 2/92, 5/92, 7/92, 8/92, 3/93, 4/93, 5/93, 6/93, 8/93, 12/93, 1/94, 6/94, 7/94, 1/95, 6/95, 10/97, 2/98, 3/99,

5/00, 6/00, 8/00, temp. 5/01, 12/01, 5/02, 6/02, 12/03,
12/04, 5/06, 9/06, 6/07, 6/08, 4/13 eff. 5/1/13)
(Amended and renumbered from 812-006-0020, 9/06)

DIVISION 7

LICENSING OF INDIVIDUALS AND BUSINESSES ENGAGED IN LEAD-BASED PAINT ACTIVITIES AND RENOVATION

General

812-007-0000
Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 701.505 to 701.520 and 701.995.

(2) Purpose. These rules establish a system to license individuals certified by the Oregon Health Authority (OHA) to perform lead-based paint (LBP) activities. These rules establish a system to license contractors as LBP activities contractors and as certified LBP renovation contractors.

(3) Scope. These rules:

(a) Prescribe the requirements for, and the manner of, licensing applicants.

(b) Establish fees.

(c) Prescribe actions that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest, for which the board may deny, suspend or revoke a license.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

(6/96, 11/96, 1/97, 5/97, 6/00, 12/06, 2/10, 9/11 eff. 10/1/11)

[**812-007-0010** Repealed 2/1/10]

812-007-0020
Definitions

The following definitions apply to division 7 of OAR chapter 812.

(1) “Abatement” means any measure or set of measures designed to permanently eliminate LBP hazards.

(2) “Accredited training program” means a training program provisionally accredited or accredited by the OHA, the Environmental Protection Agency (EPA) or an EPA-authorized state or tribal program.

(3) “Certified” means certified by OHA to perform LBP activities.

(4) “Certified lead-based paint renovation contractor” means a construction contractor that is licensed by the board to conduct LBP renovation under ORS 701.515.

(5) “Certified renovator” means an individual who has successfully completed a renovator course accredited by OHA, EPA, or EPA authorized program.

(6) “Child-occupied facility” means a building, or portion of a building, constructed before 1978 and visited regularly by the same child, under age six, on at least two different days within any week (Sunday through Saturday), provided that each day’s visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(7) “Component or building component” means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to: interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and tri (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(8) “Course completion certificate” means documentation issued by an accredited training program to an individual as proof of successful completion of an accredited renovator training program (initial or refresher).

(9) “Deteriorated lead-based paint (LBP)” means any interior or exterior paint or other covering that is peeling, chipping, chalking, cracking, flaking or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(10) “Dust-lead hazard” means surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 $\mu g/ft^2$ on floors or 250 $\mu g/ft^2$ on interior windows or 400 $\mu g/ft^2$ in troughs based on wipe samples.

(11) "Emergency" means a situation in which failure to act promptly would likely result in immediate harm to persons or property.

(12) "Emergency renovation operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations.

(13) "Inspection" means a surface-to-surface investigation to determine the presence of LBP and an accompanying report explaining the results of the investigation.

(14) "Lead abatement contractor" means a construction contractor that is licensed by the board to perform abatement.

(15) "Lead assessor" or "risk assessor" means an individual who has been trained by an accredited training program and certified by the Department to conduct risk assessments.

(16) "Lead-based paint" or "LBP" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(17) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

(18) "Lead inspection contractor" means a construction contractor that is licensed by the board to perform inspections or risk assessments.

(19) "Lead inspector" means an individual who has been trained by an accredited training program and certified by OHA to conduct inspections.

(20) "Lead supervisor" means an individual who has been trained by an accredited training program and certified by OHA to supervise and conduct abatements and prepare abatement reports.

(21) "Lead worker" or "lead abatement worker" means an individual who has been trained by an accredited training program and certified by OHA to perform abatements.

(22) "Minor repair and maintenance" means activities, (including minor heating, ventilation, air conditioning work, electrical work, or plumbing) that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities, that do not involve prohibited or restricted work activities and do not involve window replacement or painted surface demolition. When removing painted components, or portions of painted components, the entire surface area removed is the amount of the painted surface disturbed. Jobs, other than emergency renovations, performed within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

(23) "Prohibited or restricted work activities" include:

(a) Open flame burning or torching;

(b) Machines to remove paint through high-speed operation without HEPA exhaust control; and

(c) Operating a heat gun at temperatures at or above 1100 degrees Fahrenheit.

(24) "Recognized test kit" means a commercially available kit recognized by EPA under 40 CFR § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.

(25) "Renovation" means the modification of any existing structure, or portion thereof, which results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term renovation includes, but is not limited to:

(a) Removal, modification or repair of painted surfaces or painted components, such as modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping or other such activities that may generate paint dust);

(b) The removal of building components, such as walls, ceilings, plumbing and windows;

(c) Window replacement;

(d) Weatherization projects, such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, or planing thresholds to install weather-stripping;

(e) Interim controls that disturb painted surfaces.

A renovation for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation. The term "renovation" does not include minor repair and maintenance.

(26) "Renovation Right Pamphlet" means the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* or any pamphlet approved by the Environmental Protection Agency (EPA) for the same purpose.

(27) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of a LBP hazard and an accompanying report explaining the results of the investigation and options for reducing LBP hazards.

(28) "Soil lead hazard" means 400 ppm of lead in child play areas or 1200 ppm in non-child play areas.

(29) "Target housing" means any housing constructed before 1978, except housing for the elderly or persons with disabilities or any housing with no bedrooms.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.505-701.520

(6/96, 11/96, 1/97, 5/97, 11/97, 10/98, 3/99, 6/00, 12/06, 2/10, temp. 3/11/10 eff. 3/11/10, temp. 6/1/10 eff. 6/1/10, 8/10 eff. 9/1/10, 9/11 eff. 10/1/11, 3/12, 10/12 eff. 11/1/12)

812-007-0025
Construction Contractors Board Lead-Based Paint Activities Fund

(1) Civil penalties imposed under ORS 701.995 will be deposited to the Construction Contractors Board LBP Activities Fund.

(2) The board will use the monies in the Construction Contractors Board LBP Activities Fund for lead poisoning prevention, including consumer and industry outreach, public education, and enforcement activities.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515, 701.520 & 701.995

(2/10)

[**812-007-0030** Repealed 2/1/10]

812-007-0031
License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-007-0120, 812-007-0130, 812-007-0220, 812-007-0230, 812-007-0320 or 812-007-0330.

(2) A license and pocket card is valid for the term for which it is issued.

(3) If a license becomes invalid, the agency may require the return of the license and pocket card.

(4) There is no charge for the original license and pocket card issued by the agency.

(5) There is a $10 fee to replace a license and pocket card.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 192.440(4)(a), 701.063, 701.238
(4/11 eff. 5/1/11)

812-007-0032
Mailing and E-mail Address Changes

(1) Individuals licensed to engage in LBP activities, contractors licensed to engage in LBP activities and certified LBP renovation contractors shall notify the board of any change in mailing or e-mail addresses while licensed and for one year following the license expiration date. Such persons must notify the board within 10 days after changing an address.

(2) No charge will be made for a mailing or e-mail address change to the board's records.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.117 & 701.515
(4/11 eff. 5/1/11)

[**812-007-0040** Repealed 2/1/10]

[**812-007-0050** Repealed 2/1/10]

[**812-007-0060** Repealed 2/1/10]

[**812-007-0070** Repealed 2/1/10]

[**812-007-0080** Repealed 2/1/10]

[**812-007-0090** Repealed 2/1/10]

Lead-Based Paint Activity Licenses – Individuals

812-007-0100
Licenses Required for Lead-Based Paint Activities – Individuals

No individual shall offer to perform or perform LBP activities in target housing or child-occupied facilities without first receiving certification from OHA and a license from the board, unless such individual is exempt from the board's licensing requirements. The following are individuals that perform LBP activities:

(1) Lead assessor;
(2) Lead inspector;
(3) Lead supervisor;
(4) Lead worker.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.510 & 701.515
(2/10, 9/11 eff. 10/1/11)

812-007-0110
Application and Eligibility Requirements for Lead-Based Paint Activity Licenses – Individuals

(1) An individual applying for a license as a lead assessor must submit the following:

(a) Completed application on a form provided by the board;
(b) The fee established in OAR 812-007-0160; and
(c) Proof that OHA certified the individual as a certified risk assessor.
(d) Copy of OHA photo identification badge.

(2) An individual applying for a license as a lead inspector must submit the following:

(a) Completed application on a form provided by the board;
(b) The fee established in OAR 812-007-0160; and
(c) Proof that OHA certified the individual as a certified inspector.
(d) Copy of OHA photo identification badge.

(3) An individual applying for a license as a lead supervisor must submit the following:

(a) Completed application on a form provided by the board;
(b) The fee established in OAR 812-007-0160; and
(c) Proof that OHA certified the individual as a certified supervisor.
(d) Copy of OHA photo identification badge.

(4) An individual applying for a license as a lead worker must submit the following:

(a) Completed application on a form provided by the board;
(b) The fee established in OAR 812-007-0160; and
(c) Proof that OHA certified the individual as a certified abatement worker.
(d) Copy of OHA photo identification badge.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10, 9/11 eff. 10/1/11)

812-007-0120
Effective Dates of New License and License Term for Lead-Based Activity Licenses – Individuals

(1) The effective date of the license will be the date the applicant meets all board requirements, including, but not limited to, the receipt of the fee required under OAR 812-007-0160.

(2) All licenses issued will be non-transferable and will be effective for one year from the date of issue.

(3) All licenses will be assigned a unique number.

(4) An applicant for a license may withdraw the application at any time before issuance of the license upon written request to the board.

(5) If the board denies the license, it shall state, in writing, the reasons for denial.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515
(2/10)

812-007-0130
Renewal of Lead-Based Paint Activity Licenses – Individuals

Individuals licensed under these rules may renew their licenses by submitting the following:

(1) A properly completed application for license renewal on a form provided by the board;

(2) The fee established in OAR 812-007-0160; and

(3) Proof that the individual is certified by OHA.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10, 9/11 eff. 10/1/11)

812-007-0140
Work Practice Standards for Lead-Based Paint Activity Licenses – Individuals

A lead assessor, lead inspector, lead supervisor, and lead worker must comply with work practice standards as provided in OAR 333-069-0070.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10)

812-007-0150
Denial, Suspension or Revocation of Lead-Based Paint Activity Licenses – Individuals

(1) The board may deny, suspend, or revoke an individual's license on the following grounds:

(a) Obtaining OHA certification through misrepresentation of certification requirements such as education, training, professional registration, or experience;

(b) Gaining admission to or completing continuing education by misrepresenting initial or previous education;

(c) Obtaining a license through invalid documentation;

(d) Permitting the duplication or use of the license by another;

(e) Failing to comply with applicable work practice standards set forth in these rules and OAR 333-069-0070; or

(f) Being subject to a final administrative order or criminal conviction based on engaging in a prohibited act under rules of OHA or the board.

(2) Hearings on denial, suspension or revocation of a license shall be conducted as a contested case in accordance with ORS 183.310 to 183.470.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10, 9/11 eff. 10/1/11)

812-007-0160
Fees for Lead-Based Paint Activity Licenses – Individuals

(1) All license and renewal application fees are non-refundable and non-transferrable.

(2) The following fees are established:

(a) Lead assessor, $50/year.

(b) Lead inspector, $50/year.

(c) Lead supervisor, $50/year.

(d) Lead worker, $25/year.

(3) If the board receives payment of fees by check and the check is returned to the agency as an NSF check, the agency will charge the applicant $25 in addition to the required fees.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10)

Lead-Based Paint Activity Licenses – Contractors

812-007-0200
Licenses Required for Lead-Based Paint Activities – Contractors

(1) No contractor shall offer to perform or perform LBP abatement in target housing or child-occupied facilities without first receiving certification from OHA and a license from the board as a lead abatement contractor, unless such contractor is exempt from the certification or licensing requirements.

(2) No contractor shall offer to perform or perform LBP inspection or risk assessment in target housing or child-occupied facilities without first receiving certification from OHA and a license from the board as a lead inspection contractor, unless such contractor is exempt from the certification or licensing requirements.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.510 & 701.515
(2/10, 9/11 eff. 10/1/11)

812-007-0205
Qualified Owner or Employee Required for Lead-Based Paint Activities – Contractors

(1) A lead abatement contractor must, at all times, have at least one owner or employee who is a licensed lead supervisor.

(2) A lead inspection contractor must, at all times, have at least one owner or employee who is a licensed lead inspector or a licensed lead risk assessor.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10)

812-007-0210
Application and Eligibility Requirements for Lead-Based Paint Activity Licenses – Contractors

(1) A person applying for a license as a lead abatement contractor must submit the following:

(a) Completed application on a form provided by the board;

(b) Proof that the person is licensed by the board as a construction contractor;

(c) The fee established in OAR 812-007-0260;

(d) Proof that the applicant is owned by or employs one or more persons who are licensed lead supervisor(s); and

(e) Proof that OHA certified the person as qualified to perform abatement.

(2) A person applying for a license as a lead inspection contractor must submit the following:

(a) Completed application on a form provided by the board;

(b) Proof that the person is licensed by the board as a construction contractor;

(c) The fee established in OAR 812-007-0260;

(d) Proof that the applicant is owned by or employs one or more persons who are licensed lead inspector(s) or licensed lead risk assessor(s); and

(e) Proof that OHA certified the person as qualified to perform inspection or risk assessment.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

(2/10, 9/11 eff. 10/1/11)

812-007-0220

Effective Dates of New License and License Term for Lead-Based Activity Licenses – Contractors

(1) The effective date of the license will be the date the applicant meets all board requirements, including, but not limited to, the receipt of the fee required under OAR 812-007-0260.

(2) All licenses issued will be non-transferable and will be effective for one year from the date of issue.

(3) All licenses will be assigned a unique number.

(4) An applicant for a license may withdraw the application at any time before issuance of the license upon written request to the board.

(5) If the board denies the license, it shall state, in writing, the reasons for denial.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

(2/10)

812-007-0230

Renewal of Lead-Based Paint Activity Licenses – Contractors

Persons licensed under these rules may renew their licenses by submitting the following:

(1) A properly completed application for license renewal on a form provided by the board;

(2) Proof that the person is licensed by the board as a construction contractor;

(3) The fee established in OAR 812-007-0260; and

(4) Proof that the contractor is certified by OHA.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

(2/10, 9/11 eff. 10/1/11)

812-007-0240

Work Practice Standards for Lead-Based Paint Activity Licenses – Contractors

A lead abatement contractor or lead inspection contractor must comply with work practice standards in OAR 333-069-0070.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.510 & 701.515

(2/10)

812-007-0250

Denial, Suspension or Revocation of License for Lead-Based Paint Activities – Contractors

(1) The board may deny, suspend, or revoke a license of a lead abatement contractor or a lead inspection contractor on the following grounds:

(a) Obtaining OHA certification through misrepresentation of certification requirements such as education, training, professional registration, or experience;

(b) Obtaining a license through invalid documentation;

(c) Performing work requiring a license without having a current valid original license identification card available at the job site for inspection;

(d) Performing work for which there is no current, appropriate certification issued by OHA;

(e) Permitting the duplication or use of the license by another;

(f) Failing to comply with applicable work practice standards set forth in these rules and OAR 333-069-0070;

(g) Failing to comply with local, state, or federal statutes or regulations including execution of a consent agreement in settlement of an enforcement action;

(h) Failing to maintain required records;

(i) Being subject to a final administrative order or criminal conviction based on engaging in a prohibited act under rules of the Department or the board;

(j) Failing to comply with a consent agreement in settlement of an enforcement action;

(k) For a lead abatement contractor, failing to have an owner or employee that is a licensed lead supervisor or lead worker; or

(l) For a lead inspection contractor, failing to have an owner or employee that is a licensed lead inspector or licensed lead assessor.

(2) Hearings on denial, suspension or revocation of a license shall be conducted as a contested case in accordance with ORS 183.310 to 183.470.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.510 & 701.515

(2/10, 9/11 eff. 10/1/11)

812-007-0260

Fees for Lead-Based Paint Activity Licenses – Contractors

(1) All license and renewal application fees are non-refundable and non-transferrable.

(2) The following fees are established:

(a) Lead abatement contractor, $50/year.

(b) Lead inspection contractor, $50/year.

(3) If the board receives payment of fees by check and the check is returned to the board as an NSF check, the board will charge the applicant $25 in addition to the required fees.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

(2/10)

Lead-Based Paint Renovation and Certified Lead-Based Paint Renovation Contractors

812-007-0300
License Required for Lead-Based Paint Renovation

No contractor shall offer to perform or perform renovation in target housing or child-occupied facilities without first receiving a certified LBP renovation contractor license from the board, unless such contractor is exempt from the board's licensing requirements.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.510 & 701.515
(2/10, 9/11 eff. 10/1/11)

812-007-0302
Applicability of and Exceptions to Rules Relating to Lead-Based Paint Renovation

(1) OAR 812-007-0300 to OAR 812-007-0374 apply to all renovations performed for compensation in target housing and child-occupied facilities, except for renovations in target housing or child-occupied facilities in which:

(a) A lead assessor or lead inspector has made a written determination that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5 percent by weight. The person performing the renovation must obtain a copy of the written determination.

(b) A certified renovator, using a recognized test kit, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5 percent by weight. The certified renovator must follow the kit manufacturer's instructions.

(2) The notification requirements in OAR 812-007-0370 to 812-007-0374 do not apply to emergency renovation operations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in OAR 333-070-0105 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from:

(a) The cleaning requirements of OAR 333-070-0090 (applicable to LBP renovation contractors by OAR 812-007-0340), which must be performed by certified renovators or individuals trained in accordance with OAR 333-070-0100;

(b) The cleaning verification requirements of OAR 333-070-0090, which must be performed by certified renovators; and

(c) The recordkeeping requirements of OAR 333-070-0110. Once the immediate emergency is over, lead safe work practices and all the requirements of these rules shall be in effect.

Stat. Auth.: ORS 670.310 &701.235 & 701.515
Stats. Implemented: ORS 701.505-701.520
(8/10 eff. 9/1/10, 3/12)

812-007-0310
Application and Eligibility Requirements for Certified Lead-Based Paint Renovation Contractor

A person applying to become a certified LBP renovation contractor must submit the following:

(1) Completed application on a form provided by the board;

(2) Proof that the person is licensed by the board as a construction contractor;

(3) The fee established in OAR 812-007-0360; and

(4) Proof that the licensee is owned by or employs at least one individual who has a current and valid course completion certificate evidencing that the individual is a certified renovator as provided in OAR 333-070-0100(3)(a), (b) or (d).

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10, 4/10)

812-007-0320
Effective Dates of New License and License Term for Certified Lead-Based Paint Renovation Contractor License

(1) The effective date of the license will be the date the applicant meets all board requirements, including but not limited to the receipt of the fee required under OAR 812-007-0360.

(2) All licenses issued will be non-transferable and will be effective for one year from the date of issue.

(3) All licenses will be assigned a unique number.

(4) An applicant for a license may withdraw the application at any time before issuance of the license upon written request to the board.

(5) If the board denies the license, it shall state, in writing, the reasons for denial.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10)

812-007-0323
License Surrender

A certified LBP renovation contractor may request that the board accept the surrender of its license.

(1) The license remains in effect until the board accepts the surrender.

(2) If the board accepts the surrender, the board will notify the licensee of the date the license terminates.

(3) The board will not accept the surrender if an investigation of or disciplinary action against the licensee is pending.

(4) The licensee must cease renovating target housing or child-occupied facilities from the date the license terminates through the remainder of the license period.

(5) The board will not reinstate the surrendered license.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.510 & 701.515
(temp. 12/22/10, 2/11 eff. 3/1/11)

812-007-0330
Renewal of Certified Lead-Based Paint Renovation Contractor License

Persons licensed under these rules may renew their licenses by submitting the following:

(1) A properly completed application for license renewal on a form provided by the board;

(2) Proof that the person is licensed by the board as a construction contractor;

(3) The fee established in OAR 812-007-0360; and

(4) Proof that the licensee is owned by or employs at least one individual who has a current and valid course completion certificate evidencing that the individual is a certified renovator as provided in OAR 333-070-0100(3)(a), (b) or (d).

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10, 4/10)

812-007-0340
Work Practice Standards for Certified Lead-Based Paint Renovation Contractors

A certified LBP renovation contractor must comply with work practice standards in OAR 333-070-0090.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(4/10)

812-007-0350
Denial, Suspension or Revocation of Certified Lead-Based Paint Renovation Contractor License

(1) The board may deny, suspend, or revoke a license of a certified LBP renovation contractor on the following grounds:

(a) Obtaining a license through invalid documentation;

(b) Permitting the duplication or use of the license by another;

(c) Violating a rule of the board; or.

(d) Violating OAR 333-070-0090 (work practice standards), 333-070-0100(4) (renovator responsibilities), or 333-070-0110 (recordkeeping and reporting requirements.) For purposes of recordkeeping and reporting requirements, as used in OAR 333-070-0110, the terms “Oregon Health Authority” and “Authority” refer to the board.

(2) Hearings on denial, suspension or revocation of a license shall be conducted as a contested case in accordance with ORS 183.310 to 183.470.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.510 & 701.515
(2/10, 4/10, 9/11 eff. 10/1/11, 3/12)

812-007-0360
Fees for Certified Lead-Based Paint Renovation Contractor Licenses

(1) All license and renewal application fees are non-refundable and non-transferrable.

(2) The fee for a certified LBP renovation contractor license is $50/year.

(3) If the board receives payment of fees by check and the check is returned to the agency as an NSF check, the board will charge the applicant $25 in addition to the required fees.

Stat. Auth.: ORS 670.310, 701.235 & 701.515
Stats. Implemented: ORS 701.515
(2/10)

812-007-0370
Notification Requirements for Certified Lead-Based Paint Renovation Contractors – Renovation in Target Housing Dwelling Units

(1) No more than 60 days before beginning renovation in target housing dwelling units, the contractor must provide the owner of the dwelling unit with an Renovation Right Pamphlet and do one of the following:

(a) Obtain from the owner a written acknowledgment that the owner has received the Renovation Right Pamphlet; or

(b) Obtain a certificate of mailing of the Renovation Right Pamphlet dated at least 7 days before the start of the renovation.

(2) In addition to the requirements of (1), if the owner does not occupy the dwelling unit, the contractor must provide the Renovation Right Pamphlet to an adult occupant of the dwelling unit and comply with one of the following:

(a) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the Renovation Right Pamphlet;

(b) Obtain a certificate of mailing of the Renovation Right Pamphlet at least 7 days before the start of the renovation; or

(c) Certify in writing that the contractor delivered the Renovation Right Pamphlet to the dwelling unit but was unsuccessful in obtaining a written acknowledgment from an adult occupant. Certification must include:

(A) The address of the dwelling unit undergoing renovation;

(B) The date and method of delivery of the Renovation Right Pamphlet;

(C) The name of the individual delivering the Renovation Right Pamphlet;

(D) A reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available);

(E) The signature of an owner or employee of the contractor; and

(F) The date the contractor’s owner or employee signed the certification.

(3) The written acknowledgment required by paragraphs (1)(a) and (2)(a) must:

(a) Include a statement acknowledging receipt of the Renovation Right Pamphlet before the start of the renovation, the name of the recipient, the address undergoing renovation, the signature of the recipient and the date of signature;

(b) Be either a separate sheet of paper or part of a written contract or service agreement for the renovation; and

(c) Be written in the same language as the agreement for renovation or, in the case of non-owner target housing, the same language as the lease or rental agreement.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.510 & 701.515

(2/10, 9/11 eff. 10/1/11)

812-007-0372

Notification Requirements for Certified Lead-Based Paint Renovation Contractors – Renovation in Target Housing Common Areas

(1) No more than 60 days before beginning renovation in target housing common areas, the contractor must provide the owner of the target housing with an Renovation Right Pamphlet and do one of the following:

(a) Obtain from the owner a written acknowledgment that the owner has received the Renovation Right Pamphlet; or

(b) Obtain a certificate of mailing of the Renovation Right Pamphlet dated at least 7 days before the start of the renovation.

(2) In addition to the requirements of (1), the contractor must comply with one of the following:

(a) Notify, in writing, each affected dwelling unit occupant and make the Renovation Right Pamphlet available upon request before the start of renovation. The written notice should describe:

(A) The general nature and locations of the planned renovation activities;

(B) The expected starting and ending dates; and

(C) A statement of how the occupant can obtain the Renovation Right Pamphlet, at no charge, from the contractor performing the renovation.

(b) While the renovation is ongoing, post signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected dwelling units. The signs must be accompanied by:

(A) A posted copy of the Renovation Right Pamphlet; or

(B) Information on how interested occupants can review or obtain a copy of the Renovation Right Pamphlet from the contractor at no cost.

(c) The posted signs must also include information on how interested occupants may review a copy of the records required by OAR 333-070-0110 or obtains a copy from the contractor at no cost to the occupants.

(3) The contractor must prepare, sign, and date a statement describing the steps taken to notify occupants of the intended renovation and to provide the Renovation Right Pamphlet.

(4) The written acknowledgment required by paragraphs (1)(a) and (2)(a) must:

(a) Include a statement acknowledging receipt of the Renovation Right Pamphlet before the start of the renovation, the name of the recipient, the address undergoing renovation, the signature of the recipient and the date of signature;

(b) Be either a separate sheet of paper or part of a written contract or service agreement for the renovation; and

(c) Be written in the same language as the agreement for renovation or, in the case of non-owner target housing, the same language as the lease or rental agreement.

(5) If the scope, location, or expected starting or ending dates of the planned renovation change and the contractor provided written notification in accordance with (1) or (2)(a), the contractor must provide further written notification to the owners and occupants including revised information on the ongoing or planned renovation. This subsequent notification must be provided before the contractor performing the renovation initiates work beyond that described in the original notice.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.510 & 701.515

(2/10, 9/11 eff. 10/1/11)

812-007-0374

Notification Requirements for Certified Lead-Based Paint Renovation Contractors – Renovation in Child-Occupied Facilities

(1) No more than 60 days before beginning renovation in any child-occupied facility, the contractor performing the renovation must provide the building owner with the Renovation Right Pamphlet and comply with one of the following:

(a) Obtain from the owner a written acknowledgment that the owner has received the Renovation Right Pamphlet; or

(b) Obtain a certificate of mailing of the Renovation Right Pamphlet dated at least 7 days before the start of the renovation.

(2) In addition to the requirements of (1), if the owner does not occupy the building, the contractor must provide the Renovation Right Pamphlet to an adult representative of the child-occupied facility and comply with one of the following:

(a) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the Renovation Right Pamphlet;

(b) Obtain a certificate of mailing of the Renovation Right Pamphlet at least 7 days before the start of the renovation; or

(c) Certify in writing that the contractor delivered the Renovation Right Pamphlet to the dwelling unit but was unsuccessful in obtaining a written acknowledgment from an adult occupant. Certification must include:

(A) The address of the facility undergoing renovation;

(B) The date and method of delivery of the Renovation Right Pamphlet;

(C) The name of the person delivering the Renovation Right Pamphlet;

(D) A reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available);

(E) The signature of an owner or employee of the contractor; and

(F) The date the contractor's owner or employee signed the certification.

(3) In addition to the requirements of (1) and (2), the contractor must provide the parents and guardians of children using the child-occupied facility with the Renovation Right Pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date. The contractor may comply by doing one of the following:

(a) Mail or hand-deliver the Renovation Right Pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility;

(b) While the renovation is ongoing, post signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by:

(A) A posted copy of the Renovation Right Pamphlet; or

(B) Information on how the parents or guardians can review or obtain a copy of the Renovation Right Pamphlet from the contractor at no cost.

(c) The posted signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility may review a copy of the records required by OAR 333-070-0110 or obtains a copy from the contractor at no cost to the parents or guardians.

(4) The contractor must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(5) The written acknowledgment required by paragraphs (1)(a) and (2)(a) must:

(a) Include a statement acknowledging receipt of the Renovation Right Pamphlet before the start of the renovation, the name of the recipient, the address undergoing renovation, the signature of the recipient and the date of signature;

(b) Be either a separate sheet of paper or part of a written contract or service agreement for the renovation; and

(c) Be written in the same language as the agreement for renovation.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.510 & 701.515

(2/10, 9/11 eff. 10/1/11)

DIVISION 8

CERTIFICATION OF INDIVIDUALS AND LICENSING OF BUSINESSES ENGAGED IN HOME INSPECTIONS

812-008-0000
Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS chapter 701.

(2) Purpose.

(a) The purpose of these rules is to create a program to certify home inspectors.

(b) These rules prescribe the requirements for certification and practices of individuals, and licensing of businesses engaged in home inspections.

(c) These rules cover businesses and all individuals who offer to undertake, submit a bid to undertake or undertake a home inspection.

(d) These rules identify when an inspection and report that is limited to one or more specific systems or components of a residential structure or appurtenance is not a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.

(3) Scope.

(a) These rules are limited to the establishment of certification for individuals and licensing of businesses that offer to undertake, submit a bid to undertake or undertake certified home inspections.

(b) These rules prescribe the requirements for, and the manner of certifying applicants to be Oregon certified home inspectors and the licensing of businesses employing these individuals, to assure the protection of consumers.

(c) These rules establish prescribed fees to the extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355.

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 6/00, 12/11 eff. 1/1/12)

Effective thru September 30, 2015

812-008-0020
Definitions

The following definitions apply to Division 8 of OAR chapter 812:

(1) “Administrator” means the Administrator of the agency.

(2) “Agency” means the Oregon Construction Contractors Board.

(3) “Automatic safety controls” means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.

(4) “Central air conditioning” means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

(5) “Certified individual” means an individual who successfully passes a test accredited by the agency, completes the education required for renewal, and satisfies any other requirements established by OAR chapter 812.

(6) “Component” means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component. “Component” also includes, but is not limited to, the separate parts of an installed appliance or an electric or gas-powered system, including, but not limited to, a water heater, furnace or air conditioning unit.

(7) “Conspicuous” as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or other contrasting type or color. But in a telegram any stated term is “conspicuous.” Whether a term or clause is “conspicuous” or not is for decision by the court.

(8) “Cross connection” means any physical connection or arrangement between potable water and any source of contamination.

(9) “Dangerous or adverse situations” means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.

(10) “Describe” means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.

(11) “Dismantle” means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.

(12) “Energy audit” means evaluation or testing of components or systems with a focus on energy efficiency or renewable energy, which may lead to recommendations that improve energy efficiency or renewable energy generation. “Energy audit” also includes quality assurance review or verification of installed or retrofitted components or systems impacting energy efficiency or renewable energy generation.

(13) “Enter” means to go into an area and observe all visible components.

(14) “Forensic evaluation” means evaluation or testing of components or systems for purposes of envelope analysis, materials testing or failure due to water intrusion or other external causes.

(15) “Functional drainage” means a drain is functional when it empties in a reasonable amount of time.

(16) “Functional flow” means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(17) “Home performance testing” means evaluation or testing of components or systems for purposes of comfort, energy efficiency, safety or indoor air quality.

(18) "Home inspection" means an inspection of substantially all of the components or systems as set forth in 812-008-0205 through 812-008-0214 for the purpose of determining the overall physical condition and habitability of the inspected structure at the time of inspection. A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction. A home inspection does not include energy audit, forensic evaluation or home performance testing.

(19) "Installed" means attached or connected such that the installed item requires tools for removal.

(20) "Normal operating controls" means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

(21) "Observe" means the act of making a visual examination.

(22) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(23) "On-site water supply quantity" means the water quantity based on the rate of flow of water.

(24) "Operate" means to cause systems or equipment to function.

(25) "Oregon certified home inspector" means a person certified pursuant to ORS chapter 701, chapter 814, 1997 Oregon Laws and OAR chapter 812.

(26) "Readily accessible panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

(27) "Representative number" for multiple identical components such as windows and electrical outlets means one such component per room; for multiple identical exterior components, one such component on each side of the building.

(28) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(29) "Shut down" means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

(30) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

(31) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(32) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions. "System" also includes, but is not limited to, an installed appliance or an electric or gas-powered system, including but not limited to, a water heater, furnace or air conditioning unit.

(33) "Technically exhaustive" means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

(34) "Test" means a test administered by the agency.

(35) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 12/04, 6/06, 12/11 eff. 1/1/12)

Effective October 1, 2015

812-008-0020
Definitions

The following definitions apply to Division 8 of OAR chapter 812:

(1) "Administrator" means the Administrator of the agency.

(2) "Agency" means the Oregon Construction Contractors Board.

(3) "Automatic safety controls" means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.

(4) "Central air conditioning" means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

(5) "Certified individual" means an individual who successfully passed a test accredited by the agency or who successfully passed the National Home Inspector Examination and who completes the education required for renewal and satisfies any other requirements established by OAR chapter 812.

(6) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component. "Component" also includes, but is not limited to, the separate parts of an installed appliance or an electric or gas-powered system, including, but not limited to, a water heater, furnace or air conditioning unit.

(7) "Conspicuous" as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as:

NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(8) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.

(9) "Dangerous or adverse situations" means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.

(10) "Describe" means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.

(11) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.

(12) "Energy audit" means evaluation or testing of components or systems with a focus on energy efficiency or renewable energy, which may lead to recommendations that improve energy efficiency or renewable energy generation. "Energy audit" also includes quality assurance review or verification of installed or retrofitted components or systems impacting energy efficiency or renewable energy generation.

(13) "Enter" means to go into an area and observe all visible components.

(14) "Forensic evaluation" means evaluation or testing of components or systems for purposes of envelope analysis, materials testing or failure due to water intrusion or other external causes.

(15) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time.

(16) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(17) "Home performance testing" means evaluation or testing of components or systems for purposes of comfort, energy efficiency, safety or indoor air quality.

(18) "Home inspection" means an inspection of substantially all of the components or systems as set forth in 812-008-0205 through 812-008-0214 for the purpose of determining the overall physical condition and habitability of the inspected structure at the time of inspection. A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction. A home inspection does not include energy audit, forensic evaluation or home performance testing.

(19) "Installed" means attached or connected such that the installed item requires tools for removal.

(20) "Normal operating controls" means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

(21) "Observe" means the act of making a visual examination.

(22) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(23) "On-site water supply quantity" means the water quantity based on the rate of flow of water.

(24) "Operate" means to cause systems or equipment to function.

(25) "Oregon certified home inspector" means a person certified pursuant to ORS chapter 701, chapter 814, 1997 Oregon Laws and OAR chapter 812.

(26) "Readily accessible panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

(27) "Representative number" for multiple identical components such as windows and electrical outlets means one such component per room; for multiple identical exterior components, one such component on each side of the building.

(28) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(29) "Shut down" means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the "off" position or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

(30) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

(31) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(32) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions. "System" also includes, but is not limited to, an installed appliance or an electric or gas-powered system, including but not limited to, a water heater, furnace or air conditioning unit.

(33) "Technically exhaustive" means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

(34) "Test" means a test administered by the agency.

(35) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 12/04, 6/06, 12/11 eff. 1/1/12, 7/15 eff. 10/1/15)

812-008-0030

Certification and License Required

(1) Except as provided in section (3) of this rule, no individual shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first receiving certification to do same from the agency and without being an owner or employee of a business that is licensed with the agency.

(2) Except as provided in section (3) of this rule, no business shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first becoming licensed with the agency as a residential general contractor, a residential specialty contractor, or a home inspection services contractor and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) The following persons are exempt from the requirements of this rule.

(a) Persons registered each year as a general contractor under ORS chapter 701 during the period from January 1, 1991, through August 11, 1997, as provided in section (3)(b) of chapter 814, 1997 Oregon Laws.

(b) Persons performing an energy audit or issuing a report on an energy audit.

(c) Persons performing a forensic evaluation or issuing a report on a forensic evaluation.

(d) Persons performing home performance testing or issuing a report on a home performance testing.

(e) Persons who assign home energy performance scores for residential buildings.

(4) No person, including persons covered by section (3) of this rule, shall use the title Oregon certified home inspector without receiving such certification from the agency.

(5) Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

(6) All certificates for individuals to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

(7) Home inspection service contractors are not required to complete continuing education.

Stat. Auth.: ORS 670.310, 701.235, 701.350 and 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350 and 701.355

(2/98, 10/98, temp. 6/99, 9/99, 6/00, 5/02, 2/08, 12/11 eff. 1/1/12, 12/13 eff. 1/1/14)

Effective thru September 30, 2015

812-008-0040

Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

(a) An application on a form provided by the agency;

(b) The fee established in OAR 812-008-0110;

(c) If applicable, CCB number and name of employing licensee;

(d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and

(e) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a residential general contractor, a residential specialty contractor or a home inspection services contractor;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an individual applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university, (10 points maximum).

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university, (10 points maximum).

(c) One point for each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector, (10 points maximum).

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities, (10 points maximum).

(4) The individual applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country (16 points maximum).

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (16 points maximum).

(c) One-half point for each letter of recommendation from an Oregon-certified home inspector (4 points maximum).

(d) One point for each building codes certification issued by a government agency (5 points maximum).

Stat. Auth.: ORS 670.310, 701.235, 701.350 and 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350 and 701.355

(2/98, 5/99, temp. 6/99, 2/00, 6/00, 8/00, temp. 10/00, 12/00, 4/01, 9/01, temp. 10/01, 5/02, 12/06, 12/07, 2/08, 12/13 eff. 1/1/14)

Effective October 1, 2015

812-008-0040

Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

(a) An application on a form provided by the agency;

(b) The fee established in OAR 812-008-0110;

(c) If applicable, CCB number and name of employing licensee;

(d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule;

(e) Evidence of successful passage of the National Home Inspector Examination; and

(f) A signed statement that the individual has read and understands the home inspector standards of behavior, as set forth in OAR 812-008-0201, and the home inspector standards of practice, as set forth in OAR 812-008-0202 through 812-008-0214.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a residential general contractor, a residential specialty contractor or a home inspection services contractor;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) An individual applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university.

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university.

(c) One point for each completed “ride-along” inspection performed under the direct supervision of an Oregon certified home inspector.

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities.

(4) The individual applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country.

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections.

(c) One-half point for each letter of recommendation from an Oregon-certified home inspector.

(d) One point for each building codes certification issued by a government agency.

Stat. Auth.: ORS 670.310, 701.235, 701.350 and 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350 and 701.355

(2/98, 5/99, temp. 6/99, 2/00, 6/00, 8/00, temp. 10/00, 12/00, 4/01, 9/01, temp. 10/01, 5/02, 12/06, 12/07, 2/08, 12/13 eff. 1/1/14, 7/15 eff. 10/1/15)

Effective thru September 30, 2015

812-008-0050

Testing Requirements

(1) The agency shall provide a written test for certification of individuals.

(2) The test shall be divided into five sections and weighted as follows:

(a) 20 percent: Structure, roofing, site, exterior, and interior.

(b) 20 percent: Heating, cooling, insulation, ventilation, fireplaces and wood stoves.

(c) 20 percent: Electrical.

(d) 20 percent: Plumbing.

(e) 20 percent: Contracts, reports and standards.

(3) To be certified, applicants must successfully pass the test.

(4) Applicants shall schedule an appointment with the agency, or designated proctors throughout the state, to take the test after receipt of a letter of authorization from the agency and payment of the fee prescribed in Division 8.

(5) The passing score shall be 75 percent or higher based on 100 percent possible.

(6) Applicants shall score 75 percent or higher on each of five sections of the test.

(7) Applicants shall not take the same test version on consecutive attempts.

(8) The agency will notify applicants by mail of their test scores on each section of the test.

(9) Applicants who fail one or more sections of the test need not retake test sections already passed except as provided in (10) below.

(10) Applicants shall pass all sections of the test within one year of the date the person first took the test or retake all sections of the test.

(11) Applicants shall complete the certification process within one year from the date the person passed all sections of the test or retake the entire test.

(12) Applicants shall show picture identification before taking the test.

(13) Applicants shall not be accompanied by another individual while taking the test unless it is a translator.

(14) Applicants needing a translator shall pay for translator.

(15) Applicants taking the test shall not leave the testing room.

(16) Applicants shall not retain notes or other materials during the test.

(17) Applicants who attempt and fail the first test may take all subsequent tests in no less than 30 days.

(18) Applicants shall not review test questions or answer sheets.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 4/98, 10/98, 9/99, 9/01, 6/03, 2/04, 3/06)

Effective October 1, 2015

812-008-0050

Examination Requirements

(1) Beginning October 1, 2015, home inspector applicants shall successfully pass the National Home Inspector Examination created and graded by the Examination Board of Professional Home Inspectors.

(2) National Home Inspector Examinations passed before October 1, 2015, may be used if the applicant applies for certification on or after October 1, 2015.

(3) The examination shall be administered at a test center in Oregon designated by the Examination Board of Professional Home Inspectors or in any other state that administers the National Home Inspector Examination.

(4) Successful applicants will submit their official score sheet to the agency. The agency may verify with the Examination Board of Professional Home Inspectors the validity of any official score sheet.

(5) Retesting after a failed examination will be administered in accordance with protocols of the Examination Board of Professional Home Inspectors.

(6) This requirement does not apply to any home inspector certified by the agency before October 1, 2015, whose certification is current and in good standing.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 4/98, 10/98, 9/99, 9/01, 6/03, 2/04, 3/06, 7/15 eff. 10/1/15)

Effective thru September 30, 2015

812-008-0060

Certification Issuance

(1) The effective date of the certificate will be the date applicant meets all agency requirements, including but not limited the receipt of the fee required under OAR 812-008-0110 (4).

(2) A unique certification number will be assigned to each certificate.

(3) All certificates shall be issued in the name of the individual who passed the test.

(4) An application for certification may be withdrawn upon receipt of a written request to the agency at any time prior to the issuance of the certification.

(5) When granted, the certificate shall be mailed to the applicant.

(6) If denied, the agency shall state, in writing, the reasons for denial.

(7) A certificate shall be non-transferable and shall be effective for two years from date of issue.

Stats. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 8/00, 6/03, 12/07)

Effective October 1, 2015

812-008-0060

Certification Issuance

(1) The effective date of the certificate will be the date applicant meets all agency requirements, including but not limited the receipt of the fee required under OAR 812-008-0110.

(2) A unique certification number will be assigned to each certificate.

(3) All certificates shall be issued in the name of the individual who passed the test.

(4) An application for certification may be withdrawn upon receipt of a written request to the agency at any time prior to the issuance of the certification.

(5) When granted, the certificate shall be mailed to the applicant.

(6) If denied, the agency shall state, in writing, the reasons for denial.

(7) A certificate shall be non-transferable and shall be effective for two years from date of issue.

Stats. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 8/00, 6/03, 12/07, 7/15 eff. 10/1/15)

812-008-0065

Mailing and E-mail Address Changes

(1) Certified home inspectors shall notify the board of any change in mailing or e-mail addresses while certified and for one year following the certification expiration date. Such persons must notify the board within 10 days after changing an address.

(2) No charge will be made for a mailing or e-mail address change to the board's records.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.117 & 701.350

(4/11 eff. 5/1/11)

812-008-0070

Requirements for Renewal of Certification

(1) An Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(a) A properly completed renewal application on an agency form; and

(b) The renewal fee as required under OAR 812-008-0110; and

(c) Copies of completion certificates or other proof of completion listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

(2) If, during the two years immediately preceding the expiration date of the certification, an Oregon certified home inspector served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(6/99, 9/01, 3/03, 12/04, 1/06, 12/07, 11/09 eff. 1/1/10, 2/11 eff. 3/1/11)

812-008-0072
Approved Continuing Education Units

The following continuing education units (CEUs) are approved:

(1) One CEU for each completed clock hour of instruction of approved subject matter in OAR 812-008-0074(1) given by the following:

(a) Education providers approved under OAR 812-008-0074(3).

(b) Accredited colleges or universities.

(c) Federal, state or local government agencies.

(d) Education providers approved or accredited by federal, state or local government agencies.

(2) One CEU for accompanying a plumbing, electrical, or heating and air conditioning contractor who is licensed with the Building Codes Division, on a repair or maintenance job that lasts a minimum of four hours. No more than one CEU shall be granted in each of the three areas per two-year renewal period for a total of three CEUs.

(3) One CEU for each year completed for serving as an officer of an Oregon or national home inspector professional trade association.

(4) One CEU for each Home Inspector Advisory Committee meeting attended as a Construction Contractors Board Home Inspector Advisory Committee member.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(6/99, 9/99, 2/00, 8/00, 11/02, 6/03, 1/06, 12/06, 2/11 eff. 3/1/11)

812-008-0074
Approved Course Subjects and Education Providers

(1) The following subject areas are approved for continuing education units: Report writing, communication skills, business practices, legal issues, ethics, home inspector study guide items, building codes, construction, renovation, lead-based paint and home inspector standards of practice.

(2) If applicable, a foreign company applying to be an education provider must be authorized by the Oregon Corporation Division to do business in Oregon. All education provider applicants must register their assumed business name(s) used in Oregon with the Oregon Corporation Division.

(3) Education provider applicants shall complete an application form prescribed by the agency that shall include but is not limited to the following information:

(a) Evidence that the education provider applicant complies with section (2) of this rule.

(b) An outline that demonstrates the goals and objectives of the education program are appropriate for Oregon Home Inspectors;

(c) Certification that the courses intended for Oregon Home Inspectors are in the approved subject matter stated in OAR 812-008-0074(1).

(d) Certification that the instructors are qualified and have:

(A) Experience in subject matter.

(B) Licenses, certificates, and/or degrees in subject matter.

(C) Background in training or adult education; and

(D) Knowledge of home inspection industry.

(e) Certification that the criteria used by the education provider to approve and evaluate instructors and courses are stringent and ongoing.

(4) Education providers offering continuing education units as defined in 812-008-0072(1)(a) shall provide completion certificates to course attendees within 30 days from the date of course completion. Course completion certificates shall include but are not limited to the following:

(a) Education provider's name;

(b) Attendee's name;

(c) Date of course;

(d) Subject areas covered in course;

(e) Number of clock hours or continuing education units; and

(f) Signature of education program designee.

(5) The agency may terminate a provider's program if they do not meet the agency's approved criteria.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(9/99, 6/03, 5/06, 12/06, 8/10 eff. 9/1/10, 12/10 eff. 1/1/11, 2/11 eff. 3/1/11)

812-008-0076
Certification Renewal Term, Effective Date

(1) Certification renewal shall be effective on the day following the expiration date of the certification for which renewal is sought if an Oregon certified home inspector fulfills all requirements of OAR 812-008-0070 on or before the expiration date.

(2) If an Oregon certified home inspector fails to fulfill all requirements of OAR 812-008-0070 on or before the expiration date of the certification for which renewal is sought, but fulfills all such requirements at a future date, certification renewal shall be effective on the day all requirements for renewal are completed. However, during the period from the expiration date of the certification for which renewal is sought and the date upon which all requirements of OAR 812-008-0070 are fulfilled, the certification of the individual formerly an Oregon certified

home inspector is not in effect, and the prohibition of OAR 812-008-0030(1) applies.

(3) An applicant for renewal shall fulfill all requirements of OAR 812-008-0070 when applicant's previous certification has expired for two years or less.

(4) An applicant for renewal shall fulfill all requirements of OAR 812-008-0040 when applicant's previous certification has expired for more than two years. Each time an applicant completes the requirements of OAR 812-008-0040, applicant will be issued a new certification number.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(6/99, 3/02)

812-008-0077
Certification Cards

(1) The agency shall issue a certification and pocket card effective on the date on which the certification becomes effective under OAR 812-008-0060 or 812-008-0076.

(2) A certification and pocket card is valid for the term for which it is issued.

(3) If a certification becomes invalid, the agency may require the return of the certification and pocket card.

(4) There is no charge for the original certification and pocket card issued by the agency.

(5) There is a $10 fee to replace a certification and pocket card.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 192.440(4)(a), 701.063, 701.238

(4/11 eff. 5/1/11)

[**812-008-0078** Repealed January 26, 2006]

[**812-008-0080** Amended and renumbered to 812-008-0200-0214, 8/05, effective 1/1/06]

812-008-0090
Revocation of Certification

The Construction Contractors Board may revoke the certificate of an Oregon certified home inspector or the license of a business that performs work as a home inspector for failure of the Oregon certified home inspector to:

(1) Comply with one or more of the "Standards of Practice" set forth in OAR 812-008-0202 through 812-008-0214.

(2) Comply with one or more of the "Standards of Behavior" set forth in OAR 812-008-0201.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 6/99, 6/00, 3/06, 12/09 eff. 1/1/10)

Effective to September 30, 2015

812-008-0110
Prescribed Fees

The following prescribed fees are established:

(1) Application to become certified, $50.

(2) Test, first attempt, $50.

(3) Test, each sitting to retake one or more sections, $25.

(4) Initial two-year Certification, $150.

(5) Certification renewal (two years), $150.

(6) Refunds:

(a) 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.

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of $40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of $25 in addition to the required payment of the fees or penalty.

(7)(a) Any certified home inspector in the United States armed forces need not pay a renewal fee if such fee would be due during the certified home inspector's active duty service.

(b) A certified home inspector in the United States armed forces shall pay the next license renewal fee that will become due after the certified home inspector is discharged from active duty service.

(c) The agency may request that the certified home inspector provide documentation of active duty status and of discharge.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

Stats. Implemented: ORS 293.445, 701.350 & 701.355

(2/98, 6/99, 9/01, temp. 1/03, 6/03, 12/04, 12/05, 12/07, 11/09 eff. 1/1/10)

Effective October 1, 2015

812-008-0110
Prescribed Fees

The following prescribed fees are established:

(1) Initial two-year Certification, $150.

(2) Certification renewal (two years), $150.

(3) Refunds:

(a) 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.

(b) Except as set forth in subsection (3)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of $40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of $25 in addition to the required payment of the fees or penalty.

(4)(a) Any certified home inspector in the United States armed forces need not pay a renewal fee if such fee would be due during the certified home inspector's active duty service.

(b) A certified home inspector in the United States armed forces shall pay the next license renewal fee that will become due after the certified home inspector is discharged from active duty service.

(c) The agency may request that the certified home inspector provide documentation of active duty status and of discharge.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

Stats. Implemented: ORS 293.445, 701.350 & 701.355

(2/98, 6/99, 9/01, temp. 1/03, 6/03, 12/04, 12/05, 12/07, 11/09 eff. 1/1/10, 7/15 eff. 10/1/15)

812-008-0200
Standards of Behavior and Standards of Practice

OAR 812-008-0201 sets forth the standards of behavior of Oregon certified home inspectors. OAR 812-008-0202 through 812-008-0214 of this rule set forth the minimum standards of practice required by Oregon certified home inspector.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080, 8/05)

812-008-0201
Standards of Behavior

(1) An Oregon certified home inspector shall not:

(a) Engage in dishonest or fraudulent conduct or undertake activities that are injurious to the welfare of the public, which result in injury or damage to another person.

(b) Disclose any information about the results of an inspection without the approval of the client for whom the inspection was undertaken.

(c) Accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.

(d) Directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers or similar arrangements. This paragraph is not intended to prohibit any discount, credit or add-on service made directly to an inspector's client.

(e) Accept financial or other consideration, such as material or equipment, from suppliers for suggesting the use of, or promoting a specific product in the course of performing an inspection.

(f) Accept compensation, directly or indirectly, for recommending contractors, services, or products to inspection clients or other parties having an interest in inspected properties.

(g) Inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

(h) Express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

(i) Allow his or her interest in any business to affect the quality or results of inspection work that the Oregon certified home inspector may be called upon to undertake.

(j) Misrepresent any matters to the public.

(2) Opinions expressed by Oregon certified home inspectors shall only be based on their education, experience, and physical evidence observed by the inspector.

(3) Before the execution of a contract to undertake a home inspection, an Oregon certified home inspector shall disclose to the client any interest in a business that may affect the client.

(4) Nothing in OAR 812-008-0201 shall prohibit a business offering home inspection services from advertising services or for the purpose of recruiting employees and personnel. All such advertisements shall not be misleading or deceptive. A business shall not advertise home inspection services unless the business is properly licensed.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(15), 8/05, 6/08)

812-008-0202
Contracts and Reports

(1) Home inspections undertaken according to division 8 shall be based solely on the property conditions, as observed at the time of the home inspection.

(2) Oregon certified home inspectors shall:

(a) Provide a written inspection contract, signed by both the Oregon certified home inspector and client, prior to completing a home inspection that shall:

(A) State that the home inspection is in accordance with standards and practices set forth in division 8 of OAR chapter 812;

(B) Describe the services provided and their cost;

(C) State where the planned inspection differs from the standard home inspection categories as set forth in OAR 812-008-0205 through 812-008-0214; and

(D) Conspicuously state whether the home inspection includes a wood destroying organism inspection and if such inspection is available for a fee.

(E) For the purpose of this rule, a home inspection shall be deemed completed when the initial written inspection report is delivered.

(b) Observe readily visible and accessible installed systems and components listed as part of a home inspection as defined by these rules unless excluded pursuant to these rules in OAR 812-008-0200 through 812-008-0214; and

(c) Submit a written report to the client that shall:

(A) Describe those systems and components as set forth in OAR 812-008-0205 through 812-008-0214;

(B) Record in the report each item listed in OAR 812-008-0205 through 812-008-0214 and indicate whether or not the property inspected was satisfactory with regard to each item of inspection; it will not be sufficient to satisfy subsection (2)(c) of this rule that the certified home inspector prepare a report listing only deficiencies;

(C) State whether any inspected systems or components do not function as intended, allowing for normal wear and tear; and how, if at all, the habitability of the dwelling is affected;

(D) State the inspector's recommendation to monitor, evaluate, repair, replace or other appropriate action;

(E) State the Construction Contractors Board license number of the business and the name, certification number and signature of the person undertaking the inspection; and

(F) Include on the first page of the contract and on the first page of the report, in bold-faced, capitalized type and in at least 12 point font, the following statement: "THIS REPORT IS INTENDED ONLY FOR THE USE OF THE PERSON PURCHASING THE HOME INSPECTION SERVICES. NO OTHER PERSON, INCLUDING A PURCHASER OF THE INSPECTED PROPERTY WHO DID NOT PURCHASE THE HOME INSPECTION SERVICES, MAY RELY UPON ANY REPRESENTATION MADE IN THE REPORT."

(d) Submit to each customer at the time the contract is signed a copy of "Home Inspection Consumer Notice."

(3) Division 8 does not limit Oregon certified home inspectors from reporting observations and conditions or rendering opinions of items in addition to those required in division 8.

(4) All written reports, bids, contracts, and an individual's business cards shall include the Oregon certified home inspector's certification number.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05, 3/06, 11/09 eff. 1/1/10)

(Amended and renumbered from 812-008-0080(1), 8/05)

812-008-0203
General Limitations

(1) Inspections undertaken in accordance with division 8 are visual and are not technically exhaustive.

(2) "Residential structures" and "appurtenances" thereto are defined in ORS chapter 701.005 and OAR chapter 812-008-0020.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(2), 8/05)

812-008-0204
General Exclusions

(1) Oregon certified home inspectors are not required to report on:

(a) Life expectancy of any component or system;

(b) The causes of the need for a repair;

(c) The methods, materials, and costs of corrections;

(d) The suitability of the property for any specialized use;

(e) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;

(f) The advisability or inadvisability of purchase of the property;

(g) The presence or absence of pests such as wood damaging organisms, rodents, or insects;

(h) Cosmetic items, underground items, or items not permanently installed; or

(i) Detached structures.

(2) Oregon certified home inspectors are not required to:

(a) Offer or undertake any act or service contrary to law;

(b) Offer warranties or guarantees of any kind;

(c) Offer to undertake engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the Oregon certified home inspector holds a valid occupational license, in which case the Oregon certified home inspector may inform the client that the home inspector is so certified, and is therefore qualified to go beyond division 8 and undertake additional inspections beyond those within the scope of the basic inspection;

(d) Calculate the strength, adequacy, or efficiency of any system or component;

(e) Enter any area, undertake any procedure that may damage the property or its components, or be dangerous to the Oregon certified home inspector or other persons;

(f) Operate any system or component that is shut down or otherwise inoperable;

(g) Operate any system or component that does not respond to normal operating controls;

(h) Disturb insulation, move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;

(i) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to toxins, carcinogens, noise or contaminants in the building or soil, water, and air;

(j) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;

(k) Predict future condition, including but not limited to failure of components;

(l) Project operating costs of components;

(m) Evaluate acoustical characteristics of any system or component;

(n) Observe special equipment or accessories that are not listed as components to be observed in division 8; or

(o) Identify presence of odors or their source;

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(3), 8/05)

812-008-0205
Structural Components

(1) The Oregon certified home inspector shall observe and describe visible structural components including:

(a) Foundation;

(b) Floors and floor structure;

(c) Walls and wall structure;

(d) Columns or piers;

(e) Ceilings and ceiling structure; and

(f) Roofs and roof structure.

(2) The Oregon certified home inspector shall:

(a) Probe or sound structural components where deterioration is suspected, except where probing would damage any finished surface;

(b) Enter underfloor crawl spaces, basements, and attic spaces except when access is obstructed or restricted, when entry could damage any property, or when dangerous or adverse situations are suspected;

(c) Report the methods used to observed underfloor crawl spaces and attics; report inaccessible areas; and

(d) Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(4), 8/05)

812-008-0206
Exterior and Site

(1) The Oregon certified home inspector shall observe and describe:

(a) Wall cladding, flashings, and trim;

(b) Entryway doors and all windows;

(c) Garage door operators;

(d) Attached decks, balconies, stoops, steps, areaways, porches, and applicable railings;

(e) Eaves, soffits, and fascias; and

(f) Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building that adversely affect the structure.

(2) The Oregon certified home inspector shall:

(a) Operate all entryway doors and a representative number of windows;

(b) Operate garage doors manually or by using permanently installed controls for any garage door opener; and

(c) Report whether or not any garage door opener will automatically reverse or stop when meeting reasonable resistance during closing, or reverse with appropriately installed optical sensor system.

(3) The Oregon certified home inspector is not required to observe:

(a) Storm windows, storm doors, screening, shutters, and awnings;

(b) Garage door operator remote control transmitters;

(c) Soil or geological conditions, site engineering, property boundaries, encroachments, or easements;

(d) Recreational facilities (including spas, saunas, steambaths, swimming pools, decorative water features, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); or

(e) Detached buildings or structures;

(f) Fences or privacy walls;

(g) Ownership fencing, privacy walls, retaining walls; or

(h) Condition of trees, shrubs, or vegetation.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(5) & (14), 8/05)

812-008-0207
Roofing

(1) The Oregon certified home inspector shall observe and describe:

(a) Roof coverings;

(b) Roof drainage systems;

(c) Flashings;

(d) Skylights, chimneys, and roof penetrations; and

(e) Signs of leaks or abnormal condensation on building components.

(2) The Oregon certified home inspector shall report the method used to observe the roofing and components.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(6), 8/05)

812-008-0208
Plumbing

(1) The Oregon certified home inspector shall observe:

(a) Interior water supply and distribution system, including piping materials, supports, and insulation, fixtures and faucets, functional flow, leaks, and cross connections;

(b) Interior drain, waste, and vent system, including traps, drain, waste, and vent piping, piping supports and pipe insulation, leaks, and functional drainage;

(c) Hot water systems including water heating equipment, normal operating controls, automatic safety controls, and chimneys, flues, and vents;

(d) Above ground oil storage and distribution systems including interior oil storage equipment, supply piping, venting, and supports; leaks; and

(e) Sump pumps and sewage ejection pumps.

(2) The Oregon certified home inspector shall describe:

(a) Water supply and distribution piping materials;

(b) Drain, waste, and vent piping materials; and

(c) Water heating equipment.

(3) The Oregon certified home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house except where the flow end of the faucet is connected to an appliance or interior faucets not serviced by a drain.

(4) The Oregon certified home inspector is not required to:

(a) State the effectiveness of anti-siphon devices and anti-backflow valves;

(b) Determine whether water supply and waste disposal systems are public or private;

(c) Operate automatic safety controls;

(d) Operate any valve except toilet flush valves, fixture faucets, and hose faucets;

(e) Observe:

(A) Water conditioning systems;

(B) Fire and lawn sprinkler systems;

(C) On-site water supply quantity and quality;

(D) On-site waste disposal systems;

(E) Foundation irrigation systems;

(F) Whirlpool tubs, except as to functional flow and functional drainage;

(G) Swimming pools and spas; or

(H) Solar water heating equipment.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(7), 8/05)

812-008-0209
Electrical

(1) The Oregon certified home inspector shall observe:

(a) Service entrance conductors;

(b) Service equipment, grounding equipment, main overcurrent device, and distribution panels;

(c) Amperage and voltage ratings of the service;

(d) Branch circuit conductors, their overcurrent devices, and the compatibility of their amperages and voltages;

(e) The operation of a representative number of installed ceiling fans, lighting fixtures, switches, and receptacles located inside the house, garage, and on the dwelling's exterior walls;

(f) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;

(g) The operation of ground fault or arc fault circuit interrupters;

(h) Smoke alarms; and

(i) Carbon monoxide detectors.

(2) The Oregon certified home inspector shall describe:

(a) Service amperage and voltage;

(b) Service entry conductor materials; and

(c) Service type as being overhead or underground;

(3) The Oregon certified home inspector shall report:

(a) Any observed 110 volt aluminum branch circuit wiring; and

(b) The presence or absence of smoke alarms, and operate their test function, if accessible, except when detectors are part of a central security system.

(4) The Oregon certified home inspector is not required to:

(a) Insert any tool, probe, or testing device inside the panels;

(b) Test or operate any overcurrent device or safety device in the electrical service panel or elsewhere that may adversely affect the personal property of the resident;

(c) Dismantle any electrical device or control other than to remove the covers of the main or auxiliary distribution panels;

(d) Observe:

(A) Low-voltage systems except to report the presence of solenoid-type lighting systems;

(B) Security system devices or heat detectors;

(C) Telephone, security, TV, intercoms, lightening arrestors or other ancillary wiring that is not a part of the primary electrical distribution system; or

(D) Built-in vacuum equipment.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 105.838(1), 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05, 4/11 eff. 5/1/11)

(Amended and renumbered from 812-008-0080(8), 8/05)

812-008-0210
Heating

(1) The Oregon certified home inspector shall observe permanently installed heating systems including:

(a) Heating equipment;

(b) Normal operating controls;

(c) Automatic safety controls;

(d) Chimneys, flues, and vents, where readily visible;

(e) Solid fuel heating devices;

(f) Heat distribution systems including fans, pumps, ducts, and piping, with supports, insulation, air filters, registers, radiators, fan coil units, convectors; and

(g) The presence of installed heat source in each room.

(2) The Oregon certified home inspector shall describe:

(a) Energy source; and

(b) Heating equipment and distribution type.

(3) The Oregon certified home inspector shall operate the systems using normal operating controls.

(4) The Oregon certified home inspector shall open readily accessible panels provided by the manufacturer or installer for routine homeowner maintenance.

(5) The Oregon certified home inspector is not required to:

(a) Operate automatic safety controls;

(b) Ignite or extinguish solid fuel fires;

(c) Observe:

(A) The interior of flues;

(B) Fireplace insert flue connections;

(C) Humidifiers; or

(D) The uniformity or adequacy of heat supply to the various rooms.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(9), 8/05)

812-008-0211
Central Air Conditioning

(1) The Oregon certified home inspector shall observe:

(a) Central air conditioning systems including cooling and air handling equipment and normal operating controls.

(b) Distribution systems including fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, and fan-coil units.

(2) The Oregon certified home inspector shall describe:

(a) Energy sources; and

(b) Cooling equipment type.

(3) The Oregon certified home inspector shall operate the systems using normal operating controls.

(4) The Oregon certified home inspector shall open readily openable panels provided by the manufacturer or installer for routine homeowner maintenance.

(5) The Oregon certified home inspector is not required to:

(a) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;

(b) Observe non-central air conditioners; or

(c) Observe the uniformity or adequacy of cool-air supply to the various rooms.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(10), 8/05)

812-008-0212
Interiors

(1) The Oregon certified home inspector shall observe and describe:

(a) Walls, ceiling, and floors;

(b) Steps, stairways, balconies, and railings;

(c) Counters and cabinets; and

(d) Doors and windows.

(2) The Oregon certified home inspector shall:

(a) Operate a representative number of windows and interior doors; and

(b) Report signs of abnormal or harmful water penetration or damage in the building or components or signs of abnormal or harmful condensation on building components.

(3) The Oregon certified home inspector is not required to:

(a) Operate a representative number of cabinets and drawers;

(b) Observe paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; or

(c) Observe draperies, blinds, or other window treatments.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(11), 8/05)

812-008-0213
Insulation and Ventilation

(1) The Oregon certified home inspector shall observe and describe:

(a) Insulation and vapor retarders/barriers in unfinished spaces;

(b) Ventilation of attics and foundation areas;

(c) Kitchen, bathroom, and laundry venting systems; and

(d) The operation of any readily accessible attic ventilation fan, and when the temperature permits, the operation of any readily accessible thermostatic control.

(e) Absence of insulation in unfinished space adjacent to heated living areas.

(2) The Oregon certified home inspector is not required to report on:

(a) Concealed insulation and vapor retarders;

(b) Venting equipment that is integral with household appliances; or

(c) Thermal efficiency ratings.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(12), 8/05)

812-008-0214
Built-in Kitchen Appliances

(1) The Oregon certified home inspector shall observe and operate the basic functions of the following kitchen appliances:

(a) Installed dishwasher, through its normal cycle;

(b) Range, cook top, and installed oven;

(c) Trash compactor;

(d) Garbage disposal;

(e) Ventilation equipment or range hood;

(f) Installed microwave oven; and

(g) Built-in refrigerators.

(2) The Oregon certified home inspector is not required to observe:

(a) Clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation;

(b) Non built-in appliances;

(c) Refrigeration units that are not installed; or

(d) Microwave leakage.

(3) The Oregon certified home inspector is not required to operate:

(a) Appliances in use; or

(b) Any appliance that is shut down or otherwise inoperable.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05)

(Amended and renumbered from 812-008-0080(13), 8/05)

DIVISION 9

CONTESTED CASE HEARINGS AND APPEAL COMMITTEE

Contested Case Hearings, Complaints

812-009-0010
Application of Rules

Subject to OAR 812-004-0590, complaints filed before July 1, 2011, arising under ORS 701.139-701.180 are governed by:

(1) OAR 812-009-0020 – 812-009-0220 and OAR 137-003-0501–137-003-0700, with respect to contested cases;

(2) OAR 812-009-0400, 812-009-0430, and 812-009-0435, with respect to exceptions; and

(3) OAR 812-009-0440, with respect to meetings of the board's Appeal Committee.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413 to 183.470 & 701.145

(temp. 1/00, 5/00, 6/02, 12/06. temp. 7/8/11, 9/11 eff. 10/1/11, 10/12 eff. 11/1/12)

812-009-0020
Amendment to Statement of Damages

(1) If the agency refers a complaint to the Office of Administrative Hearings for a hearing on the amount the respondent owes the complainant, the complainant may amend the amount the complainant alleges the respondent owes the complainant by filing an amended statement of damages. An amended statement of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and OAR 812-009-0085. An amended statement 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 before the scheduled date of a hearing on the matter.

(2) An amended statement of damages filed under section (1) 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 statement of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the Breach of Contract Complaint and complaint items added up to and through the initial on-site meeting. The amended statement of damages must be signed by the complainant.

(3) An amended statement of damages making a significant change in the amount the complainant alleges that the respondent owes the complainant 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.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413, 183.415 & 701.145

(10/98, temp. 1/00, temp. 3/00, 5/00, 11/02, 8/03, 12/06, 6/08)

Attorney General noted that rule is authorized under OAR 137-003-0501(2) and does not require Attorney General approval in letter dated 2/24/00

[**812-009-0040** Repealed 5/00]

812-009-0050
Providing Required Information to Parties

The agency delegates to the Office of Administrative Hearings or the administrative law judge assigned to hear a complaint the responsibility to provide the information required to be given to each party under ORS 183.413(2) and OAR 137-003-0510(1).

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413, 183.415, 701.133 & 701.145

(temp. 3/00, 5/00, 8/03, 12/06, 6/08)

Authorized by Attorney General order dated 2/24/00

812-009-0060
Hearing Postponement

If a party requests postponement of a hearing, the request may be granted if:

(1) The request is promptly made after the party receives the notice of hearing or is promptly made after emergency or unforeseen circumstances arise;

(2) The party establishes circumstances that prevent attendance by the party at the scheduled hearing; and

(3) The party provides evidence of good cause why it cannot attend the scheduled hearing.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413 to 183.470 & 701.145

(10/98, temp. 1/00, temp. 3/00, 5/00, 4/12 eff. 5/1/12)

812-009-0070
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 an administrative law judge suspends or cancels a hearing under this rule, the administrative law judge must refer the complaint to the agency with a memorandum recommending that processing of the complaint be suspended under ORS 701.145 and OAR 812-004-0520 and stating the basis of the recommendation. A copy of this memorandum must be served on the parties.

(2) If a complaint is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the complaint; or

(b) Refer the complaint back to the administrative law judge with instructions to resume the hearing.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.133 & 701.145
(temp. 1/00, 5/00, 4/01, 3/03, 8/03, 12/06, 6/08)
Authorized by Attorney General order dated 1/27/00

[**812-009-0080** Repealed 5/00]

812-009-0085
Filing of Documents

Unless otherwise provided in these rules, the agency waives the right to receive copies of documents filed in a proceeding conducted by an administrative law judge, under OAR 137-003-0520.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8
Stats. Implemented: ORS 183.413 to 183.470 & 701.145
(temp. 1/00, 5/00, 4/12 eff. 5/1/12)

812-009-0090
Discovery and Subpoenas

(1) The agency delegates to the administrative law judge assigned to hear a complaint the authority to:

(a) Order and control discovery under OAR 137-003-0566, 137-003-0567, 137-003-0568 and 137-003-0569, related to the hearing on the complaint, except an administrative law judge may not authorize a party to take a deposition of agency staff or board members.

(b) Issue subpoenas under OAR 137-003-0585 that are related to the hearing on the complaint.

(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.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8
Stats. Implemented: ORS 183.425, 183.440, 183.445, 183.450, 701.145 & 701.149
(temp. 1/00, temp. 3/00, 5/00, 8/03, 12/06, 6/08, 4/12 eff. 5/1/12)

812-009-0100
Burden of Proof and Failure to Meet Burden

The complainant must submit sufficient credible evidence into the record to support an award of damages under OAR 812-004-0535. If the complainant does not carry this burden of proof, the administrative law judge must dismiss the complaint.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183 & ORS 701
(10/98, temp. 3/00, 4/01, 3/03, 8/03, 2/04, 12/06)

812-009-0120
Determination of Validity of Complaint

In determining the validity of the complaint, the administrative law judge must determine:

(1) Whether the complaint arose out of a transaction within the scope of ORS chapter 701;

(2) Whether the agency has jurisdiction over the matters at issue; and

(3) Whether the record of the complaint supports an award of damages under OAR 812-004-0535.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183 & ORS 701
(10/98, temp. 3/00, 12/01, 3/03, 8/03, 2/04, 12/06)

812-009-0140
Failure to Appear

(1) "Order" as used in this rule means a proposed and final order an administrative law judge is authorized to issue under OAR 812-009-0160 or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) If the administrative law judge notified the parties to a complaint of the time and place of a hearing on the complaint and a party did not appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3).

(3) If a complainant does not appear at a hearing, an administrative law judge may dismiss a complaint under section (2) of this rule if the administrative law judge finds that the record does not contain sufficient evidence to support the complaint.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8
Stats. Implemented: ORS 183.415, 183.417, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.149
(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 4/01, 9/01, 5/02, 8/03, 12/06, 12/07, 6/08)

812-009-0160
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 an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a complaint is referred for a hearing to determine the amount, if any, that a respondent owes a complainant, the administrative law judge may not issue an order in an amount greater than the total amount the complainant alleges the respondent owes the complainant in:

(a) The most recent statement of damages or amended statement of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Breach of Contract Complaint filed under OAR 812-004-0340, if no statement of damages was filed.

(3) If a complaint is referred for a hearing to determine whether any portion of a judgment is within the agency's jurisdiction, 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 complainant or dismiss the complaint.

(5) An administrative law judge must consider any amounts due to the respondent from the complainant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge must issue a proposed and final order under OAR 137-003-0645(4) that must automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;

(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-003-0655(1);

(c) The administrative law judge withdraws and corrects the order under OAR 137-003-0655(1);

(d) The agency issues an amended proposed order under OAR 137-003-0655 (3); or

(e) 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) of this rule is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that does not include a request for an award of the complaint processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the complaint processing fee paid by the complainant under OAR 812-004-0110 and 812-004-0400.

(9) If a complaint is referred for a hearing solely to determine if the Board has jurisdiction over the complaint and the administrative law judge finds that the Board has jurisdiction over the complaint, the administrative law judge must issue an intermediate order that the Board resume processing the complaint. The Board may accept the order to resume processing or issue a proposed and final order under OAR 137-003-0060 to dismiss the complaint for lack of jurisdiction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415. 183.450, 183.460, 183.464, 183.470, 701.145 & 701.146

(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 8/00, 5/02, 11/02, 8/03, 10/04, 12/05, 12/06, 6/07, 6/08)
Authorized by Attorney General order dated 07/11/00

[**812-009-0180** Repealed 5/00]

812-009-0185
Amended Proposed Order or Final Order after Hearing

In accordance with OAR 137-003-0655(7), the agency exempts from the 90-day requirement for an amended proposed order or final order all cases in which written exceptions are filed with the board. In these cases, 90 days normally is an insufficient time in which to issue an amended proposed order or final order.

Stat. Auth.: ORS 183.341, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183 & ORS 701

(4/12 eff. 5/1/12)

812-009-0200
Final Order Without a Proposed Order

(1) Notwithstanding OAR 812-009-0160 (6), an administrative law judge must issue a final order under OAR 137-003-0665 in a contested case without issuing a proposed order if:

(a) The total amount alleged to be due to any complainant in a hearing does not exceed $2,500;

(b) The parties voluntarily agree to a settlement of a complaint in accordance with ORS 183.417(11), except as provided in section (2) of this rule; or

(c) The hearing was requested by the respondent after the parties voluntarily agreed to a settlement of a complaint and the following conditions exist:

(A) The settlement's essential terms are limited to the respondent's agreement to pay money to the complainant in exchange for the complainant's release of the complaint; and

(B) The amount of the final order does not exceed the amount the respondent agreed to pay under the settlement agreement.

(2) If the parties voluntarily agree to a settlement of a complaint in accordance with ORS 183.417(11) and the settlement agreement includes an agreement for future performance, the administrative law judge must issue an intermediate order containing any necessary findings of fact and return the complaint to the agency for further processing and issuance of the final order.

Stat. Auth.: ORS 670.310, 701.145, 701.235& 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.415, 183.417, 183.450, 183.460, 183.464, 183.470 & 701.145

(10/98, temp. 1/00, temp. 3/00, 5/00, 6/02, 8/03, 12/06, 6/08)

Authorized by Attorney General order dated 1/27/00

812-009-0220
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 complaint issued by an administrative law judge under this division must be filed with the agency.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.482, 701.133 & 701.145

(temp. 1/00, temp. 3/00, 5/00, 8/03, 12/06, 6/08)

Authorized by Attorney General order dated 1/27/00

Contested Case Hearings, Enforcement

812-009-0300
Hearing Notice and Limitation on Final Civil Penalty Order

A notice of hearing shall contain the duration of any suspension and the amount of any 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, except as follows. If the proposed sanction is not the maximum potential sanction, the agency may, in the notice, state the maximum potential sanction for each violation and impose up to the maximum potential sanction, without amending the notice.

Stat. Auth.: ORS 183.310, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183 & ORS 701

(10/98, temp. 3/00, 5/00, 8/03, 4/12 eff. 5/1/12)

812-009-0320
Entry of Agency Evidence

Contested case enforcement hearings may be held before an administrative law judge. The agency's evidence may be entered into the record by the administrative law judge, or by another representative of the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.133 & 701.145

(10/98, temp. 3/00, 5/00, 8/03, 12/05, 6/08)

812-009-0340
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 refusals to issue, reissue or renew, or suspensions, which will be lifted upon correction of a deficiency, payment of a penalty or payment of a construction debt, based upon:

(A) ORS 701.098(4)(a)(A) (no bond);

(B) ORS 701.098(4)(a)(B) (no insurance);

(C) ORS 701.098(4)(a) (F) (unpaid construction debt);

(D) ORS 701.102 (unpaid construction debt);

(E) ORS 701.106, where the violation is based on a final order issued by:

(i) Department of Consumer and Business Services, Building Codes Division;

(ii) Department of Consumer and Business Services, Workers' Compensation Division;

(iii) Department of Consumer and Business Services, Oregon-OSHA,

(iv) Employment Department;

(v) Department of Revenue; or

(vi) Landscape Contractors Board.

(F) Failure to pay an outstanding obligation, as required by OAR 812-005-0280 (2);

(G) Failure to obtain or maintain an increased bond, as required by ORS 701.068(5) or (6).

(H) Failure to provide information as required under ORS 701.046 and OAR 812-003-0260.

(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.

Stat. Auth.: ORS 183.310 to 183.550, 670.310 & 701.235

Stats. Implemented: ORS 183.450

(3/87, 12/87, 1/88, 5/93, 12/93, 1/94, 6/94, 7.94, 10/98, 6/00, 6/08, 2 temp. 2/10 eff. 2/3/10, 4/10, 6/14 eff. 7/1/14)

812-009-0350
Amended Proposed Order or Final Order after Hearing

In accordance with OAR 137-003-0655(7), the agency exempts from the 90-day requirement for an amended proposed order or final order all cases in which written exceptions are filed with the board. In these cases, 90 days normally is an insufficient time in which to issue an amended proposed order or final order.

Stat. Auth.: ORS 183.341, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183 & ORS 701

(4/12 eff. 5/1/12)

[**812-009-0360** Repealed 5/00]

Exceptions; Appeal Committee

812-009-0400
Exceptions to Agency Orders, Dispute Resolution Complaints

(1) After a contested case complaint hearing, the complainant or respondent may file written exceptions if they believe that the administrative law judge made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2)(a) To be considered, the first exceptions must be received by the agency within 21 days from the date of mailing the proposed order.

(b) If one party files timely exceptions, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days from 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 812-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board's Appeal Committee at a regular meeting of the committee.

(4) The exceptions must substantially conform to the requirements of OAR 812-009-0430.

(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 before the case is referred to the Committee for scheduling 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 audio recording of the hearing with the fee required under OAR 812-001-0160.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (6)(a) of this rule, the agency must send a copy of the audio recording of the hearing to the party that did not file the exceptions without 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. The party must deliver the transcript to the agency within 21 days from the date the agency mails the audio recording of the hearing to the party.

(d) The agency must mail a copy of the transcript to the other party to the complaint.

(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 within 21 days from 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 section (7) of this rule to the party that filed the exceptions.

(8) The Appeal Committee may refuse to consider evidence of oral testimony submitted by a party if the party does not comply with the requirements of sections (6) and (7) of this rule.

(9) The complainant and respondent may appear before the members of the Committee to argue for or against the proposed order.

(10) The agency may waive or extend the time limits in sections (5) through (7) of this rule on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183.460 & 701.260
(10/98, temp. 3/00, 6/00, 4/01, 3/03, 8/03, 12/04, 12/05, 12/06, 4/08)

812-009-0420
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) If exceptions are timely received, the matter will be set for consideration by the Appeal Committee at its next meeting for which agenda space is available.

(3)(a) If the respondent intends to rely on oral testimony given at the hearing, the respondent must include in the exceptions:

(A) A notice of intention to rely on oral testimony; and

(B) A request for a copy of the audio recording of the hearing with the fee required under OAR 812-001-0160.

(b) The respondent must prepare a typed transcript of the portions of the hearing testimony that the respondent contends support the exceptions. The respondent must deliver the transcript to the agency within 21 days from the date the agency mails the copy of the audio recording of the hearing to the respondent.

(4) The Appeal Committee may refuse to consider evidence of oral testimony submitted by respondent if the respondent does not comply with the requirements of section (3) of this rule.

(5) The respondent may appear before the members of the Appeal Committee to argue against the proposed order, if the agency receives written notice of intent to do so before the Appeal Committee meeting date. Oral argument will be permitted only if the original exceptions were timely received.

Stat. Auth.: ORS 183.310, 670.310 & 701.235
Stats. Implemented: ORS 183.460 & 701.260
(10/98, 12/05, 4/08)

812-009-0430
Form of Exceptions to Agency Order in a Complaint

(1) Exceptions to an agency order filed by a party to a complaint under OAR 812-009-0400 or a respondent under 812-009-0420 must conform to the following requirements:

(a) Exceptions must 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 complaint, the first page must show the file number, the names of the parties to the complaint and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page must show the name of the respondent at the top of the page.

(c) Each page of the exceptions must 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 must 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 finding of fact is not supported by the evidence in the record.

(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 must 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 must be included in the exceptions.

(h) The party submitting the exceptions must sign and date the exceptions.

(2) If the agency provides forms to a party that comply with the requirements of section (1) of this rule, the agency may require that the party use the forms provided or forms that substantially match the forms provided if the party submits exceptions.

(3) The Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of sections (1) and (2) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS ch. 183, 701.145 & 701.260

(4/01, 8/03, 12/05, 12/06, 6/08, 6/10)

812-009-0435
Rescheduling of Exceptions Before the Appeal Committee

If a party requests in writing to reschedule the case scheduled before the Appeal Committee, the request may be granted if:

(1) The request is promptly made after the party receives the notice of the scheduling of the matter before the Appeal Committee or is promptly made after emergency or unforeseen circumstances arise;

(2) The party establishes circumstances that prevent attendance by the party at the scheduled Appeal Committee meeting; and

(3) The circumstances preventing attendance at the Appeal Committee meeting are beyond the reasonable control of the requesting party.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.413 to 183.470 & 701.260

(4/08)

812-009-0440
Appeal Committee Meeting

(1) At the meeting of the Board's Appeal Committee, the Committee will consider documentary evidence received at the hearing and exceptions and written or oral argument for or against the proposed order, but the Committee will not consider new or additional evidence.

(2) The Committee may limit the time allowed for oral argument by a party before the Committee to five minutes.

(3) After hearing oral argument, the Committee may conduct its deliberations privately, under authority of ORS 192.690(1). If the Committee conducts its deliberations privately, it will return to public meeting for any motions and voting.

(4) The Committee may affirm the proposed order and findings of fact, modify either or both, or send the case back to the Office of Administrative Hearings for a new hearing or to the agency for further processing. Unless the case is sent back to a new hearing, the agency will issue a final order after the Committee meeting.

(5) Final orders are subject to judicial review as set forth in ORS chapter 183.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.460 & 701.260

(10/98, 3/99, 3/03, 8/03)

DIVISION 10

CCB ARBITRATION BY THE BOARD

812-010-0020
Applicability of Rules; Application of ORS 36.600-36.740

(1) The rules in division 10 of this chapter apply to complaints filed before July 1, 2011, when:

(a) A complaint is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely complaint is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board must arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division is governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 36.600 to 36.740, ch. 183, 701.133, 701.139 & 701.148

(10/98, 9/99, 12/01, 6/02, 9/02, 8/03, 12/03, 5/04, 10/04, 12/06, 6/08, temp. 7/8/11, 9/11 eff. 10/1/11)

812-010-0030
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 judge” in the incorporated rule shall be given the same meaning as “arbitrator” in these rules.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183, 701

(5/02, 8/03, 12/03)

812-010-0040
Arbitration of Disputes Outside Jurisdictional Requirements

Construction disputes which do not meet timeliness filing under ORS 701.143 or other jurisdictional requirements for complaints may be arbitrated by the agency if both parties agree in writing to submit the dispute to the Construction Contractors Board for binding arbitration. At the discretion of the agency, the agency may refuse to accept a dispute submitted for arbitration under this rule.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.148

(10/98, 9/99, 12/01, 5/02, 12/04, 12/06)

812-010-0050
Application for Judicial Relief

An application to the court for judicial relief under the rules in division 10 of this chapter or under ORS 36.600 to 36.740 shall be subject to ORS 36.615.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 36.600-36.740

(12/03, 5/04, 12/04)

812-010-0060
Appointment of Arbitrator

Assignment of arbitrator shall be as provided in ORS 701.149 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.

Stat. Auth.: ORS 670.310, 701.148 & 701.235

Stats. Implemented: ORS 183.645, 701.148 & 701.149

(10/98, 9/99, temp. 1/00, 5/00, 5/02, 8/03, 12/03, 5/04, 10/04, 6/08)

812-010-0080
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 812-010-0040, 812-010-0100 or 812-010-0470.

Stat. Auth.: 670.310, 701.148 & 701.235

Stats. Implemented: ORS 701.148 & 701.149

(10/98, 9/99, temp. 1/00, 5/00, 5/02, 8/03, 6/05, 6/08)

812-010-0085
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 must be filed as follows:

(a) With the agency before a complaint 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 complaint 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 complaint or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document, correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration must serve copies of the document filed on the parties to the complaint or dispute or their counsel if the parties are represented. Service under this section must be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 812-004-0210, after the agency refers the complaint 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 complaint 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.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183 & 701

(5/02, 8/03, 12/03, 12/06)

812-010-0090

Request for Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings receives a request under OAR 812-004-0590 to conduct the hearing on a complaint as a contested case, the Office of Administrative Hearings must retain jurisdiction over the complaint. The Office of Administrative Hearings must 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 812-004-0590 that a party to the complaint filed a court complaint and OAR 812-004-0590 requires that the complaint be decided in court, the Office of Administrative Hearings must return the complaint to the agency.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS ch. 183, 701.145 & 701.146

(6/02, 8/03, 12/06, 6/08)

812-010-0100

On-Site Investigation, Settlement Discussions

(1) At the discretion of the agency, arbitration may be preceded by an on-site investigation 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 investigation before arbitration. The agency may grant or deny the request at its discretion.

(4) If the parties to an arbitration settle a complaint referred to arbitration under OAR 812-004-0560, the parties may agree that the arbitrator may issue a final order under ORS 183.417(11).

Stat. Auth.: ORS 183.310 to 183.500, 670.310, & 701.235

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/01, temp. 9/02, 11/02, 8/03, 12/06, 6/08)

812-010-0110

Statement of Damages and Amendment to Statement of Damages

(1) If the party asserting a complaint has not previously filed a Breach of Contract Complaint or statement of damages under OAR 812-004-0340, 812-004-0540 or 812-004-0550, the party must file with the agency on a form provided by the agency a statement of damages stating the amount that 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 counterclaim, the counterclaiming party must file with the agency on a form provided by the agency a statement 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 a statement stating the amount 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 statement of damages. An amended statement of damages must be delivered to the arbitrator as required by OAR 812-010-0085. An amended statement of damages filed under this section must be received by the arbitrator no later than 14 days before the scheduled date of an arbitration on the matter.

(5) An amended statement 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 statement of damages must state the amount alleged to be owed to the party filing the amended statement by the other party. If the subject of the arbitration is a complaint, the amount alleged to be owed must be limited to items of complaint in the Breach of Contract Complaint and complaint items added up to and through the initial on-site meeting. The amended statement of damages must be signed by the party filing the amendment.

(6) An amended statement 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 812-010-0220 if the time left before the arbitration is insufficient to prepare for arbitration on the amended amount.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.148

(9/99, temp. 7/00, 8/00, 12/01, 5/02, temp. 9/02, 11/02, 12/06)

812-010-0120
Time and Place of Arbitration Hearing; Notice

The Office of Administrative Hearings must fix a time and place for the arbitration hearing. The Office of Administrative Hearings must mail notice of the time and place of the arbitration at least 21 days before the arbitration, unless otherwise agreed to by the parties.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148 & 701.149

(10/98, 9/99, temp. 7/00, 8/00, 12/01, 5/02, temp. 9/02, 11/02, 8/03, 12/06, 6/08)

812-010-0140
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, must 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 10 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 must decide whether the arbitrator should be disqualified. Such decision is final.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, & 701.235

Stats. Implemented: ORS 36.705 & 701.148

(10/98, 9/99, temp. 3/00; 5/00, 12/03, 5/04, 12/06)

812-010-0160
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 Administrative Law Judge may substitute another arbitrator at any time before the arbitration hearing begins.

Stat. Auth.: ORS 670.310, 701.148 & 701.235

Stats. Implemented: ORS 701.148 & 701.149

(10/98, 9/99, temp. 1/00, 5/00, 8/03, 6/08)

812-010-0180
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 701.160.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.160

(10/98, 9/99, 12/01, 10/04)

812-010-0200
Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator may require the exclusion of a witness who is not a party during the testimony of other witnesses. The arbitrator must decide whether any other person may attend the hearing.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148
(10/98, 9/99, 12/04, 12/06)

812-010-0220
Postponement, Recess and Continuance

An arbitrator may postpone or recess and later continue an arbitration. A party requesting a postponement or continuance must show good cause. The arbitrator must decide whether to grant a postponement or continuance. That decision is final.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
(10/98, 9/99, 11/02, 12/04, 12/06)

[**812-010-0240** Repealed 12/03]

812-010-0260
Recording of Hearing

(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 hearings when 90 days have passed after the arbitrator issues an award in the matter. However, if a party timely files exceptions to the award with the court, the agency may not dispose of the recording of the hearing until the court makes final determination of the matter.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
(10/98, 9/99, 12/04, 12/06)

812-010-0280
Conduct of Hearing; Authority of Arbitrator

(1) An arbitrator may conduct arbitration in such 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.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
(10/98, 12/03)

812-010-0290
Summary Disposition

An arbitrator may decide a request for summary disposition of a complaint 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.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
(12/03, 12/06)

812-010-0300
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 any party who, after due notice, does not appear. An award must 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 complaint without an evidentiary hearing if the party making the complaint does not appear after due notice and without good cause.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
(10/98, 9/99, 12/04, 12/06)

812-010-0320
Discovery

(1) Parties to an arbitration are encouraged to exchange information informally before 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 may control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
(10/98, 9/99, 12/04, 12/06)

812-010-0340
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 is the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not necessary.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but must give appropriate weight to any objections made. All documents to be considered by the

arbitrator must be filed with the agency before or at the hearing.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/04, 12/06)

812-010-0360
Close of Hearing

When satisfied that the parties have completed their presentations, the arbitrator must close the hearing.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(10/98, 12/04, 12/06)

812-010-0380
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 does not state objections before the close of the hearing is deemed to have waived the right to object.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(10/98, 12/04, 12/06)

812-010-0400
Service 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 hearing, the notice of hearing shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.117, 701.133 & 701.148

(10/98, 5/02, 8/03, 12/03, 6/08)

812-010-0420
Time, Form, and Scope of Award; Limitation on Award

(1) An award must 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 must be in writing and must be signed or otherwise authenticated by the arbitrator.

(4) The award must 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 must contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) 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 statement of damages or amended statement of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Breach of Contract Complaint filed by the party under OAR 812-004-0340, if no statement of damages was filed.

(6) When a complainant makes a complaint against a respondent's surety bond, letter of credit or cash deposit required under ORS 701.085 (2005) or 701.068 or 701.088 and the parties to the complaint have not agreed that the arbitration will bind the complainant, only the complainant may assert damages. The arbitrator may award damages to the complainant, but not to the respondent. The respondent may assert amounts owed to it as an offset under section (7) of this rule.

(7) An arbitrator must consider any amounts owed by a party alleging 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 alleging the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a statement of damages as to the offset. If the party asserting the offset did not file a statement of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a complaint 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, letter of credit or cash deposit required under ORS 701.085 (2005) or 701.068 or 701.088 and other amounts that are not payable from the bond, letter of credit or cash deposit under OAR 812-004-0250 or any other law, the award must segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at

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.

(10) If a limitation on damages under section (4) is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, 701.088, 701.145, 701.148

(10/98, 6/02, 9/02, 11/02, 8/03, 12/03, 12/04, 6/05, 12/06, 12/07, 6/08)

812-010-0425

Petition to Modify or Correct an Award

(1) A party to arbitration or the agency may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator must mail copies of the petition to the other parties to the arbitration and to 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. If the arbitrator waives or extends the time limitations in sections (3) and (5), the arbitrator must notify the agency of 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 complaint not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the complaints submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the complaints submitted;

(d) Because the arbitrator has not made a final and definite award upon a complaint submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator must 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 must 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) If the arbitrator who prepared the award is not available to consider a petition 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.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183.482 & 701.148

(6/02, 9/02, 8/03, 12/03, 10/04, 6/05, 12/06, 6/08)

812-010-0430

Form of Petition to Vacate, Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 812-010-0425 must conform to the following requirements:

(a) The petition must be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition must be titled "Petition to Modify or Correct an Arbitration Award" and must 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 complaint, the first page shall show the file number.

(c) Each page of the petition must 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 must sign and date the petition. The date must be the date the petition is

served on the arbitrator and 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.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183 & 701.148

(6/02, 9/02, 12/03, 12/06)

[**812-010-0440** Amended and renumbered to 812-010-0470 6/29/05)]

812-010-0460
Petition to Court to Confirm Award or Vacate, Modify or Correct Award

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party must 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 must serve the agency with a copy of a petition filed under this section.

(3) Failure of a party to serve the agency under section (2) of this rule constitutes a waiver of any objection to transmittal of the award to the respondent's surety company for payment under OAR 812-004-0600.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.148

(10/98, 9/99, 6/02, 9/02, 12/03, 5/04, 10/04, 6/05, 12/06)

812-010-0470
Payments from Licensee's Bond, Letter of Credit or Cash Deposit

(1) If an award or amended award requires payment by a licensee and the licensee does not pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond, letter of credit or cash deposit to the extent payment is authorized under ORS 701.150. Payment from the bond, letter of credit or cash deposit is subject to the laws in ORS chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.088, 701.143 & 701.150

(10/98, /600, 12/01, 5/02, temp. 9/02, 11/02, 12/03, 5/04, 10/04, 6/05, 12/06, 12/07, 6/08)

(Amended and renumbered from 812-010-0440, 6/29/05)

812-010-0480
Interpretation and Application of Rules

The arbitrator must interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules must be interpreted and applied by the agency administrator or a person designated by the agency administrator.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(10/98, temp. 3/00, 5/00, 12/04, 12/06)

812-010-0500
Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to ORS 36.660(1) to (3).

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/03, 5/04, 10/04)

812-010-0510
Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to ORS 36.660(4).

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(12/03, 5/04)

812-010-0520
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 812-010-0510 the court may award attorney fees and costs as provided in ORS 36.660(5).

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(12/03, 5/04)

DIVISION 11

APPROVED TRAINING AND PROFESSIONAL CREDENTIALS

812-011-0000
Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 701.120.

(2) Purpose. The purpose of these rules is to provide needed information to the public about contractors who have successfully completed accredited abatement training or training in approved lead safe work practices.

(3) Scope:

(a) These rules recognize approved or accredited work practices training that qualifies as information released by the agency to the public per ORS 701.250.

(b) These rules establish the procedures for adding and deleting approved or accredited training to agency records released to the public per ORS 701.250.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.120
(12/01, 5/02)

812-011-0010
Definitions

The following definitions apply to division 11 of OAR chapter 812:

(1) "Accredited training" means education that is recognized as having met minimum standards prescribed by the United States Environmental Protection Agency under 40 CFR 745.

(2) "Approved training" means education mandated by the United States Department of Housing and Urban Development as providing specialized instruction for construction contractors.

(3) "Lead safe work practices" means a set of measures designed to reduce human exposure or likely exposure to lead-based paint hazards.

(4) "Credential holder" means a sole proprietor, partner, corporate officer, LLC member or trustee of an entity licensed with the agency who is not an employee and who has successfully completed accredited or approved training.

(5) "Successful completion" means meeting all course requirements as required by a training provider.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.120
(12/01)

812-011-0030
Approved and Accredited Training

The agency shall accept the following lead safe work practices training:

(1) Successful completion of a lead-based paint supervisor or worker training course accredited by the Oregon Department of Human Services;

(2) Successful completion of training in a lead-based paint training course accredited by the United States Environmental Protection Agency under 40 CFR 745;

(3) Successful completion of a lead-based paint training course accredited by states authorized by the United States Environmental Protection Agency under 40 CFR 745; or

(4) Successful completion of training in remodeling or operations and maintenance approved by the United States Department of Housing and Urban Development under 24 CFR 35, et. seq.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.120
(12/01, 5/02)

812-011-0050
Procedures

The agency shall use the following procedures to add and delete information from licensee records the agency releases to the public per ORS 701.250:

(1) If a credential holder wants approved or accredited training in OAR 812-011-0030 added to the licensee's records, the credential holder shall send the following to the agency:

(a) A written request that a credential holder's approved or accredited training be included in the licensee's records;

(b) The licensee's active Construction Contractors Board license number(s); and

(c) A copy of a course completion certificate for an approved or accredited training by an organization listed in OAR 812-011-0030.

(2) When the agency receives the information in section (1) of this rule, the agency will add the following to the licensee's records that the agency releases per ORS 701.250:

(a) Name of the approved or accredited training course or program; and

(b) Contact information for the organization listed in OAR 812-011-0030 that provided the approved or accredited training.

(3) The agency may state in records released to the public that the agency is not responsible for the quality of work of a credential holder who has successfully completed approved or accredited training in OAR 812-011-0030.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.120
(12/01)

812-011-0070
Advertising

A licensee who has successfully completed approved professional credentials in this division may include this information in the licensee's advertising or in other information presented to the public regarding the qualifications of the licensee if the credentials are currently active.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.120
(12/01)

DIVISION 12

CONTRACTOR DUTIES

812-012-0110
Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

(a) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(b) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(c) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule;

(d) Customer's name and address;

(e) Address where the work is to be performed;

(f) A description of the work to be performed; and

(g) Price and payment terms.

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701,315, 701.320, 701.330 and 701.335

Stats. Implemented: ORS 701.305, 701.330 and 701.335

(12/07, 6/08, 12/09 eff. 1/1/10, 4/10, 12/13 eff. 1/1/14)

812-012-0120
Maintenance Schedules

(1) A contractor that constructs a new residential structure or zero-lot-line dwelling shall provide a maintenance schedule to the first purchaser or owner of the structure or dwelling. The maintenance schedule will recommend periodic steps that the purchaser or owner should take to prevent moisture intrusion or water damage to the structure or dwelling. The minimum information contained in the maintenance schedule will consist of the information listed below in section (4).

(2) "Moisture intrusion" and "water damage" are defined as follows:

(a) "Moisture intrusion" means water, whether liquid, frozen, condensed or vaporized, that penetrates into a structure or behind the outside cladding of a structure.

(b) "Water damage" means damage or harm caused by moisture intrusion that reduces the value or usefulness of a structure.

(3) Moisture intrusion and water damage may occur, for example, from the following:

(a) Missing or loose roofing materials or flashing;

(b) Window sills or door frames without adequate caulking or weather-stripping;

(c) Lack of caulking in siding, mortar in masonry or grout in exterior ceramic tile installations;

(d) Degraded paint on exterior siding or surfaces;

(e) Overflowing or clogged gutters;

(f) Gutter drains or downspouts that are not a sufficient distance from the structure;

(g) Improper drainage slope next to foundation;

(h) Plant materials too close to the structure or foundation;

(i) Sprinklers that overspray onto the structure or foundation;

(j) Non-working interior ventilation systems.

(4) The recommended maintenance schedule for new residential structures and dwellings, to prevent moisture intrusion and water damage, is as follows:

(a) At least once a year:

(A) Check roof for damaged, loose or missing shingles. Check flashing around roof stacks, vents, skylights, and chimneys and in roof valleys for missing or loose flashing. Repair or replace if necessary.

(B) Check for water stains in the roof of the attic and in the exterior overhangs or soffits. If water stains are present, locate and repair the cause of moisture intrusion.

(C) Check and repair missing mortar in exterior masonry.

(D) Check painted surfaces for cracking, peeling or fading. Repaint if necessary.

(E) Inspect gutters and downspouts for leaks. Repair if necessary. Check alignment of gutters, downspouts and splash blocks to ensure that water is properly diverted away from the structure and foundation. Repair if necessary.

(F) Inspect gutters for debris blockage. Remove debris (for example, tree needles and leaves) from downspouts and gutters.

(G) Check soil around foundation to make sure that it slopes in such a way that water can flow away from the foundation. Fill soil in any areas that have settled around the foundation.

(H) Trim back tree branches, shrubs and other plants to make sure they are not in contact with the structure.

(I) Check landscaping sprinklers to make sure that they are not set so that they will soak siding or form puddles near the foundation. Adjust if necessary.

(b) At least twice a year, check and repair missing, cracked or peeling caulking or weather-stripping around window sills, door frames and in siding gaps.

(c) At least once every two months, check to make sure that interior mechanical ventilation systems (such as bathroom, kitchen and utility room vent fans) are in good working order. Repair if necessary.

(5) Signs of water damage may include, but are not limited to, dampness, staining, mildewing (blackened surfaces with musty smell) and softness in wood members (possible sign of dry rot).

(6) If water damage is discovered, investigation should be made into the source of the water damage. Steps should be taken to repair or replace building components or materials that allowed moisture intrusion leading to the

water damage. Additional steps may need to be taken depending on the extent of the water damage.

(7) The maintenance schedule in section (4) contains the minimum information that a contractor that constructs a new residential structure or zero-lot-line dwelling must provide. A contractor may offer a maintenance schedule with additional information, recognizing the uniqueness of each structure and its material components. A contractor may use any form or layout for its maintenance schedule, provided that it contains the information in section (4).

(8) The contractor that constructs a new residential structure or zero-lot-line dwelling shall provide a copy of its maintenance schedule to the first purchaser or owner no later than 60 days after substantial completion of the structure or dwelling, or occupancy of the structure or dwelling, whichever occurs later.

(9) For purposes of this rule, a contractor that constructions a new residential structure or zero-lot-line dwelling refers to the prime or general contractor that contracts with the homeowner or sells to the first purchaser. Subcontractors that do not have a contractual relationship with the homeowner or first purchaser are not required to deliver a maintenance schedule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.335

(6/08, 9/08)

(Amended and renumbered from 812-001-0240, 9/08 eff. 10/1/08)

812-012-0130

Delivery and Proof of Delivery of Consumer Notice

(1) If a contractor is required to have a written contract under ORS 701.305, the consumer notices described in OAR 812-001-0200(1), (2) and (4) shall be delivered on or before the date the contract is entered into.

(2) The contractor shall maintain proof of delivery of the Consumer Protection Notice, Notice of Procedure, and the notice required under ORS 87.093, if required, for a period of two years after the contract was entered into. Proof of delivery of the notices shall include, but not be limited to:

(a) A signed copy of the notices;

(b) An unambiguous phrase in the written contract that acknowledges receipt of the notices and that is initialed by the owner; or

(c) Copies of the written contract, if the notices are fully contained in the written contract.

Stat. Auth.: ORS 670.310, 701.235, 701.305 & 701.330

Stats. Implemented: 701.305 & 701.330

(12/07, temp. 1/08, 4/08)

812-012-0140

Requirements for Notice of Compliance with Homebuyer Protection Act

(1) Under ORS 87.007(3), a seller of residential property must deliver a Notice of Compliance with Homebuyer Protection Act on or before the date the sale of the property closes to the purchaser of:

(a) A new single family residence, condominium or residential building; or

(b) An existing single-family residence, condominium or residential building where:

(A) The price for original construction, including but not limited to an addition to the single family residence, condominium or residential building, that is completed within three months prior to the date of the sale of the property is $50,000 or more; or

(B) The contract price for improvements to the single-family residence, condominium or residential building that are completed within three months prior to the date of the sale of the property is $50,000 or more.

(2) The seller must deliver the notice required under ORS 87.007(3) on or before the close of the sale of the property.

(3) The notice required under ORS 87.007(3) shall be on the form adopted under OAR 812-001-0200.

(4) Under ORS 87.007(3), a seller of residential property may specify on the Notice of Compliance with Homebuyer Protection Act that ORS 87.007(2) does not apply to the sale of the property if the seller knows that no person may enforce a valid lien against the property because:

(a) The last day to perfect any lien on the property under ORS 87.035 was prior to the date of sale of the property; and

(b) No lien was perfected.

Stat. Auth.: ORS 87.007, 670.310, & 701.235

Stats. Implemented: ORS 87, 87.007, & ch. 701

(temp. 12/03, 2/04, 5/04, 12/05, 9/08)

(Renumbered from 812-001-0300, 9/08 eff. 10/1/08)

812-012-0145

Surety Bond Issued to Protect Purchasers of Residential Property from Lien Claims

A seller of residential property may provide a surety bond to satisfy the requirements of ORS 87.007(2)(c), provided that the bond complies with the following requirements.

(1) The bond must be issued by an insurer authorized or approved to do business in this state.

(2) The bond must be issued on or after the date of completion of the residential property. For purposes of this rule, the “date of completion” shall be determined in accordance with ORS 87.045.

(3) The bond must be issued in an amount of not less than 25 percent of the sales price of the residential property.

(4) The bond shall remain in effect:

(a) Not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the residential property; or

(b) If one or more liens are perfected against the residential property within 75 days from the date of completion, until:

(A) All liens are released and the releases recorded;

(B) The seller files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081;

(C) The surety files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081; or

(D) The surety pays the buyer the amount of the lien or the penal sum of the bond, whichever is less.

(5) The bond shall include the following terms and conditions:

"NOW, THEREFORE, the conditions of the foregoing obligation are that if the principal shall not permit any construction lien to be placed upon the subject property; shall obtain the release of all construction liens upon the subject property and have the releases recorded; or shall file a bond or deposit in accordance with ORS 87.076 to 87.081; then this obligation shall be void; otherwise to remain in full force and effect.

"This bond is for the exclusive purpose of paying construction lien obligations encumbering (legal description or address of property) arising out of the sale by principal to (name(s) of purchaser(s)), in compliance with ORS 87.007(2)(c) and OAR 812-012-0145.

"The bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the penalty on this bond.

"The bond shall remain in effect for not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the property; or, if one or more liens are perfected against the property within 75 days from the date of completion, until (1) all liens are released and the releases recorded; (2) the principal files a bond or makes a deposit and the principal files the required affidavit under ORS 87.076 to 87.081; (3) the surety files a bond or makes a deposit and the surety files the required affidavit under ORS 87.076 to 87.081; or (4) the surety pays the liens."

Stat. Auth.: ORS 87.007, 670.310 & 701.235

Stats. Implemented: ORS 87.007

(10/04, 12/05, 9/08)

(Amended and renumbered from 812-001-0305, 9/08, eff. 10/1/08)

812-012-0150

Letter of Credit Issued to Protect Purchasers of Residential Property from Lien Claims

(1) As used in this rule, "letter of credit" means an irrevocable standby letter of credit.

(2) A seller of residential property may provide a letter of credit to satisfy the requirements of ORS 87.007(2)(c), provided that the letter of credit complies with the following requirements.

(a) The letter of credit must be issued by or confirmed by an Oregon state-chartered bank or a federally chartered bank that has an Oregon branch.

(b) The letter of credit must be issued on or after the date of completion of the residential property. For purposes of this rule, the "date of completion" shall be determined in accordance with ORS 87.045.

(c) The letter of credit must be issued in an amount of not less than 25 percent of the sales price of the residential property.

(d) The beneficiary of the letter of credit must be the purchaser of the property.

(e) The letter of credit shall remain in effect:

(A) Not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the residential property; or

(B) If one or more liens are perfected against the residential property within 75 days from the date of completion, until:

(i) All liens are released and the releases recorded;

(ii) The seller files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081; or

(iii) The issuing or confirming bank pays the purchaser of the property the amount of the lien or the amount of the letter of credit, whichever is less in accordance with the terms of the letter of credit.

(f) The letter of credit can be called by the purchaser of the property immediately if:

(A) The seller of the property permits any construction lien to be placed upon the property;

(B) The seller of the property fails to obtain the release of all construction liens upon the property and have the releases recorded; or

(C) The seller of the property fails to file a bond or deposit and record the required affidavit under ORS 87.076 to 87.081.

(g) The credit shall be available by presentation of the purchaser of the residential property at sight on the issuing, or confirming, bank when accompanied by a notice of lien filing together with the claim of lien, as provided by ORS 87.039. The credit shall be available within three business days of presentation.

Stat. Auth.: ORS 87.007, 670.310 & 701.235

Stats. Implemented: ORS 87.007

(10/04, 12/05, 9/08)

(Amended and renumbered from 812-001-0310, 9/08, eff. 10/1/08)

812-012-0170

Unpaid Court Judgments

(1) A contractor against whom a court enters a judgment or order awarding arbitration must report that judgment or order to the Construction Contractors Board, if:

(a) The judgment or order arises from:

(A) Breach of contract;

(B) Negligent work; or

(C) Improper work.

(b) The judgment or order relates to construction or proposed construction of a residential structure.

(2) The contractor will transmit a copy of the final judgment or order to the Construction Contractors Board

within 45 days after the final judgment or order is recorded.

(3) The contractor will transmit the copy of the final judgment or order with a completed "Unpaid Court Judgment Filing" form described in OAR 812-001-0220.

(4) The contractor is not required to send the Board a copy of the judgment or order, if:

(a) The contractor paid the damages and other amounts payable under the judgment or order within 30 days from the date the judgment or order was recorded; or

(b) The contractor appealed the judgment or order and has filed an undertaking on appeal as required by ORS 19.300.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.109

(5/09)

DIVISION 20

CONTINUING EDUCATION FOR COMMERCIAL CONTRACTORS

812-020-0050
Authority, Purpose, and Scope of Rules – Continuing Education for Commercial Contractors

(1) Authority. These rules are promulgated in accordance with ORS 670.310(1) and 701.086, which authorize CCB to adopt rules to administer a continuing education system for commercial contractors.

(2) Purpose. The purpose of these rules is to further explain and detail the requirements for continuing education under ORS 701.086.

(3) Scope. These rules establish:

(a) Procedures for commercial contractors to report continuing education hours;

(b) Sanctions for commercial contractors failing to comply; and

(c) Processes for prorating requirements.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

812-020-0055
Definitions – Continuing Education for Commercial Contractors

The following definitions apply to OAR 812-020-0050 to 812-020-0073:

(1) "Building code" means a specialty code as defined in ORS 455.010(7).

(2) "Commercial contractor" means a licensed contractor as defined under ORS 701.005(2).

(3) "Inactive commercial contractor" means a commercial contractor that has voluntarily placed its license in inactive status in accordance with OAR 812-003-0330 to 812-003-0370 and has not converted the license back to active status in accordance with ORS 812-003-0380.

(4) "Lapse in license" has the meaning given that term by OAR 812-002-0420.

(5) "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, temp. 5/10, 8/10 eff. 9/1/10, 6/14 eff. 7/1/14)

812-020-0060
Effective Date – Continuing Education for Commercial Contractors

OAR 812-020-0050 to 812-020-0073 and the amendment to OAR 812-003-0280(2) take effect upon passage, and apply to commercial contractors that renew their licenses on and after July 1, 2010.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

812-020-0062
Exemptions – Continuing Education for Commercial Contractors

(1) Commercial contractors subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693 do not need to satisfy the continuing education requirements. These contractors include, but are not limited to:

(a) Electrical contractors subject to regulation under ORS 479.510 to 479.945.

(b) Plumbing contractors subject to regulation under ORS chapter 693.

(c) Boiler contractor subject to regulation under ORS 480.510 to 480.670.

(d) Elevator contractors subject to regulation under ORS 479.510 to 479.945.

(e) Renewable energy contractors subject to regulation under ORS 479.510 to 479.945.

(f) Pump installation contractors subject to regulation under ORS 479.510 to 479.945.

(g) Limited sign contractors subject to regulation under ORS 479.510 to 479.945.

(2) Commercial contractors endorsed only as commercial developers do not need to satisfy the continuing education requirements.

(3) If, during the two years immediately preceding the expiration date of the license, a commercial contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the commercial contractor is a:

(a) Sole proprietor;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 11/09 eff. 1/1/10, 6/14 eff. 7/1/14)

812-020-0065
Minimum Requirements – Continuing Education for Commercial Contractors

(1) Commercial contractors shall have a key employee, or combination of key employees, who complete continuing education.

(2) Education hours may be earned by attending offerings provided by any of the following:

(a) Post-secondary institutions such as colleges or universities;

(b) Trade schools;

(c) Trade associations;

(d) Professional societies;

(e) Private companies;

(f) Public agencies;

(g) Business associations; or

(h) Contractor-provided in-house training programs.

(3) Courses shall be a minimum of one clock hour to qualify for one hour of continuing education credit.

(4) Credit shall not be applied for the same key employee repeating the same continuing education course during a two-year period.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

812-020-0070
Certification of Hours – Continuing Education for Commercial Contractors

(1) Upon renewal, a commercial contractor must certify that one or more key employees obtained the continuing education required by OAR 812-020-0050 to 812-020-0073.

(2) For a commercial general or specialty contractor – level 1 with five or more key employees, the commercial contractor must certify that one or more key employees completed at least 80 hours during the preceding license period.

(3) For a commercial general or specialty contractor – level 1 with four or fewer key employees, the commercial contractor must certify as follows:

(a) With four key employees, that one or more key employees completed at least 64 hours during the preceding license period.

(b) With three key employees, that one or more key employees completed at least 48 hours during the preceding license period.

(c) With two key employees, that one or more key employees completed at least 32 hours during the preceding license period.

(d) With one key employee, that the key employee completed at least 16 hours during the preceding license period.

(4) For a commercial general or specialty contractor – level 2, the commercial contractor must certify that one or more key employees completed at least 32 hours during the preceding license period.

(5) For purposes of this rule, the required amount of continuing education hours for the renewing contractor is determined based on the contractor's endorsement status as of the previous date of license issuance, reissuance or renewal. If the contractor was not endorsed as a commercial contractor on the previous date, continuing education does not apply.

(6) For purposes of this rule, if a contractor is subject to the continuing education requirement, the number of key employees is the number of such persons employed by the commercial contractor as of the previous date of license issuance, reissuance or renewal as a commercial contractor.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 1/09 eff. 2/1/09, 2/10, 6/14 eff. 7/1/14)

812-020-0071
Hours Earned as Residential Contractor – Continuing Education for Commercial Contractors

(1) Until December 31, 2015, a commercial contractor also endorsed as a residential contractor may take credit for continuing education earned under ORS 701.126 and OAR division 21 before January 1, 2014.

(2) A commercial contractor also endorsed as a residential contractor may take credit for continuing education earned under ORS 701.082 and OAR division 22.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: ORS 701.082 & 701.086
(6/09, 6/14 eff. 7/1/14)

812-020-0072
Recordkeeping and Review – Continuing Education for Commercial Contractors

(1) Every commercial contractor shall maintain records of its key employees' participation in continuing education activities for a period no less than 24 months after the renewal date.

(2) The agency may request any commercial contractor's continuing education records for review.

(3) If a commercial contractor cannot prove that the commercial contractor's key employees completed the continuing education, the agency may suspend the license until the commercial contractor proves compliance or the commercial contractor's key employees complete the missing courses.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

812-020-0080
Inactive Commercial Contractor – Continuing Education for Commercial Contractors

If a commercial contractor's license is placed in an inactive status during any part of the license period, the commercial contractor needs only complete the continuing education hours for the period the license was active. The continuing education hours required under OAR 812-020-0070 will be prorated for the period that the license was active. For example, if a commercial contractor is inactive 6 months during the license period (inactive 25% of the time), the contractor needs to certify completion of 75% of the hours otherwise required.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

[**812-020-0082** Repealed February 1, 2010]

812-020-0085
Lapse in License – Continuing Education for Commercial Contractors

If a license expires and is not renewed for a period not exceeding one year, the commercial contractor may seek renewal and backdating of the license. To renew the

license, the commercial contractor must certify that it has satisfied the continuing education requirements either during the license period or during the lapse in license period, or both.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

812-020-0087
Courses Completed by Key Employees – Continuing Education for Commercial Contractors

A commercial contractor may certify continuing education hours based upon courses completed by its key employees; provided that a key employee was employed by the commercial contractor when he or she completed a course. If a commercial contractor employs a key employee who completed continuing education course(s) before being hired by the commercial contractor, the commercial contractor may not include those hours to certify that it satisfied the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 6/14 eff. 7/1/14)

812-020-0090
Key Employee of More than One Commercial Contractor – Continuing Education for Commercial Contractors

If a key employee who completes a continuing education course is employed by more than one commercial contractor when the course is completed, each commercial contractor may include those hours to certify that it satisfied the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.086 & 701.235
Stats. Implemented: 701.086
(11/08, 12/10 eff. 1/1/11, 6/14 eff. 7/1/14)

Note: This division no longer applies to most contractors. See Division 22 for current rules on continuing education.

DIVISION 21

CONTINUING EDUCATION FOR RESIDENTIAL CONTRACTORS

812-021-0000
Authority, Purpose, Scope – Continuing Education for Residential Contractors

(1) Authority. These rules are promulgated in accordance with ORS 701.126, which requires CCB to establish a continuing education system for contractors, other than licensed developers.

(2) Purpose. The purpose of these rules is to create a continuing education system, including training in:

(a) Construction means and methods;

(b) Compliance with the state building code;

(c) Business practices; and

(d) Other topics as determined by the Board.

(3) Scope.

(a) These rules establish the content and hours required for continuing education.

(b) These rules establish procedures for recordkeeping, for verifying continuing education hours and for sanctions for failing to comply.

(c) These rules establish procedures for provider and course approval.

(d) These rules establish fees for provider and course approvals and for training offered by the agency.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0005
Definitions – Continuing Education for Residential Contractors

The following definitions apply to OAR 812-021-0000 to 812-021-0047:

(1) "BEST" means Building Exterior Shell Training.

(2) "Building code" means a specialty code as defined in ORS 455.010(7).

(3) "Employee" means:

(a) Any individual employed by a contractor; or

(b) A leased worker provided to a contractor by contract with a worker leasing company licensed under ORS 656.850(2).

(c) "Employee" does not include a subcontractor, which is an independent contractor, or a temporary employee.

(4) "'Green' or sustainable building practices" means the practice of increasing the efficiency with which buildings use resources such as energy, water, and materials, while reducing building impacts on human health or the environment.

(5) "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

(6) "Officer" means an individual person as defined in OAR 812-002-0533.

(7) "Owner" means an individual person as defined in OAR 812-002-0537.

(8) "Residential contractor" means a licensed contractor as defined in ORS 701.005(12).

(9) "Responsible managing individual (RMI)" means an individual person as defined in ORS 701.005(15).

Stat. Auth.: ORS 670.310, 701.126 and 701.235

Stats. Implemented: ORS 701.126

(6/09, temp. 1/13/12 eff. 1/13/12, 4/12 eff. 5/1/12, 12/13 eff. 1/1/14)

812-021-0010
Effective Date – Continuing Education for Residential Contractors

OAR 812-021-0000 to 812-021-0047 take effect upon passage, and apply to residential contractors that renew their licenses on or after October 1, 2011.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0011
Residential Developer Exemption – Continuing Education for Residential Contractors

Residential developers are exempt from the continuing education requirements in OAR 812-021-0000 to 812-021-0047.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0015
Minimum Continuing Education Requirements – Continuing Education for Residential Contractors

(1) Residential contractors, other than residential limited contractors, shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of 16 hours of continuing education every license period as described in sections (3) and (4).

(2) Residential limited contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete:

(a) A minimum of eight hours of continuing education as described in subsection (3)(a), for license renewals on or after October 1, 2011, and before October 1, 2013;

(b) A minimum of eight hours of continuing education, for license renewals on or after October 1, 2013 as follows:

(A) Five core hours as described in subsection (5)(a); and

(B) Three elective hours as described in OAR 812-021-0019.

(3) For a residential contractor renewing on or after October 1, 2011, and before October 1, 2013, continuing education hours shall consist of the following:

(a) Eight core hours consisting of the following:

(A)Three hours of BEST offered by the agency or an approved provider;

(B) Two hours of education on one or more building codes offered by:

(i) A provider approved by the agency to offer courses in building codes; or

(ii) A provider offering a building codes course completed by the contractor on or before June 30, 2012, and approved by the Oregon Department of Consumer and Business Services, Building Codes Division, or the International Codes Council; and

(C) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) For residential contractors renewing on or after October 1, 2011, and before October 1, 2013, education on "green" or sustainable building practices may satisfy the requirement for education on one or more building codes as required in paragraph (B) of subsection (a) provided that the contractor completes the education on "green" or sustainable building practices on or before September 30, 2011.

(c) Eight elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(4) Effective October 1, 2011, if a residential contractor renews its license on or after October 1, 2011, but before October 1, 2013, for that renewal period only, the contractor may include any continuing education hours that it earned from July 1, 2009, to the renewal date.

(5) For a residential contractor renewing on or after October 1, 2013, continuing education hours shall consist of the following:

(a) Five core hours consisting of the following:

(A) Two hours of education on one or more building codes offered by a provider approved by the agency to offer courses in building codes; and

(B) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) Eleven elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(6) Courses shall be a minimum of one clock hour to qualify for one hour of continuing education credit.

(7) Credit shall not be given for a person repeating the same continuing education course during a two-year period.

(8) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the residential contractor is a:

(a) Sole proprietor without employees;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, temp. 7/1/11 eff. 7/1/11, 9/11 eff. 10/1/11, temp. 11/18/11, 3/12)

812-021-0016

Fees for Agency Courses – Continuing Education for Residential Contractors

(1) The agency may charge a fee of $15 per course hour for the following courses:

(a) Building Exterior Shell (BEST), offered by the agency as provided in OAR 812-021-0015(3)(a)(A).

(b) Construction Laws, Regulations, and Business Practices, offered by the agency as provided in OAR 812-021-0015()(a)(C) and 812-021-0015(4)(a)(B).

(2) In addition to the fee for the course, CCB may charge for processing, shipping and handling course materials made available other than online.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(8/10 eff. 9/1/10, temp 4/28/11, 6/11 eff. 7/1/11)

812-021-0019

Elective Hours – Continuing Education for Residential Contractors

(1) Elective hours may be earned by completing construction or construction business related offerings provided by any of the following:

(a) Post-secondary institutions such as colleges or universities;

(b) Trade schools;

(c) Trade associations;

(d) Professional societies;

(e) Private companies;

(f) Public agencies;

(g) Business associations;

(h) Contractor-provided in-house training programs;

(i) Non-profit organizations; or

(j) Manufacturers or businesses in the construction industry.

(2) Elective hours may be earned by completing trainings or demonstrations offered by building component manufacturers on product use, capabilities, or installation.

(3) Elective hours may be earned by completing education classes required to maintain another construction industry license, such as a certified home inspector or a registered professional engineer.

(4) Elective hours may be earned by completing core classes not otherwise completed for core credit.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, 6/11 eff. 7/1/11, 3/12)

812-021-0021

Exemptions from Continuing Education

(1) For purposes of this rule, "dwelling" means a shelter in which people live, such as buildings used exclusively for residential occupancy, including single-

family, two-family (e.g. duplex) and multi-family (e.g. apartment) buildings.

(2) For purposes of this rule, "outbuilding" means a building accessory to a dwelling that is used by the persons who occupy the dwelling, including detached garages, shops, sheds and barns.

(3) The following persons are exempt from obtaining BEST education as required under OAR 812-021-0015(2) or (3)(a)(A):

(a) Contractors that are licensed as:

(A) Plumbing contractors under ORS 447.010 to 447.156; or

(B) Electrical contractors under ORS 479.630.

(b) Contractors that have an owner or officer who is licensed as:

(A) An architect under ORS 671.010 to 671.220, whether or not operating within the scope of that registration; or

(B) A professional engineer under ORS 672.002 to 672.325, whether or not operating within the scope of that license.

(c) Unless provided otherwise, contractors that do not perform work on a residential structure that is a dwelling or an outbuilding, including but not limited to:

(A) Contractors that only perform tree pruning, tree and stump removal, or tree and limb guying;

(B) Contractors that only forge, weld or fabricate ornamental iron, so long as the contractor does not attach or install the ornamental iron in or on a residential structure that is a dwelling or outbuilding;

(d) The following contractors are not exempt under subsection (c) of this section:

(A) Contractors that perform excavation for residential construction;

(B) Contractors that perform grading for residential construction;

(C) Contractors that perform concrete work for residential construction; and

(D) Contractors that perform paving for residential construction.

(4) The following persons are exempt from obtaining education in building codes as required under OAR 812-021-0015(2), (3)(a)(B) or (4)(a)(A):

(a) Contractors that are licensed as:

(A) Plumbing contractors under ORS 447.010 to 447.156; or

(B) Electrical contractors under ORS 479.630.

(b) Contractors that have an owner or officer who is licensed as:

(A) An architect under ORS 671.010 to 671.220, whether or not operating within the scope of that registration; or

(B) A professional engineer under ORS 672.002 to 672.325, whether or not operating within the scope of that license.

(c) Unless provided otherwise, contractors that do not perform work on a residential structure that is a dwelling or outbuilding, including but not limited to:

(A) Contractors that only perform tree pruning, tree and stump removal, or tree and limb guying;

(B) Contractors that only forge, weld or fabricate ornamental iron, so long as the contractor does not attach or install the ornamental iron in or on a residential structure that is a dwelling or an outbuilding;

(d) The following contractors are not exempt under subsection (c) of this section:

(A) Contractors that perform excavation for residential construction;

(B) Contractors that perform grading for residential construction;

(C) Contractors that perform concrete work for residential construction; and

(D) Contractors that perform paving for residential construction.

(5) Contractors that are exempt from the continuing education requirements under sections (3) or (4) of this rule must complete additional elective continuing education, as provided in OAR 812-021-0019, in an amount totaling the number of core hours that the contractor would otherwise be required to complete under OAR 812-021-0015 but for the exemption.

Stat. Auth.: ORS 670.310, 701.126 and 701.235

Stats. Implemented: ORS 701.126

(temp. 7/11 eff. 7/1/11, temp. 9/2/11 eff. 9/2/11, 9/11 eff. 10/1/11, 12/13 eff. 1/1/14)

812-021-0023

Carry Forward of Excess Hours – Continuing Education for Residential Contractors

If a residential contractor exceeds the requirement for continuing education in any license period, the residential contractor may carry forward a maximum of eight education hours into the next license period. The carry-forward hours will be credited as elective hours.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0025

Provider Approval, Standards, Fees, Renewal and Withdrawal for Core – Continuing Education for Residential Contractors

(1) The agency will review and approve providers offering core continuing education.

(2) Providers will apply for approval on a form prescribed by the agency. Providers may, but need not, apply for approval at the same time they apply for course approval.

(3) Providers seeking approval to offer training in BEST or building codes must submit the following to the agency:

(a) Name, address and contact information of the provider;

(b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;

(c) Description of provider business plan;

(d) Description of the core subject area(s) provider intends to offer; and

(e) Such other information or documentation as the agency may request.

(4) Notwithstanding sections (1) through (3) of this rule, a provider offering education on "green" or sustainable building practices that obtained provider approval before January 1, 2011, may continue to offer courses qualifying for mandatory core continuing education until September 30, 2011.

(5) Providers must remit to the agency together with their application:

(a) A non-refundable fee of $2,000 if applying to offer BEST;

(b) A non-refundable fee of $500 if applying to offer building codes; or

(c) A non-refundable fee of $2,500 if applying to offer both BEST and building codes.

(6) To qualify for approval, providers must:

(a) Certify the programs offered meet the minimum standards and content objectives established by the Board;

(b) Employ or contract with educators who have at least four years work experience or four years of education, or any combination of both, in the subject that they instruct;

(c) Be capable of entering and transmitting electronic data to the agency;

(d) Describe a process for prompt resolution of complaints by registrants;

(e) Describe a process for cancellations and refunding registrant payments; and

(f) If applying to offer BEST, provide a surety bond in an amount of $20,000 obligating the surety to pay registrants to whom the provider owes money for cancellation or other refunds that the provider fails to pay. The bond must be in the form adopted by the board as the "Continuing Education Provider Surety Bond" dated December 1, 2009.

(7) Only an approved provider may offer or provide training to a contractor or a contractor's employees.

(8) An approved provider may not allow any person not approved by the agency as a provider to offer or provide training or courses of the approved provider.

(9) For purposes of this rule, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of an approved provider in advertising or soliciting the courses.

(10) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(11) Providers must re-submit application and fees required under sections (3) and (5) of this rule for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

(12) The agency may withdraw approval issued to any provider that violates ORS 701.126 or any rule of the agency.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, 12/09 eff. 1/1/10, 8/10 eff. 9/1/10, 9/11 eff. 10/1/11, temp. 2/12 eff. 2/9/12, 3/12, 4/12 eff. 5/1/12)

812-021-0028

Course Approval, Standards, Fees and Renewal for Core – Continuing Education for Residential Contractors

(1) The agency will approve courses that provide training in BEST or building codes.

(2) Approved courses may be offered as an individual course or as part of a comprehensive curriculum.

(3) A provider seeking approval of its courses must submit the following:

(a) Course name, course description, objectives of the offered course, and number of hours of continuing education credit;

(b) A written description of the course educator's credentials;

(c) Copies of the course materials provided to registrants as described in section (4)(b);

(d) Cost of the offered course(s) to registrant;

(e) For live classes and classes held in real-time:

(A) Anticipated date, time, place of the course; and

(B) Number of registrants that each course can accommodate;

(f) For self-study courses:

(A) Anticipated date when the course will first be offered;

(B) Description of provider's procedures to answer student questions; and

(C) The length of time a student has to complete the course and receive credit; and

(g) A non-refundable fee of $50 per credit hour submitted for approval.

(4) To meet minimum standards for course approval, the provider must:

(a) Submit the course syllabus describing the course objectives and content on BEST or building codes, as appropriate;

(b) Submit a comprehensive course outline on BEST or building codes, as appropriate;

(c) Have materials for each registrant:

(A) Of sufficient explanation and quality to provide information about the subject of BEST or building codes, as appropriate;

(B) A course syllabus; and

(C) A statement that the provider is responsible for the content of the course.

(d) Have no attendance restrictions except for payment of money or membership in the provider organization.

(5) Notwithstanding sections (1) through (4) of this rule, a course on "green" or sustainable building practices that obtained approval before January 1, 2011, may continue to qualify for mandatory core continuing education if completed on or before September 30, 2011.

(6) Providers seeking to offer BEST must offer training substantially equivalent to criteria established by the agency.

(7) Except as provided in section (5) of this rule, course approval will be valid for two (2) years from the date the course is approved by the agency.

(8) Providers must re-submit application and fees under this section for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, temp. 7/1/11 eff. 7/1/11, 9/11 eff. 10/1/11)

812-021-0030

Core Hours: BEST – Continuing Education for Residential Contractors

(1) Only the agency and providers approved by the agency as BEST providers may offer or provide BEST. For purposes of this section, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of the approved provider in advertising or soliciting the courses.

(2) Only the agency or approved providers may charge contractors for BEST. Approved providers may charge contractors an amount determined by the provider.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, temp. 2/12 eff. 2/9/12, 4/12 eff. 5/1/12)

812-021-0031

Core Hours: Building Codes – Continuing Education for Residential Contractors

(1) Only providers approved by the agency in building codes may offer or provide training in their approved subject area. For purposes of this section, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of the approved provider in advertising or soliciting the courses.

(2) Only approved providers may charge contractors for building code training. Approved providers may charge contractors an amount determined by the provider.

(3) Notwithstanding sections (1) and (2) of this rule, a provider approved by the agency before January 1, 2011 as qualified to offer training in "green" or sustainable building practices for mandatory core education may:

(a) Offer such training, so long as the course is completed on or before September 30, 2011; and

(b) Charge contractors for such training in an amount determined by the provider.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, 9/11 eff. 10/1/11, temp. 2/12 eff. 2/9/12, 4/12 eff. 5/1/12)

812-021-0032

Core Hours: Agency Law, Rules, and Business Practices – Continuing Education for Residential Contractors

(1) The agency will make available to all contractors education on agency laws, regulations, and business practices.

(2) The agency may charge contractors for the law, regulation training, and business practices.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0033

Notification of Completion of Core Hours – Continuing Education for Residential Contractors

Provider will transmit data, as directed by the agency, notifying the agency when a contractor completes an approved course.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0034

Notification of Completion of Elective Hours – Continuing Education for Residential Contractors

(1) Contractors may provide data, as directed by the agency, notifying the agency when a contractor has taken an elective course.

(2) Contractors will certify completion of elective hours upon renewal.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09)

812-021-0035

Agency Tracking of Hours – Continuing Education for Residential Contractors

(1) The agency will track completion of core hours.

(2) The agency may notify contractors, in advance of their renewal dates, of the number and type of core hours left to be completed before renewal.

(3) The agency may notify contractors, in advance of their renewal dates, of the reported elective hours and the number left to be completed before renewal.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, 9/11 eff. 10/1/11)

812-021-0037

Certification, Recordkeeping, and Review – Continuing Education for Residential Contractors

(1) Contractors shall maintain records of continuing education courses completed for a period of:

(a) 24 months after the renewal date for which the education was reported; or

(b) For a lapsed license, a period of 24 months after the date the license ceased to be lapsed.

(2) The agency may request any contractor's continuing education records for review.

(3) If a contractor cannot prove that it completed the continuing education, the agency may suspend or refuse to renew the license until the contractor proves compliance or completes the missing courses.

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
(6/09, 10/12 eff. 11/1/12)

812-021-0040
Inactive Status During the License Period or Upon Renewal – Continuing Education for Residential Contractors

(1) If a contractor is inactive for less than a year and seeks to renew in an active status, the contractor must complete the total continuing education hours required in OAR 812-021-0015 in order to renew. If the inactive contractor cannot prove that it completed the continuing education, the agency may refuse to convert the license to active status until the contractor proves compliance or completes the missing courses.

(2) If a contractor is inactive for one year or more during the license period and seeks to renew in an active status, the contractor is not required to complete the continuing education hours as required in OAR 812-021-0015 in order to renew.

(3) If a contractor is inactive for any period of time and seeks to renew in an inactive status, the contractor is not required to complete the continuing education hours required in OAR 812-021-0015 in order to renew.

(4) If a contractor is active at the time of renewal and seeks to renew in an inactive status, the contractor is not required to complete the continuing education hours required in OAR 812-021-0015 in order to renew.

(5) Notwithstanding section (4) of this rule, if an active contractor renews to an inactive status and seeks to change to active status during the two-year license renewal period, the contractor must complete the continuing education requirements in OAR 812-021-0015 in order to change to active status. Continuing education hours earned during the prior two-year license period and the period of inactivity may be included for determining compliance. If the inactive contractor cannot prove that it completed the continuing education, the agency may refuse to convert the license to active status until the contractor proves compliance or completes the missing courses. Notwithstanding OAR 812-021-0015, hours completed during this same period and credited towards renewal to active may not be included for the contractor's next renewal.

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.063; 701.126
(6/09, 3/12, 10/12 eff. 11/1/12)

812-021-0042
Lapse in License – Continuing Education for Residential Contractors

If a license lapses and the contractor applies for renewal as provided in ORS 701.063(4) and OAR 812-003-0300, the contractor must satisfy the continuing education requirement in OAR 812-021-0015. The contractor may satisfy the requirement by continuing education completed during the lapse period.

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
(6/09)

812-021-0045
Claiming Continuing Education Credits – Continuing Education for Residential Contractors

(1) A contractor may claim continuing education hours for courses completed during the time an employee is employed by the contractor. If the employee is a leased worker, the employee must complete the continuing education hours while leased to the contractor.

(2) If an employee completed continuing education before being hired by a contractor, the contractor may not claim those hours to satisfy its continuing education requirement.

(3) A contractor may claim continuing education hours for courses completed at the time the owner, officer or RMI is associated with the contractor.

(4) If an owner, officer or RMI completed continuing education before associating with a contractor, the contractor may not claim those hours to satisfy the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.126 and 701.235
Stats. Implemented: ORS 701.126
(6/09, 12/13 eff. 1/1/14)

812-021-0047
Personnel of More than One Contractor– Continuing Education for Residential Contractors

(1) If an employee who completes a continuing education course is employed by more than one contractor at the time the employee completes the course, each employing contractor may claim the continuing education hours. For purposes of this rule, "employed by more than one contractor" does not include leased workers leased by more than one contractor. For leased workers, only one contractor may claim the continuing education credits.

(2) If an owner, officer or RMI who completes a continuing education course is associated with more than one contractor at the time the owner, officer or RMI completes the course, each affiliated contractor may claim the continuing education hours.

Stat. Auth.: ORS 670.310, 701.126 and 701.235
Stats. Implemented: ORS 701.126
(6/09, 12/13 eff. 1/1/14)

DIVISION 22

NEW CONTINUING EDUCATION FOR RESIDENTIAL CONTRACTORS

812-022-0000
Authority, Purpose, Scope, Applicable Dates – Continuing Education for Residential Contractors (SB 783)

(1) Authority. These rules are promulgated in accordance with ORS 701.082, which requires CCB to establish a residential continuing education system for licensed residential contractors, other than developers.

(2) Purpose. The purpose of these rules is to create a residential continuing education system. The Board shall adopt minimum standards for:

(a) Approving providers of residential continuing education;

(b) Approving courses for residential continuing education; and

(c) Where available, giving consideration to any residential continuing education program adopted by national construction licensing trade associations.

(3) Scope.

(a) These rules establish the content and hours required for residential continuing education.

(b) These rules establish procedures for recordkeeping, for verifying attendance or completion of residential continuing education hours and for sanctions for failing to comply.

(c) These rules establish procedures and standards for provider and course approval.

(d) These rules establish fees for:

(A) Provider approvals;

(B) Course approvals;

(C) Specialized education program approvals;

(D) Per attendee charge to providers for each completed approved course;

(E) Training offered by the agency; and

(F) Charge to providers that, by agreement, offer the agency-developed training.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.082

(10/24/13, 4/30/14)

812-022-0005
Definitions – Continuing Education for Residential Contractors (SB 783)

The following definitions apply to OAR 812-022-0000 to 812-022-0047:

(1) "Employee" means:

(a) Any individual employed by a contractor; or

(b) A leased worker provided to a contractor by contract with a worker leasing company defined under 701.005(19) (2013) or licensed under ORS 656.850(2).

(c) "Employee" does not include a subcontractor, which is an independent contractor, or a temporary employee.

(2) "Instructor" means:

(a) Any individual who develops, or assists in developing, curriculum for any course;

(b) Any individual who presents a course in live format; or

(c) Any individual who is available to answer questions from course attendees or participants.

(3) "Licensing period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

(4) "Officer" means an individual person as defined in ORS 701.005(12).

(5) "Owner" means an individual person as defined in OAR 812-002-0537.

(6) "Residential contractor" means a licensed contractor as defined in ORS 701.005(13).

(7) "Responsible managing individual (RMI)" means an individual person as defined in ORS 701.005(16).

(8) "Series A Courses" means courses required under OAR 812-022-0015(2)(b) that CCB has approved pursuant to OAR 812-022-0028.

(9) "Series B Courses" means courses satisfying requirements under OAR 812-022-0015(3)(b) that do not require CCB approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.082; 701.005 & 701.035

(10/24/13, 4/30/14)

812-022-0010
Effective Date – Continuing Education for Residential Contractors (SB 783)

(1) OAR 812-022-0000 to 812-022-0047 apply to residential contractors:

(a) That have active, non-lapsed licenses that expire on or after January 1, 2014.

(b) That renew lapsed licenses with expiration dates on or after January 1, 2014.

(c) That renew lapsed licenses with expiration dates before January 1, 2014, but that are renewed on or after January 1, 2014.

(2) Notwithstanding section (1), until December 31, 2015, a residential contractor may apply hours earned from attending the courses, completed during the licensing period immediately preceding January 1, 2014, towards the new residential continuing education requirements regardless of whether the courses would qualify under the new law. These courses may include the following.

(a) Construction Contractor Board laws, regulations and business practices (up to three hours). Hours earned will be applied towards the three hours of Construction Contractor Board laws, regulations and business practices required for the new residential continuing education.

(b) Building codes courses approved by CCB before January 1, 2014, (up to two hours). Hours earned will be applied towards the five hours of Series A courses required for the new residential continuing education.

(c) Building Exterior Shell Training (BEST) (up to three hours). Hours earned will be applied towards the five

hours of Series A courses required for the new residential continuing education.

(d) Elective courses. Hours earned will be applied towards the eight hours of Series B courses required for the new residential continuing education for contractors licensed less than six years.

(3) Notwithstanding section (1), a residential contractor renewing a license on or after January 1, 2014, that expired before October 1, 2013, must complete three hours of BEST and two hours of building code courses. The BEST and building code course hours will substitute for required Series A Course hours.

(4) Notwithstanding section (1), a residential contractor renewing a license on or after January 1, 2014, which expired between October 1, 2013, and December 31, 2013, must complete two hours of building code course. The hours will substitute for required Series A Course hours.

(5) Notwithstanding OAR 812-021-0028(7) and (8), providers approved pursuant to OAR 812-021-0025 or 812-022-0025 may continue to offer BEST or building codes courses previously approved by CCB under OAR 812-021-0028 without submitting additional application or fees for provider or course approval.

(6) Notwithstanding section (1), a contractor renewing its license between January 1, 2014, and March 31, 2014, may elect to renew the license pursuant to OAR 812-021-0015 rather than renewing its license pursuant to this rule. A contractor making this election will need to maintain record of the continuing education courses it completes to satisfy OAR 812-021-0015 for which the provider does not otherwise submit notification of completion of core hours.

Stat. Auth.: ORS 670.310, 701.082, 701.126 and 701.235

Stats. Implemented: ORS 701.082

(10/24/13, temp. 10/29/13, 2/6/14, temp. 3/26/14)

812-022-0011

Residential Developer Exemption – Continuing Education for Residential Contractors (SB 783)

Residential developers are exempt from the residential continuing education requirements in OAR 812-022-0000 to 812-022-0047.

Stat. Auth.: ORS 670.310, 701.082 & 701.235

Stats. Implemented: ORS 701.082

(10/24/13, 4/30/14)

812-022-0015

Minimum Continuing Education Requirements – Continuing Education for Residential Contractors (SB 783)

(1) Except as provided in section (3), residential contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of eight hours of-continuing education every licensing period as described in sections (2) and (3).

(2) Residential continuing education hours consist of the following:

(a) Three hours of education on laws, regulations and business practices offered by the agency or by an approved provider under an agreement with the agency; and

(b) Five hours of Series A Courses, approved by the agency and offered by approved providers, in one or more of the following subjects:

(A) Construction business practices;

(B) Marketing;

(C) Customer service;

(D) Accounting;

(E) Business law;

(F) Bidding;

(G) Building Codes; or

(H) Safety.

(3) Residential contractors that have not been licensed as a residential contractor during any part of the six-years immediately preceding their scheduled renewal date must complete an additional eight hours of residential continuing education offered by an approved provider. The education hours may include:

(a) Series A Courses described in section (2)(b);

(b) Series B Courses in one or more of the following subjects:

(A) Energy efficiency; or

(B) Trade specific subjects, such as roofing, excavation, or exterior shell construction, as selected by the contractor; or

(c) Courses in excess of three hours of education on laws, regulations and business practices offered by the agency, or by an approved provider under an agreement with the agency, as described in section (2)(a).

(4) Courses shall be a minimum of 50 minutes to qualify for one hour of residential continuing education credit. Courses shall be at least one credit hour.

(5) Credit shall not be given for an individual student repeating the same residential continuing education course during a two-year licensing period.

(6) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the residential continuing education requirement is waived for that two-year licensing period. This exemption applies only if the residential contractor is a:

(a) Sole proprietor without employees;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.082, & 701.235

Stats. Implemented: ORS 701.082

(10/24/13, temp. 11/26/13, 2/6/14, 6/14 eff. 7/1/14)

812-022-0016

Fees for Agency Courses – Continuing Education for Residential Contractors (SB 783)

(1) The agency may charge a fee of $15 per course hour for courses in laws, regulations, and business practices, offered by the agency as provided in OAR 812-022-0015(2)(a).

(2) In addition to the fee for the course, CCB may charge for processing, shipping and handling course materials made available other than online.

(3) If the agency enters into agreements with providers to provide the agency's courses on laws, regulations and business practices, the agency may charge providers an additional fee of $4 per student per course hour, in addition to the fees charged in section (1).

Stat. Auth.: ORS 670.310, 701.267 & 701.235

Stats. Implemented: ORS 701.267

(10/24/13, 4/30/14)

812-022-0018
Agreements to Offer Agency Courses – Continuing Education for Residential Contractors (SB 783)

The agency may enter into agreements with approved providers to provide the agency's courses on laws, regulations and business practices.

Stat. Auth.: ORS 670.310, 701.267 & 701.235

Stats. Implemented: ORS 701.267

(10/24/13, 4/30/14)

812-022-0021
Exemptions from Continuing Education – Continuing Education for Residential Contractors (SB 783)

The following contractors are exempt from continuing education requirements as required by OAR division 22:

(1) Contractors licensed as plumbing contractors under ORS 447.010 to 447.156;

(2) Contractors licensed as electrical contractors under ORS 479.630;

(3) Contractors owned by, or having an officer who is, an architect registered under ORS 671.010 to 671.220; and

(4) Contractors owned by, or having an officer who is, a professional engineer licensed under ORS 672.002 to 672.325

Stat. Auth.: ORS 670.310, 701.082, 701.083, & 701.235

Stats. Implemented: ORS 701.082 and 701.083

(10/24/13, temp. 11/26/13, 2/6/14, temp. 3/26/14, 6/14 eff. 7/1/14)

812-022-0022 Experience Exemptions from Continuing Education – Continuing Education for Residential Contractors (SB 783)

(1) Notwithstanding ORS 701.082(2), if a contractor was licensed for at least six years before the contractor's renewal date, the contractor may qualify for renewal by completing eight hours of continuing education as provided in ORS 701.082(1).

(2) Notwithstanding ORS 701.082(2), if a contractor's RMI was an RMI for any contractor for at least six years before the contractor's renewal date, the contractor may qualify for renewal by completing eight hours of continuing education as provided in ORS 701.082(1).

(3) The licensing for the contractor or experience for the RMI does not need to be continuous.

Stat. Auth.: ORS 670.310, 701.082 and 701.235

Stats. Implemented: ORS 701.082 and 701.265

(temp. 3/26/14, 6/14 eff. 7/1/14)

812-022-0025
Provider Approval – Continuing Education for Residential Contractors (SB 783)

(1) The agency will review and approve providers offering residential continuing education.

(2) Providers will apply for approval on a form, and submit fees, prescribed by the agency.

(3) Providers seeking approval to offer residential continuing education must submit the following to the agency:

(a) Name, address and contact information of the provider;

(b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;

(c) Description of the subject area(s) the provider intends to offer;

(d) Indication whether provider will offer:

(A) Series A Courses;

(B) Series B Courses; or

(C) Both Series A and Series B Courses; and

(e) Such other information or documentation as the agency may request.

(4) To qualify for approval, providers must:

(a) Employ or contract with instructors who have at least four years work experience or four years of education, or any combination of both, in the subject that they instruct;

(b) Be capable of entering and transmitting electronic data to the agency;

(c) Describe and follow a process for prompt resolution of complaints by registrants;

(d) Describe a process for cancellations and refunding registrant payments. If the provider does not permit cancellation or refunds, it must provide notice of that fact in a conspicuous manner in its advertising, solicitation and registration materials;

(e) Describe and follow attendance verification procedures;

(f) Provide an evaluation opportunity as prescribed by the agency for course attendees to complete;

(g) Be capable of submitting rating results to the agency by 12:00 noon of the business day following the day the contractor completes the course;

(h) Except as provided in OAR 812-022-0027(2), if offering agency developed courses, pursuant to an agreement under OAR 812-022-0018, or Series A Courses, provide a surety bond, as described in OAR 812-022-0027, in the amount of $20,000 obligating the surety to pay the State of Oregon any fees unpaid by provider;

(i) Except as provided in OAR 812-022-0026(3), pay fees as provided under OAR 812-022-0026; and

(j) Maintain records available for agency to inspect for at least six years.

(5) Only an approved provider may offer or provide residential continuing education to a contractor or a contractor's employees.

(6) An approved provider may not allow any person not approved by the agency as a provider to offer or provide courses of the approved provider. For purposes of this rule, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of an approved provider in advertising or soliciting the courses.

(7) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(8) If providers change or add course types (Series A Courses or Series B Courses), they shall notify the agency within 24 hours.

(9) If providers change or add instructors, they shall notify the agency within 24 hours.

(10) Providers must re-submit an application and fees for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

(11) The agency may withdraw approval issued to any provider that violates Oregon Laws 2013, chapter 718, or any rule of the agency.

Stat. Auth.: ORS 670.310, 701.265 and 701.235

Stats. Implemented: ORS 701.265

(10/24/13, temp. 10/29/13, temp. 12/12/13, 2/6/14)

812-022-0026

Fees for Provider Approval – Continuing Education for Residential Contractors (SB 783)

(1) Providers will remit to the agency a non-refundable fee of $2,000, together with an application for approval, or renewal of approval, to offer Series A Courses, Series B Courses, or both Series A Courses and Series B Courses.

(2) Providers will be assessed a fee of $4 per student per hour for each Series A Course hour provided. Providers will pay agency the fees at the time provider submits each student's records. The agency will establish the manner in which the provider must remit payment. Students will receive credit for Series A Course hours only after CCB receives provider's payment.

(3) The fees established under section (1) of this rule do not apply to Oregon public community colleges or small business development centers (including BizCenter Online Learning).

Stat. Auth.: ORS 670.310, 701.235, and 701.267

Stats. Implemented: ORS 701.267

(10/24/13, temp. 12/12/13, 2/6/14)

812-022-0027

Surety Bond to Assure Performance of Agency Agreements

(1) Providers that provide Series A Courses as provided in OAR 812-022-0015(2)(b), will maintain a surety bond in the amount of $20,000, issued by a surety company authorized to do business in the State of Oregon, for the benefit of the State of Oregon, Construction Contractors Board. The bond must be in the form "Series A Course Provider Surety Bond," dated October 24, 2013.

(2) Section (1) of this rule does not apply to Oregon public community colleges or small business development centers (including BizCenter Online Learning).

Stat. Auth.: ORS 670.310, 701.235, 701.265 and 701.267

Stats. Implemented: ORS 701.265 and 701.267

(10/24/13, temp. 10/29/13, temp. 12/12/13, 2/6/14)

812-022-0028

Course Approval – Continuing Education for Residential Contractors (SB 783)

(1) The agency will approve Series A Courses required under OAR 812-022-0015(2)(b). Providers seeking course approval must be approved providers under OAR 812-022-0025.

(2) A provider seeking approval for Series A Courses must submit the following:

(a) Course name, course description, objective of the offered course, and number of hours of continuing education credit sought (must be no less than one hour);

(b) A written description of the course instructors' credentials, including years of education and experience in the subject matter they instruct;

(c) Course syllabus;

(d) Comprehensive course outline;

(e) Copies of the course materials provided to students;

(f) Cost of the offered course;

(g) For live classes and classes held in real time:

(A) Anticipated date, time, place of the course; and

(B) Number of registrants that each course can accommodate;

(h) For self-study courses:

(A) Anticipated date when the course will first be offered;

(B) Description of provider's procedures to answer student questions; and

(C) The length of time a student has to complete the course and receive credit.

(i) Any other information as directed by the agency.

(3) The agency will only approve Series A Courses that the agency, in its sole discretion, considers offer high quality in the following respects:

(a) The course relates to one or more of the subjects listed in OAR 812-022-0015(2)(b);

(b) The course's use of animation, audio, video or color to stimulate multiple learning styles;

(c) The course holds interest through the use of visual, textual, audio or interactive components;

(d) The course material is presented in a logical and understandable manner;

(e) The spelling, grammar and sentence structure in written materials are correct;

(f) For courses using internet, video, audio or other electronic media, the course program is technically sufficient (e.g., video does not "stutter"; internet material does not "lock up"); and

(g) For courses using internet, video, audio or other electronic media, there is adequate instruction and

guidance to navigate from the beginning to the end of the course.

(4) The agency will only approve Series A Courses that provide qualified instructors to answer questions in real-time, either in person, by telephone or by electronic means (e.g. chat rooms, e-mail, instant message).

(5) Series A Course approval will be valid for two (2) years from the date the provider is approved by the agency.

(6) Providers must re-submit an application and fees for renewal of Series A Course approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.235, 701.265 and 701.267

Stats. Implemented: ORS 701.265 and 701.267

(10/24/13, temp. 10/29/13, 2/6/14)

812-022-0029

Fees for Course Approval – Continuing Education for Residential Contractors (SB 783)

Providers will remit to the agency a non-refundable fee of $100 together with an application for approval of any Series A Course.

Stat. Auth.: ORS 670.310, 701.235 and 701.267

Stats. Implemented: ORS 701.267

(temp. 10/29/13, 2/6/14)

812-022-0033

Provider Rosters, Notification of Completion and Certificates of Completion for Series A Course Hours – Continuing Education for Residential Contractors (SB 783)

(1) Providers will maintain rosters capturing data for all contractors that complete Series A Courses, as described in 812-022-0015(2)(b). Rosters will contain the following information:

(a) Course name and any other information identifying course, as required by agency:

(b) Contractor's name;

(c) Contractor's license number;

(d) Name of individual attending or completing the course;

(e) Relationship of individual completing the course to contractor (e.g. owner, officer, member, employee);

(f) Date individual attended or completed the course;

(g) Number of hours credit obtained by attending or completing the course; and

(h) Certification by individual completing the course that the identified individual:

(A) Attended or completed the entire course; and

(B) No other individual attended, completed or assisted in completing the course in place of the individual.

(2) Providers will transmit data, as directed by the agency, containing the information in section (1) and notifying the agency when a contractor completes a Series A Course. Providers must submit data by 12:00 noon of the business day following the date the contractor completes the course.

(3) Upon satisfactory completion of each Series A Course, providers will prepare a certificate of completion for the person completing the course. The certificate of completion will contain the following information:

(a) Provider name;

(b) Provider number assigned by the agency;

(c) Course name;

(d) Course number assigned by the agency;

(e) Number of credit hours;

(f) Date of course completion;

(g) Student name;

(h) Name of contractor with which student is associated;

(i) Contractor CCB number; and

(j) Any other information required by the agency.

Stat. Auth.: ORS 670.310, 701.267 & 701.235

Stats. Implemented: ORS 701.267

(10/24/13, 4/30/14)

812-022-0034

Completion and Registration of Series B Courses – Continuing Education for Residential Contractors (SB 783)

(1) Contractors that were not licensed as a residential contractor during any part of the six-year period immediately preceding the renewal must complete eight hours of residential continuing education, which may include Series A Courses described in OAR 812-022-0015(2)(b) or Series B Courses described in OAR 812-022-0015(3)(b).

(2) The agency will register Series B Courses authorized under OAR 812-022-0015(3)(b). Providers seeking course approval must be approved providers under OAR 812-022-0025.

(3) A provider registering Series B Courses must submit the following:

(a) Course name, course description, objective of the offered course, and number of hours of continuing education credit;

(b) Cost of the offered course;

(c) For live classes and classes held in real time:

(A) Anticipated date, time, place of the course; and

(B) Number of registrants that each course can accommodate;

(d) For self-study courses:

(A) Anticipated date when the course will first be offered; and

(B) The length of time a student has to complete the course and receive credit.

(e) Any other information as directed by the agency.

(4) Series B Course registration will be valid for two (2) years from the date the provider is approved by the agency.

(5) Providers must re-submit a registration form for renewal of Series B Course registration. Renewal of registration will be subject to the same requirements as initial registration.

Stat. Auth.: ORS 670.310, 701.082, and 701.235

Stats. Implemented: ORS 701.082

(temp. 10/29/13, 2/6/14)

812-022-0035
Provider Rosters, Notification of Completion and Certificates of Completion for Series B Course Hours – Continuing Education for Residential Contractors (SB 783)

(1) Providers will maintain rosters capturing data for all contractors that complete Series B Courses, as described in 812-022-0015(3)(b). Rosters will contain the following information:

(a) Course name and any other information identifying course, as required by agency:

(b) Contractor's name;

(c) Contractor's license number;

(d) Name of individual attending or completing the course;

(e) Relationship of individual completing the course to contractor (e.g. owner, officer, member, employee);

(f) Date individual attended or completed the course;

(g) Number of hours credit obtained by attending or completing the course; and

(h) Certification by individual completing the course that the identified individual:

(A) Attended or completed the entire course; and

(B) No other individual attended, completed or assisted in completing the course in place of the individual.

(2) Providers will transmit data, as directed by the agency, containing the information in section (1) and notifying the agency when a contractor completes a Series B Course. Providers must submit data by 12:00 noon of the business day following the date the contractor completes the course.

(3) Upon satisfactory completion of each Series B Course, providers will prepare a certificate of completion for the person completing the course. The certificate of completion will contain the following information:

(a) Provider name;

(b) Provider number assigned by the agency;

(c) Course name;

(d) Course number assigned by the agency;

(e) Number of credit hours;

(f) Date of course completion;

(g) Student name;

(h) Name of contractor with which student is associated;

(i) Contractor CCB number; and

(j) Any other information required by the agency.

Stat. Auth.: ORS 670.310, 701.235, 701.265 and 701.267

Stats. Implemented: ORS 701.265 and 701.267

(temp. 10/29/13, 2/6/14)

812-022-0036
Agency Tracking of Hours – Continuing Education for Residential Contractors (SB 783)

(1) The agency will track completion of Series A and Series B Course hours.

(2) The agency may notify contractors, in advance of their renewal dates, of the number of Series A Course hours left to be completed before renewal.

(3) The agency may notify contractors, in advance of their renewal dates, of reported Series B.

Stat. Auth.: ORS 670.310, 701.082 & 701.235

Stats. Implemented: ORS 701.082

(10/24/13, 4/30/14)

812-022-0037
Certification, Recordkeeping, and Review – Continuing Education for Residential Contractors (SB 783)

(1) Contractors shall maintain records of continuing education courses completed for a period of:

(a) 24 months after the renewal date for which the residential continuing education was reported; or

(b) For a lapsed license, a period of 24 months after the date the license ceased to be lapsed.

(2) The agency may request any contractor's residential continuing education records for review.

(3) If a contractor cannot prove that it completed the residential continuing education, the agency may suspend or refuse to renew the license until the contractor proves compliance or completes the missing courses.

Stat. Auth.: ORS 670.310, 701.082 & 701.235

Stats. Implemented: ORS 701.082

(10/24/13, 4/30/14)

812-022-0040
Inactive Status During the License Period or Upon Renewal – Continuing Education for Residential Contractors (SB 783)

(1) If a contractor is inactive for less than one year and seeks to renew in active status, the contractor must complete all residential continuing education required under OAR 812-022-0015. The contractor may satisfy the requirement by residential continuing education completed during the inactive period.

(2) If a contractor is inactive for one year or more during the licensing period and seeks to renew in active status, the contractor is not required to complete the residential continuing education requirements under OAR 812-022-0015.

(3) If a contractor is inactive for any period of time and seeks to renew in inactive status, the contractor is not required to complete residential continuing education required under OAR 812-022-0015.

(4) If a contractor is active at the time of renewal and seeks to renew in inactive status, the contractor is not required to complete the residential continuing education requirements under OAR 812-022-0015.

(5) Notwithstanding section (4), if an inactive contractor renews to inactive status and seeks to change to active status during the two-year licensing period, the contractor must complete residential continuing education required in OAR 812-022-0015. The contractor may satisfy the requirement by residential continuing education completed during the inactive period. Hours completed

and credited towards this renewal may not be included for contractor's next renewal.

(6) Hours completed and credited towards one renewal may not be included for contractor's next renewal.

Stat. Auth.: ORS 670.310, 701.082 & 701.235
Stats. Implemented: ORS 701.063 & 701.082
(10/24/13, 4/30/14)

812-022-0042
Lapse in License – Continuing Education for Residential Contractors (SB 783)

If a license lapses and a contractor applies for renewal as provided in ORS 701.063(4) and OAR 812-003-0300, the contractor must satisfy the residential continuing education requirements of OAR 812-022-0015. The contractor may satisfy the requirement by residential continuing education completed during the lapse period.

Stat. Auth.: ORS 670.310, 701.082 & 701.235
Stats. Implemented: ORS 701.063 & 701.082
(10/24/13, 4/30/14)

812-022-0045
Claiming Continuing Education Credits – Continuing Education for Residential Contractors

(1) A contractor may claim continuing education hours for courses completed during the time an employee is employed by the contractor. If the employee is a leased worker, the employee must complete the continuing education hours while leased to the contractor.

(2) If an employee completed continuing education before being hired by a contractor, the contractor may not claim those hours to satisfy its continuing education requirement.

(3) A contractor may claim continuing education hours for courses completed at the time the owner, officer or RMI is associated with the contractor.

(4) If an owner, officer or RMI completed continuing education before associating with a contractor, the contractor may not claim those hours to satisfy the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.082 & 701.235
Stats. Implemented: ORS 701.082
(10/24/13, 4/30/14)

812-022-0047
Personnel of More than One Contractor– Continuing Education for Residential Contractors

(1) If an employee who completes a continuing education course is employed by more than one contractor at the time the employee completes the course, each employing contractor may claim the continuing education hours. For purposes of this rule, "employed by more than one contractor" does not include leased workers leased by more than one contractor. For leased workers, only one contractor may claim the continuing education credits.

(2) If an owner, officer or RMI who completes a continuing education course is associated with more than one contractor at the time the owner, officer or RMI completes the course, each affiliated contractor may claim the continuing education hours.

Stat. Auth.: ORS 670.310, 701.082 & 701.235
Stats. Implemented: ORS 701.082
(10/24/13, 4/30/14)

DIVISION 25
ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY LOAN PROGRAM (EEAST)

812-025-0000
Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with, and under the authority of, ORS 470.560, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753, section 48.

(2) Purpose. These rules establish a certification system for primary contractors that participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program created by ORS chapter 470 and Oregon Laws 2009.

(3) Scope. These rules:

(a) Establish the requirements for, and the manner of, certifying applicants.

(b) Establish fees.

(c) Prescribe actions that constitute grounds to deny, suspend, or revoke a certification.

(d) Outline requirements for notifying other agencies.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: 470.560, 670.310, 701.108, 701.119 and OR Laws 2009, chapter 753, sections 42 – 46a, section 48 and section 49

(12/10 eff. 1/1/11, 12/13 eff. 1/1/14)

812-025-0005
Definitions

The following definitions apply to division 25 of OAR chapter 812.

(1) "BOLI" means Bureau of Labor and Industries.

(2) "BPI" means Building Performance Institute.

(3) "Certification" means certification provided to contractors that participate in the construction of small scale local energy projects financed through the EEAST program.

(4) "Disadvantaged business enterprise" means that term as defined in ORS 200.005(1). A "disadvantaged business enterprise" is a small business concern:

(a) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or

(b) If a corporation, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(5) "EEAST" means energy efficiency and sustainable technology.

(6) "Equal opportunity employer" means an employer that follows the principle of equal opportunity in regards to its hiring and promotion practices. An equal opportunity employer does not discriminate based on race, color, national origin, religion, gender, age, or physical or mental disability.

(7) "Minority or women business enterprise" means that term as defined in ORS 200.005(5). A "minority or women business enterprise" is a small business concern:

(a) That is at least 51 percent owned by one or more minority individuals or women; or

(b) If a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.

(8) "ODOE" means the Oregon Department of Energy.

(9) "Primary contractor" means a contractor that:

(a) Has entered or will enter into a contract with an owner of real property for which a proposed small scale local energy project will be located;

(b) Is or will be responsible for the completion of the small scale local energy project;

(c) Undertakes or will undertake to complete the small scale local energy project; and

(d) Is or will be responsible for any subcontractors performing work on the small scale local energy project.

(10) "Program" or "EEAST program" means the energy efficiency and sustainable technology loan program.

(11) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.

(12) "REAP" means Residential Energy Analyst Program offered through the Oregon Energy Coordinators Association.

(13) "Small business" means:

(a) An Oregon business that is:

(A) A retail or service business employing 50 or fewer persons at the time the loan is made; or

(B) An industrial or manufacturing business employing 200 or fewer persons at the time the loan is made; or

(b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity for which the total number of employees for both the subsidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other form of business entity at the time the loan is made is:

(A) Fifty or fewer persons if the subsidiary is a retail or service business; and

(B) Two hundred or fewer if the subsidiary is an industrial or manufacturing business.

(14) "Small business concern," for purposes of subsections (4) and (7) of this rule, is defined by the United States Small Business Administration (SBA). 13 C.F.R. part 121. A contractor is a "small business concern" if:

(a) It engages in the construction or remodeling of new or existing buildings and receives no more than $33.5 million in average annual receipts;

(b) It engages in dredging or surface cleanup activities and receives no more than $20.0 million in average annual receipts;

(c) It primarily engages in the following construction trades and receives no more than $14.0 million in average annual receipts:

(A) Poured concrete foundation and structure;

(B) Structural steel and precast concrete;

(C) Framing;

(D) Masonry;

(E) Glass and glazing;

(F) Roofing;

(G) Siding;

(H) Foundation, structure and building (other than concrete);

(I) Electrical;

(J) Plumbing;

(K) Heating and air-conditioning;

(L) Building equipment other than (I), (J) or (K);

(M) Drywall and insulation;

(N) Painting and wall covering;

(O) Flooring;

(P) Tile and terrazzo;

(Q) Finish carpentry;

(R) Building finishing other than carpentry;

(S) Site preparation.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and OR Laws 2009, chapter 753

(12/10 eff. 1/1/11, 12/13 eff. 1/1/14)

812-025-0010
Application and Eligibility to Participate in Construction of Projects Financed by the EEAST Program

An applicant for certification must submit the following:

(1) A completed application on a form provided by the board;

(2) Proof that the applicant is licensed by the board as a residential or commercial contractor;

(3) A statement that the applicant is or will be the primary contractor

(4) A copy of a BPI or REAP certificate, referred to in OAR 812-025-0015;

(5) The fee established in OAR 812-025-0040.

Stat. Auth.: ORS 670.310 and 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and OR Laws 2009, chapter 753

(12/10 eff. 1/1/11, 12/13 eff. 1/1/14)

812-025-0015
Qualifications for Certification: Skill to Perform Installation

ODOE adopted performance skill standards that the board applies in granting certification. Under the ODOE standards, a contractor is qualified if:

(1) It holds a current and valid BPI accredited contractor.

(2) It is owned by or employs one or more persons who hold a current and valid BPI certificate in at least one of the following disciplines:

(a) Building analyst;

(b) Envelope;

(c) Heating;

(d) Air conditioning/heat pump;

(e) Manufactured housing;

(f) Multifamily.

(3) It is owned by or employs one or more persons who hold a current and valid REAP certificate as one or more of the following:

(a) Energy Analyst-1;

(b) Energy Analyst-2;

(c) Shell Tech-1;

(d) Diagnostic Tech-1;

(e) Building Performance Specialist-1.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and OR Laws 2009, chapter 753

(12/10 eff. 1/1/11)

812-025-0020
Additional Qualifications for Certification

ODOE adopted standards that the board applies in granting certification. Under the ODOE standards, a contractor is qualified if:

(1) It is not listed by the Commissioner of BOLI as ineligible to receive a contract, or subcontract, for public works;

(2) It is one or more of the following:

(a) An equal opportunity employer;

(b) A small business;

(c) A minority or women business enterprise; or

(d) A disadvantaged business enterprise.

(3) It has complied with the rules and other requirements of:

(a) The board;

(b) The Workers' Compensation Division of the Department of Consumer and Business Services; and

(c) The Occupational Safety and Health Division of the Department of Consumer and Business Services.

(4) It employs at least 80 percent of employees used for the EEAST program from the local work force, if a sufficient supply of skilled workers is available locally.

(5) It has complied with federal and state wage and hour laws.

(6) It pays wages to employees used for the EEAST program at a rate equal to at least 180 percent of the state minimum wage.

(7) It pays wages to employees used for commercial structures at the prevailing wage rate for each trade or occupation employed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and OR Laws 2009, chapter 753

(12/10 eff. 1/1/11, 10/12 eff. 11/1/12)

812-025-0025
Effective Date of Certification; Certification Term

(1) The effective date of the certification will be the date the applicant meets all board requirements, including but not limited to the receipt of the fee required under OAR 812-025-0040.

(2) All initial and renewal certifications will be non-transferrable and effective for one (1) year from the date of issue.

(3) All certifications will be assigned a unique number.

(4) An applicant for a certification may withdraw the application at any time before issuance of the certification. The applicant must make written request to the board in order to withdraw the certification application.

(5) If the board denies the certification, it shall state, in writing, the reasons for denial.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and OR Laws 2009, chapter 753

(12/10 eff. 1/1/11)

812-025-0030
Renewal of Certification

Contractors certified under these rules may renew their certifications by submitting the following:

(1) A properly completed application for certification renewal on a form provided by the board;

(2) Proof that the person is licensed by the board as a residential or commercial contractor;

(3) A copy of a BPI or REAP certificate, referred to in OAR 812-025-0015;

(4) The fee established in OAR 812-025-0040.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753

(12/10 eff. 1/1/11)

812-025-0032
Certification Cards

(1) The agency shall issue a certification and pocket card effective on the date on which the certification becomes effective under OAR 812-025-0025 or 812-025-0030.

(2) A certification and pocket card is valid for the term for which it is issued.

(3) If a certification becomes invalid, the agency may require the return of the certification and pocket card.

(4) There is no charge for the original certification and pocket card issued by the agency.

(5) There is a $10 fee to replace a certification and pocket card.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 192.440(4)(a), 701.063, 701.119 & 701.238,

(4/11 eff. 5/1/11)

812-025-0035
Denial, Suspension or Revocation of Certification

The board may deny, refuse to renew, suspend or revoke a certification authorized under these rules on the following grounds:

(1) Obtaining a certification through invalid documentation;

(2) Permitting the duplication or use of the certification by another;

(3) Failing to comply with any of the certification standards in OAR 812-025-0015 and 812-025-0020.

(4) If a project is constructed for a commercial structure, failing to pay employees used for the project at the prevailing wage rated, as determined by the Commissioner of BOLI for each trade or occupation employed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753

(12/10 eff. 1/1/11)

812-025-0040
Fees

(1) All initial and renewal certification application fees are non-refundable and non-transferrable.

(2) The fee for initial certification is $50.

(3) The fee for renewal certification is $50.

(4) If the board receives payment of fees by check and the check is returned to the agency as an NSF check, the board will charge the applicant $25 in addition to the required fees.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753

(12/10 eff. 1/1/11)

812-025-0045
Notification to Other Agencies

(1) The board's website is available to ODOE to determine if the board issued, denied, suspended or revoked a certification.

(2) If the board receives a complaint that a certified contractor failed to comply with a wage and hour standard for a project under the EEAST program, the board will forward the complaint to BOLI.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753

(12/10 eff. 1/1/11)

DIVISION 30
LOCKSMITH CERTIFICATION

812-030-0000
General Definitions

The following definitions apply to OAR 812-030-0000 to 812-030-0300:

(1) "Certificate" means the authorization issued by the board to an individual locksmith.

(2) "Conviction" means a final judgment on a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere (no contest), or any other determination of guilt entered by a court against an individual in a criminal case unless the final judgment has been reversed or set aside by a subsequent court decision.

(3) "False statement" means a statement whereby an individual applying for a locksmith certificate:

(a) Provides the board with materially false information; or

(b) Fails to provide the board with information material to determining his or her qualifications.

(4) "License" means the construction contractor license issued by the board under ORS 701.046 to a business offering to or providing locksmith services, including, but not limited to, a residential locksmith services contractor.

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 701.475 to 701.490.
(2/10, 12/13 eff. 1/1/14)

812-030-0010
Testing

(1) The board shall provide and administer a test to each applicant for a locksmith certificate.

(2) The test shall demonstrate the competency of the applicant to act as a locksmith.

(3) The applicant must correctly answer 100 percent of the questions to pass the test.

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 701.485
(2/10)

812-030-0100
Potentially Disqualifying Crimes

The following crimes will potentially disqualify an applicant for a locksmith certificate:

(1) Murder
(2) Kidnapping
(3) Assault in the first degree
(4) Rape
(5) Sodomy
(6) Unlawful sexual penetration
(7) Arson in the first degree
(8) Robbery in the first or second degree
(9) Burglary in the first or second degree
(10) Theft in the first or second degree
(11) Theft by extortion
(12) Aggravated theft in the first degree.

Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.098 and 701.485
(2/10)

812-030-0110
Fitness Determination – Criminal Offense

(1) Locksmiths have the knowledge and tools to bypass or neutralize security devices in vehicles, homes and businesses. An individual may not be fit to be a locksmith if the individual engaged or engages in activity that puts public safety or security at risk by unlawfully accessing property that does not belong to the individual.

(2) The fitness to engage in locksmithing also includes, but is not limited to, the ability to refrain from violent, threatening, intimidating or sexually predatory behavior and to refrain from dishonest or fraudulent conduct.

(3) The board may determine that an individual is not fit for a locksmith certificate based on:

(a) A conviction for any crime listed in OAR 812-030-0100 occurring within seven (7) years before the date of application;

(b) The nature of the crime;

(c) The facts that support the conviction;

(d) The relevancy, if any, of the crime to the requirements for certified locksmiths;

(e) The fact that the individual is currently on probation or post-prison supervision; and

(f) Intervening circumstances relevant to the responsibilities and circumstances of a certified locksmith. Intervening circumstances include, but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 812-030-0100 or a closely related crime; and

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction. An individual shall not be denied certification on the basis of a criminal conviction that has been expunged pursuant to ORS 419A.260 and 419A.262, or other similar process under the laws of any jurisdiction.

(4) Upon notice and request from the board, an applicant for a new or renewal certificate will provide requested information to permit the board to conduct a criminal background check. Requested information includes, but is not limited to, police records, records of conviction, parole or probation reports, restitution records, counseling reports and letters of recommendation.

(5) Failure to provide the information requested in section (4) of this rule may result in denial, suspension or revocation of a certificate.

(6) If the board determines that an applicant is not fit for certification as a locksmith, the applicant is entitled to a hearing as provided in ORS 183.413 to 183.470.

Stat. Auth.: ORS 670.310, 701.235 & 701.485

Stats. Implemented: ORS 670.280, 701.098, 701.102& 701.485
(2/10)

812-030-0200
General Application Requirements
An individual must submit the following to qualify for a locksmith certificate:
(1) An application on a form provided by the board;
(2) The fee established in OAR 812-030-0250; and
(3) If applicable, the CCB license number of the business owned by or employing the applicant.
Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.485
(2/10)

812-030-0210
Certificate Issuance
(1) The effective date of the certificate will be the date that the applicant meets all board requirements, including but not limited to passing the test required by OAR 812-030-0010 and paying the fee required under OAR 812-030-0250.
(2) A unique number will be assigned to each certificate.
(3) All certificates shall be issued in the name of the individual who passed the test required by OAR 812-030-0010.
(4) If the board issues a certificate, it shall mail the certificate to the applicant.
(5) If the board denies a certificate, it shall state, in writing, the reasons for denial.
(6) A certificate shall be non-transferable.
(7) A certificate shall be effective for two years from the date of issue.
Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.485
(2/10)

812-030-0220
Requirements for Certificate Renewal
A certified locksmith shall submit the following to the board for renewal of the locksmith's certificate:
(1) Renewal application information as required by the board;
(2) The fee established in OAR 812-030-0250; and
(3) If applicable, the CCB license number of the business owned by or employing the applicant.
Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.485
(2/10)

812-030-0223
Certificate Cards
(1) The agency shall issue a certificate and pocket card effective on the date on which the certificate becomes effective under OAR 812-030-0210 or 812-030-0220.
(2) A certificate and pocket card is valid for the term for which it is issued.
(3) If a certificate becomes invalid, the agency may require the return of the certificate and pocket card.
(4) There is no charge for the original certificate and pocket card issued by the agency.
(5) There is a $10 fee to replace a certificate and pocket card.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 192.440(4)(a), 701.063, 701.238 & 701.485
(4/11 eff. 5/1/11)

812-030-0230
Certificate Renewal – Effective Date; Effect of Lapse
(1) A renewed certificate shall be effective on the day following the expiration date for which the renewal is sought if the certified locksmith fulfills all of the requirements in OAR 812-030-0220 on or before the expiration date.
(2) Except as provided in subsection (4), if a certified locksmith fails to fulfill all of the requirements in OAR 812-030-0220 on or before the expiration date, but fulfills the requirements at a future date, the renewal shall be effective on the date that all the requirements for renewal have been fulfilled. During the period from the expiration date to the effective date, the certificate is deemed to have lapsed.
(a) A locksmith may not undertake, offer to undertake or submit to do work as a locksmith for compensation while the certificate is lapsed.
(b) A locksmith may not use the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" while the certificate is lapsed.
(3) If the certificate lapses for two years or less, the applicant may renew its certification by renewing the certificate as provided for in OAR 812-030-0220.
(4) If the certificate lapses for more than two years, the applicant must apply for a new certificate as provided for in OAR 812-030-0200.
Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.485
(2/10)

812-030-0235
Mailing and E-mail Address Changes
(1) Certified locksmiths shall notify the board of any change in mailing or e-mail addresses while certified and for one year following the certification expiration date. Such persons must notify the board within 10 days after changing an address.
(2) No charge will be made for a mailing or e-mail address change to the board's records.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.117 & 701.485
(4/11 eff. 5/1/11)

812-030-0240
Requirement that Locksmith Own or Work for a Licensed Contractor

(1) In order to work as a locksmith, a certified locksmith must:

(a) Be an owner or employee of a licensed construction contractor, including, but not limited to, a residential locksmith services contractor; or

(b) Be otherwise exempt under ORS 701.490.

(2) If the board refuses to issue, refuses to reissue, suspends or revokes the contractor's license, or if the construction contractor' license expires or becomes inactive, the certified locksmith, not otherwise exempt under ORS 701.490, may not:

(a) Undertake, offer to undertake or submit to do work as a locksmith for compensation; or

(b) Use the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith."

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 701.480 and 701.490
(2/10, 12/13 eff. 1/1/14)

812-030-0250
Application, Renewal and Certificate Fees

(1) The application fee for all certificates is $60.

(2) The fee for the test required under OAR 812-030-0010 is $60.

(3) The fee for issuance of an initial two-year certificate is $60.

(4) The fee for renewal of a two-year certificate is $60.

(5) All fees are non-refundable and non-transferrable.

Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.480 & 701.485
(2/10)

812-030-0300
Standards of Professional Conduct

(1) A certified locksmith shall not engage in dishonest or fraudulent conduct, including, but not limited to:

(a) Committing any crime that results in a conviction of an offense listed in OAR 812-003-0100 to the extent the conviction demonstrates a lack of fitness under OAR 812-003-0110;

(b) Submitting to the board an application for a certificate that includes a false statement; or

(c) Failing to timely pay a civil penalty or fine imposed by a unit of local, state or federal government.

(2) A licensed construction contractor that offers locksmith services shall not engage in dishonest or fraudulent conduct, including, but not limited to:

(a) Accepting payment in advance and failing to perform the work or provide the services agreed to and failing to return payment, upon reasonable and proper demand, within ten days of the demand;

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

(c) Failing to timely pay a civil penalty or fine imposed by a unit of local, state or federal government.

(3) A certified locksmith and a licensed construction contractor that offers locksmith services shall cooperate fully with any investigation undertaken by the board.

(4) When gaining entry to private or public property, a licensed construction contractor that offers locksmith services shall:

(a) Direct the certified locksmith to make positive identification of the client; and

(b) Obtain and retain, for three years, an authorization or work order signed by the client.

(5) Subsection (4) does not apply to licensed construction contractors where the construction contractor and the client have a standing agreement covering locksmith services.

Stat. Auth.: ORS 670.310, 701.235 & 701.485
Stats. Implemented: ORS 701.480 & 701.485
(2/10)

DIVISION 32
HOME ENERGY ASSESSOR

812-032-0000
General Definitions

The following definitions apply to OAR 812-032-0000 to 812-032-0150:

(1) "Certificate" means the authorization issued by the board to an individual home energy assessor.

(2) "License" means the construction contractor license issued by the board under ORS 701.046 to a business offering or providing home energy performance scores, including, but not limited to, a home energy performance score contractor.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.527 to 701.536
(12/13 eff. 1/1/14, 4/30/14)

812-032-0100
General Application Requirements

An individual must submit the following to qualify for a home energy assessor certificate:

(1) An application on a form provided by the board;

(2) Proof of passing a training program designated by the Department of Energy;

(3) If applicable, the CCB license number of the business owned by or employing the applicant; and

(4) The fee established in OAR 812-032-0150.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.527 to 701.536
(12/13 eff. 1/1/14, 4/30/14)

812-032-0110
Certificate Issuance

(1) The effective date of the certificate will be the date that the applicant meets all board requirements, including paying the fee required under OAR 812-032-0150.

(2) A unique number will be assigned to each certificate.

(3) If the board issues a certificate, it will mail the certificate to the applicant.

(4) If the board denies a certificate, it will state, in writing, the reasons for denial.

(5) A certificate shall be non-transferable.

(6) A certificate shall be effective for one year from the date of issue.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

812-032-0120
Requirements for Certificate Renewal

A certified home energy assessor shall submit the following to the board for renewal of the home energy assessor's certificate:

(1) Renewal application information as required by the board;

(2) If applicable the CCB license number of the business owned by or employing the applicant; and

(3) The fee established in OAR 812-032-0150.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

812-032-0123
Certificate Cards

(1) The agency shall issue a certificate and pocket card effective on the date on which the certificate becomes effective under OAR 812-032-0110 or 812-032-0120.

(2) A certificate and pocket card is valid for the term for which it is issued.

(3) If a certificate becomes invalid, the agency may require the return of the certificate and pocket card.

(4) There is no charge for the original certificate and pocket card issued by the agency.

(5) There is a $10 fee to replace a certificate and pocket card.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

812-032-0130
Certificate Renewal – Effective Date; Effect of Lapse

(1) A renewed certificate shall be effective on the day following the expiration date for which the renewal is sought if the certified home energy assessor fulfills all of the requirements in OAR 812-032-0120 on or before the expiration date.

(2) Except as provided in subsection (4), if a certified home energy assessor fails to fulfill all of the requirements in OAR 812-032-0120 on or before the expiration date, but fulfills the requirements at a future date, the renewal shall be effective on the date that all the requirements for renewal have been fulfilled. During the period from the expiration date to the effective date, the certificate is deemed to have lapsed.

(a) A home energy assessor may not offer to assign, or assign, home energy scores while the certificate is lapsed.

(b) A home energy assessor may not use the title of home energy assessor or similar other title while the certificate is lapsed.

(3) If the certificate lapses for one year or less, the applicant may renew its certification by renewing the certificate as provided for in OAR 812-032-0120.

(4) If the certificate lapses for more than one year, the applicant must apply for a new certificate as provided for in OAR 812-032-0100.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

812-032-0135
Mailing and E-mail Address Changes

(1) Certified home energy assessors shall notify the board of any change in mailing or e-mail addresses while certified and for one year following the certification expiration date. Such persons must notify the board within 10 days after changing an address.

(2) No charge will be made for a mailing or e-mail address change to the board's records.

Stat. Auth.: ORS 670.310, 701.235 & 701.532

Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

812-032-0140
Requirement that Home Energy Assessor Own or Work for a Licensed Contractor

(1) In order to work as a home energy assessor, a certified home energy assessor must be an owner or employee of a licensed construction contractor, including, but not limited to, a home energy performance score contractor.

(2) If the board refuses to issue, refuses to reissue, suspends or revokes the contractor's license, or if the construction contractor' license expires or becomes inactive, the certified home energy assessor may not:

(a) Undertake, offer to assign or assign home energy performance scores; or

(b) Use the title of home energy assessor or similar other title.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

812-032-0150
Application, Renewal and Certificate Fees

(1) The application fee for a home energy assessor certificate is $100.

(2) The fee for issuance of an initial one-year certificate is $100.

(3) The fee for renewal of a one-year certificate is $100.

(4) All fees are non-refundable and non-transferrable.

Stat. Auth.: ORS 670.310, 701.235 & 701.532
Stats. Implemented: ORS 701.532
(12/13 eff. 1/1/14, 4/30/14)

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 70

PRE-RENOVATION EDUCATION AND RENOVATION, REPAIR AND PAINTING ACTIVITIES INVOLVING LEAD-BASED PAINT

333-070-0075
Authority, Purpose, Applicability

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 431.920.

(2) Purpose:

(a) The purpose of these rules is to address Oregon's need for a qualified and properly trained workforce to perform renovation, repair and painting of target housing and child-occupied facilities, and to safeguard the environment and protect the health of building occupants from lead-based paint hazards.

(b) These rules prescribe the requirements for certification of individuals and firms who perform for compensation renovation, repair and painting in target housing and child occupied facilities.

(c) These rules will establish work practice standards for the performance of renovation, repair and painting activities for certified individuals and certified renovation firms and will require that activities be performed only by certified individuals and certified renovation firms.

(d) These rules prescribe the requirements to ensure that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin.

(3) Applicability:

(a) These rules apply to all certified individuals and certified renovation firms who perform for compensation renovation, repair and painting activities in target housing and child-occupied facilities as defined in OAR 333-070-0085, except for the following:

(A) Renovations in target housing or child-occupied facilities in which a written determination from a State of Oregon certified lead inspector or risk assessor that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm2) or 0.5 percent by weight.

(B) Renovations in target housing or child-occupied facilities in which a certified renovator tests each component affected by the renovation using an Environmental Protection Agency (EPA) recognized test kit as defined in OAR 333-070-0085. The renovator must follow the kit manufacturer's instructions. This determines that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm2 or 0.5 percent by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in OAR 333-070-0095 do not apply to emergency renovation operations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in OAR 333-070-0105 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of OAR 333-070-0090, which must be performed by certified renovators or individuals trained in accordance with OAR 333-070-0100, the cleaning verification requirements of OAR 333-070-0090, which must be performed by certified renovators, and the recordkeeping requirements of OAR 333-070-0110. Once the immediate emergency is over, lead safe work practices and all the requirements of these rules shall be in effect.

(c) These rules:

(A) Require that renovation, repair and painting activities must be performed by certified renovators and individuals who have on the job training by a certified renovator working for a certified renovation firm.

(B) Prescribe the requirements for, and the manner of, certifying competency of applicants for certification as a certified individual and of the certified renovation firms employing such individuals.

(C) Determine the work practice standards for renovation, repair and painting activities, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the Authority may deny, suspend, or revoke certification.

(D) Establish the fees to the extent necessary to defray costs of those activities prescribed herein.

(d) A certified renovation firm who is licensed by the Construction Contractors Board (CCB) is not required to be certified by the Authority under these rules, but is subject to the work practice standards in these rules.

Stat. Auth.: ORS 431.920
Stats. Implemented: ORS 431.920 & 431.922
Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 23-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0080
Adoption by Reference

All standards, listings and publications referred to in these rules are, by those references, made a part of these rules as though fully set forth.

Stat. Auth.: ORS 431.920
Stats. Implemented: ORS 431.920
Hist.: PH 8-2010, f. & cert. ef. 4-26-10

333-070-0085
Definitions

As used in these rules unless otherwise required by context:

(1) "Accredited training program" means a training program accredited or provisionally accredited by the

Authority, EPA, or an EPA-authorized state or tribal program to provide training for individuals engaged in renovation, repair and painting activities.

(2) “Accreditation" means the process whereby the Authority has reviewed and approved a training program's written application with associated materials for accreditation, and has conducted an onsite audit finding the training program in compliance as specified in these rules.

(3) "Approved" means approved in writing by the Authority.

(4) “Audit’ means a classroom evaluation of ongoing training. An audit involves verifying the course content, specific time requirements for each subject, hands-on training, classroom conditions, attendance size and other measures of the adequacy of the training provided.

(5) “Authority” means the Oregon Health Authority.

(6) “Certificate of mailing” means a United States Postal Service document that indicates when a piece of mail was presented to the Postal Service for mailing.

(7) “Certified dust sampling technician” means a technician who has successfully completed a dust sampling course accredited by the Authority, EPA, or an EPA-authorized state or tribal program.

(8) “Certified individual” means an individual certified by the Authority as a renovator or dust sampling technician.

(9) “Certified renovation firm” means a company, partnership, corporation, sole proprietorship, association, or other entity that has been certified by the Authority to conduct renovation under ORS 431.920 or licensed by the CCB under ORS 701.515.

(10) “Certified renovator” means a renovator who has successfully completed a renovator course accredited by the Authority, EPA, or an EPA-authorized state or tribal program.

(11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under age six, on at least two different days within any week (Sunday through Saturday), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(12) “Cleaning verification card” means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

(13) "Clearance examination standards" means values that indicate the maximum amount of lead permitted in dust on a surface or in soil following completion of a renovation activity. Standards for lead in dust are 40 micrograms per square foot (µg/ft2) on floors, 250 µg/ft2 on interior window sills, and 400 µg/ft2 on window troughs. The values for lead in soil are 400 parts per million (ppm) in play areas and 1,200 ppm in the remainder of the yard.

(14) "Common areas" means portion(s) of a building that are generally accessible to all occupants. This may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not common areas.

(15) “Component or building component” means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to: interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

(16) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(17) "Containment" means a process or arrangement of materials to protect workers, occupants, the public, and the environment by controlling exposure to the lead-contaminated dust and debris created during renovation activities.

(18) "Course completion certificate" means documentation issued by an accredited training program to an individual as proof of successful completion of a Authority-accredited renovator or dust sampling technician training course or refresher training course.

(19) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited renovator or dust sampling technician training course.

(20) "Critical barrier" means a containment structure that allows for the passage of persons or materials while maintaining containment.

(21) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during a course or refresher training course.

(22) “Desk audit” means an audit of the training program to document proper records keeping, filing procedures and notifications required by the Authority.

(23) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking, cracking, flaking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(24) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(25) "Documented methodologies" are written methods or protocols used to sample for the presence of lead in paint, dust, and soil as recommended in U.S. Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" and "EPA’s Residential Sampling for Lead: Protocols for Dust and Soil Sampling".

(26) "Dripline" means the area within three feet surrounding the perimeter of a building.

(27) “Dry disposable cleaning cloth” means a commercially available dry, electro-statically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

(28) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft2 on floors, 250 µg/ft2 on interior window sills, and 400 µg/ft2 in window troughs based on wipe samples.

(29) "Emergency" means a situation in which failure to act promptly would likely result in immediate harm to persons or property.

(30) "Emergency renovation operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations.

(31) “EPA” means the United States Environmental Protection Agency.

(32) “EPA-authorized program” means a state or tribal program authorized by EPA to administer and enforce the provisions of 40 CFR § 745.324 and 40 CFR § 745.326.

(33) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(34) "Guest instructor" means an individual who is responsible for providing less than 30 percent of training in any course.

(35) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(36) “HEPA vacuum” means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

(37) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(38) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(39) “Interim controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(40) "Interactive/participatory teaching methods" mean instruction which consists of active participation of the students, such as brainstorming, hands-on training, demonstration and practice, small group problem-solving, learning games, discussions, risk mapping, field visits, walk-throughs, problem-posing, group work assignments, homework review sessions, question-and-answer periods, skits, or role-playing sessions. Lecture is not considered an interactive/participatory teaching method.

(41) "Job tasks" mean the specific activities performed in the context of work.

(42) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

(43) "Lead-based paint hazard" means deteriorated lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

(44) “Lead-contaminated dust” means surface dust in residential dwellings or child-occupied facilities that contains an area or mass concentration of lead in excess of levels determined by the appropriate federal agency to pose a threat of adverse health effects in pregnant women or young children.

(45) “Minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupts six square feet or less of painted surface per room for interior activities, or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by OAR 333-070-0090 are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days are the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

(46) "Multi-family housing" means a housing property consisting of more than four dwelling units.

(47) "Paint in poor condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than two square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (e.g., window sills, baseboards, soffits, trim).

(48) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(49) "Paint stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

(50) “Pamphlet” means the EPA pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools or any state pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of state or local sources of information.

(51) "Permanent" means having an expected design life of 20 years.

(52) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

(53) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a disability is an example of a proficiency test.

(54) "Provisional accreditation" means the Authority has reviewed and finds acceptable a training program's written application for accreditation, but has not conducted an on-site audit as specified in these rules.

(55) "Public agency" means an entity that functions as part of a governmental body or organization at the local, state, or federal level.

(56) “Recognized test kit” means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.

(57) “Refresher renovator of dust sampling technician training course" means a minimum training program accredited by the Authority to update an individual's knowledge and skills so that they can effectively and safely continue to practice in the field.

(58) "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by these rules. The term renovation includes, but is not limited to, the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity such as sanding, scraping, or other such activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface re-plastering, major re-plumbing); and window replacement, weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

(59) "Residential building" means a building containing one or more residential dwellings.

(60) "Residential dwelling" means:

(a) A detached single family dwelling unit, including attached structures such as porches and stoops; or

(b) A single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

(61) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(62) “RRP” means the U.S. EPA Renovation Repair and Painting Rule under 40 CFR § 745 Subpart E-Residential Property Renovation.

(63) “Site Visit’ means a visit by the Authority to audit a training program and includes but is not limited to a review of: records, including course completion forms and attendance records; facilities; instructional curriculum; examination design, administration and security procedures and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; and coverage.

(64) “Soil lead hazard” means bare soil on residential property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 ppm in a play

area or 1,200 ppm in the remainder of the yard based on soil samples.

(65) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless one or more children under age six resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

(66) "These rules" mean OAR 333-070-0075 through 333-070-0160.

(67) "Training hour" means 60 minutes of lead-based paint related training which may include a break of not more than 10 minutes.

(68) “Training instructor” means the individual responsible for organization of the course and oversight of the teaching of all course material, and who teaches at least 70 percent of the course.

(69) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(70) “Visual inspection” means:

(a) For interiors, that a certified renovator determines whether dust, debris, or residue is still present.

(b) For exteriors, that a certified renovator determines whether dust or debris is still present in and below the work area, including windowsills and the ground.

(71) “Wet disposable cleaning cloth” means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

(72) “Wet mopping system” means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

(73) “Work area” means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.918

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0090
Work Practice Standards

All renovations must be performed in accordance with the work practice standards in this rule unless the renovation qualifies for one of the exceptions identified in OAR 333-070-0075(3)(a).

(1) Standards for renovation activities.

(a) Renovations must be performed by certified renovation firms using certified renovators as directed in OAR 333-070-0100.

(b) The responsibilities of certified renovation firms are set forth in OAR 333-070-0105.

(c) The responsibilities of certified renovators are set forth in OAR 333-070-0100.

(2) Occupant protection.

(a) A certified renovation firm shall:

(A) Post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants.

(B) Post signs before beginning the renovation and keep them in place and readable until the renovation and the post-renovation cleaning verification has been completed.

(C) Post signs at each entry to the renovation project work area, at a minimum.

(b) If warning signs have been posted in accordance with paragraph (2)(a)(A) of this rule, additional signs are not required.

(3) Containing the work area. A certified renovation firm shall:

(a) Isolate the work area so that no dust or debris leaves the work area while the renovation is being performed, before beginning the renovation;

(b) Maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed; and

(c) Ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(4) Interior renovations. A certified renovation firm shall:

(a) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(b) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material;

(c) Close windows and doors in the work area;

(d) Cover doors with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(e) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater; and

(f) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(5) Exterior renovations. A certified renovation firm shall:

(a) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(b) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(c) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering; and

(d) In adverse weather conditions (e.g. windy conditions), the certified renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(6) Prohibited and restricted practices. The work practices listed below are prohibited during a renovation:

(a) Open-flame burning or torching of lead-based paint;

(b) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control; and

(c) Operating a heat gun on lead-based paint is prohibited unless the temperature is below 1100 degrees Fahrenheit.

(7) Waste from renovations. A certified renovation firm shall:

(a) Contain waste from a renovation to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered;

(b) Store and contain waste that has been collected from renovation activities in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, at the conclusion of each work day and at the conclusion of the renovation; and

(c) Contain the waste to prevent release of dust and debris when transporting waste from renovation activities.

(8) Cleaning the work area. After a renovation has been completed, the certified renovation firm shall clean the work area until no dust, debris or residue remains.

(9) Interior and exterior renovations. A certified renovation firm shall:

(a) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag;

(b) Remove the protective sheeting;

(c) Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting; and

(d) Dispose of sheeting as waste.

(10) Additional cleaning for interior renovations. A certified renovation firm shall clean all objects and surfaces in the work area and within two feet of the work area in the following manner, cleaning from higher to lower:

(a) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth. Dust bags from HEPA machines must be properly contained and disposed. Changing of vacuum bag must occur in containment and wrapped and taped in plastic for disposal.

(b) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(c) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

(11) Standards for post-renovation cleaning verification of interiors. A certified renovation firm shall have a certified renovator:

(a) Perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(b) After a successful visual inspection:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure:

(i) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(ii) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in subparagraph (A)(i) of this subsection, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(iii) If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer, and wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(i) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraph (b)(B) of this section, then use a new wet disposable cleaning cloth to wipe

that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(ii) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for one hour or until the entire surface within the work area has dried completely, whichever is longer.

(iii) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(c) Remove the warning signs when the work area passes the post-renovation cleaning verification.

(12) Standards for post-renovation cleaning verification of exteriors. A certified renovation firm shall have a certified renovator:

(a) Perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed.

(b) Remove the warning signs when the area passes the visual inspection.

(13) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the certified renovation firm and the person contracting for the renovation or another federal, state or local law or regulation requires:

(a) The certified renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(c) The certified renovation firm is required to re-clean the work area until the dust clearance sample results are below the dust clearance standards in OAR 333-070-0085.

(14) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920 & 431.922

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0095

Information Distribution Requirements for the Pre-Renovation Notification Rule (406).

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, a certified renovation firm performing the renovation shall:

(a) Provide the owner of the unit with the pamphlet; and:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) If the owner does not occupy the dwelling unit, in addition to the requirements in subsection (a) of this section, a certified renovation firm shall provide an adult occupant of the unit with the pamphlet; and:

(A) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or

(B) Certify in writing that a pamphlet has been delivered to the dwelling and that the certified renovation firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. A certification must include:

(i) The address of the unit undergoing renovation;

(ii) The date and method of delivery of the pamphlet;

(iii) The name of the individual delivering the pamphlet;

(iv) The reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available);

(v) The signature of a representative of the certified renovation firm performing the renovation; and

(vi) The date of signature.

(C) If receipt cannot be obtained from the adult occupant, obtain a certificate of mailing at least seven days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the certified renovation firm performing the renovation shall:

(a) Provide the owner with the pamphlet, and:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) Comply with one of the following:

(A) Notify the affected units in writing of the proposed renovation and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notification to each affected unit. The notice shall:

(i) Describe the general nature and locations of the planned renovation activities;

(ii) Include the expected starting and ending dates; and

(iii) Contain a statement of how the occupant can obtain the pamphlet and a copy of the records required by OAR 333-070-0110, at no cost to the occupants; or

(B) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the certified renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by OAR 333-070-0110 or obtain a copy from the renovation firm at no cost to the occupants.

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the certified renovation firm provided written initial notification to each affected unit, the certified renovation firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the certified renovation firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the certified renovation firm performing the renovation shall:

(a) Provide the owner of the building with the pamphlet, and:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) In addition to the requirements in subsection (a) of this section, if the operator of the child-occupied facility is not the owner of the building, provide the operator of the child-occupied facility with the pamphlet, and:

(A) Obtain, from the operator, a written acknowledgment the operator has received the pamphlet;

(B) Certify in writing that a pamphlet has been delivered to the operator and that the certified renovation firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from the operator. Such certification shall comply with the requirements in paragraph (1)(b)(B) of this rule; or

(C) Obtain a certificate of mailing at least seven days prior to the renovation.

(c) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by:

(A) Mailing or hand-delivering the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(B) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by OAR 333-070-0110 or obtain a copy from the renovation firm at no cost to the parents or guardians; and

(C) Prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. A written acknowledgment required by paragraphs (1)(a)(A), (1)(b)(A), (2)(a)(A), (4)(a)(A) and (4)(b)(A) of this rule must:

(a) Include the owner or occupant's name and a statement from the owner or occupant acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be on a separate sheet of paper or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0100

Renovator Certification and Dust Sampling Technician Certification and Responsibilities

(1) Renovator certification allows a certified individual to perform renovations covered by these rules.

(2) Dust sampling technician certification allows the individual to perform dust clearance sampling under OAR 333-070-0090. Optional dust sampling, procedures and determinations are contained in OAR 333-069-0070, paragraph (5)(j)(D); and sections (6) and (11).

(3) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by the Authority, EPA, or an EPA-authorized state or tribal program. The course completion certificate serves as proof of certification.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) To become a certified dust sampling technician, a certified inspector or risk assessor need only to take the dust sampling technician refresher course.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the Authority, EPA or an EPA-authorized program within five years of the date the individual completed the initial course described in OAR 333-0070-0100. If the individual does not complete a refresher course

within this time, the individual must re-take the initial course to become certified again.

(4) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with OAR 333-070-0090 at all renovations to which they are assigned. A certified renovator shall:

(a) Perform all of the tasks described in OAR 333-070-0090 and either perform or direct workers to perform, all of the tasks described in OAR 333-070-0090.

(b) Provide training to workers on the work practices they will be using in performing their assigned tasks.

(c) Be physically present at the work site:

(A) At the time the signs required by OAR 333-070-0090(2) are posted;

(B) While the work area containment required by OAR 333-070-0090(3) is being established; and

(C) While the work area cleaning required by OAR 333-070-0090(8) is performed.

(d) Regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(e) Be available, either on-site or by telephone, at all times that renovations are being conducted.

(f) Use an EPA recognized test kit when requested by the party contracting for renovation services to determine whether components to be affected by the renovation contain lead-based paint. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(g) Have, at the work site, copies of their initial course completion certificate and their most recent refresher course completion certificate.

(h) Prepare the records required by OAR 333-070-0110.

(5) Dust sampling technician responsibilities. When performing optional dust clearance sampling as referenced in OAR 333-069-0070, paragraph (5)(j)(D); and sections (6) and (11) a certified dust sampling technician shall:

(a) Collect dust samples in accordance with 40 CFR ¦ 745.227(e)(8), send the collected samples to a laboratory recognized by the EPA under ¦ 405(b) of the Toxic Substances Control Act, National Lead Laboratory Accreditation Program, and compare the results to the clearance levels in accordance with 40 CFR ¦ 745.227(e)(8)(C)(vii); and

(b) Have, at the work site, copies of their initial course completion certificate and their most recent refresher course completion certificate.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0105
Certified Renovation Firm Certification and Responsibilities

(1) Initial certification.

(a) Firms that perform renovations for compensation shall:

(A) Apply to the Authority for certification to perform renovations or dust sampling by submitting a completed "Application for Certified Renovation Firms," signed by an authorized agent of the firm; and

(B) Pay the correct amount of fees.

(b) An application will be considered complete if it contains all of the information requested on the form and includes the correct amount of fees.

(c) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(d) Within 30 days of declaring an application complete, the Authority shall:

(A) Approve the application if the Authority determines that the environmental compliance history of the applicant, its principals, or its key employees shows a willingness and ability to maintain compliance with environmental statutes or regulations; or

(B) Deny the application if the Authority determines that the environmental compliance history of the applicant, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations.

(e) If the Authority approves the application, the Authority shall issue the applicant a certificate with an expiration date not more than five years from the date the application is approved.

(f) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application.

(2) Recertification.

(a) To maintain its certification, a certified renovation firm shall apply for recertification every five years, by submitting a timely and complete "Application for Certified Renovation Firms" with the required fee to the Authority.

(A) An application for recertification is timely if it is postmarked 60 days or more before the date the certified renovation firm's current certification expires. If the certified renovation firm's application is complete and timely, the certified renovation firm's current certification will remain in effect until its expiration date or until the Authority has made a final decision to approve or deny the recertification application, whichever is later.

(B) If the certified renovation firm submits a complete recertification application less than 60 days before its current certification expires, and the Authority does not approve the application before the expiration date, the certified renovation firm's current certification will expire and the certified renovation firm will not be able to conduct renovations until the Authority approves its recertification application.

(C) If the certified renovation firm fails to obtain recertification before the certified renovation firm's current certification expires, the certified renovation firm may not perform renovations or dust sampling and must apply for initial certification under section (1) of this rule.

(b) A recertification application will be considered complete if it contains all of the information requested on the form and includes the correct amount of fees.

(c) If the Authority receives an incomplete application, it will request a certified renovation firm to submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant.

(d) Within 60 days of declaring an application for recertification complete, the Authority shall:

(A) Approve a certified renovation firm's recertification application if the Authority determines that the environmental compliance history of the certified renovation firm, its principals, or its key employees shows a willingness and ability to maintain compliance with environmental statutes or regulations; or

(B) Deny a certified renovation firm's recertification application if the Authority determines that the environmental compliance history of the certified renovation firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations.

(e) If the Authority approves a certified renovation firm's recertification application, the Authority shall issue the certified renovation firm a certificate with an expiration date not more than five years from the date the application is approved.

(f) If the Authority denies the recertification application it shall send the certified renovation firm a letter giving the reason for denying the application.

(3) Amendment of certification.

(a) A certified renovation firm shall amend its application for certification within 30 days of the date a change occurs to information included in the certified renovation firm's most recent application.

(b) If the certified renovation firm fails to amend its certification within 30 days of the date the change occurs, the certified renovation firm may not perform renovations or dust sampling until its certification is amended.

(c) To amend a certification, a certified renovation firm must submit a completed "Application for Certified Renovation Firms," signed by an authorized agent of the certified renovation firm, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(d) If additional information is needed to process the amendment, the Authority will request the certified renovation firm to submit the necessary information. The certified renovation firm's certification is not amended until the certified renovation firm submits all the required information and the Authority has approved the amendment.

(e) Amending a certification does not affect the certification expiration date.

(4) The Authority will not refund the application fees if a certified renovation firm's application for initial or recertification is denied.

(5) A certified renovation firm that is denied initial certification or recertification shall have the right to a contested case hearing under ORS chapter 183.

(6) A certified renovation firm that is denied initial or recertification may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(7) Certified renovation firm responsibilities. Certified renovation firms performing renovations shall ensure that:

(a) All individuals performing renovation activities on behalf of the certified renovation firm are either certified renovators or have been trained by a certified renovator as described in OAR 333-070-0100;

(b) A certified renovator is assigned to each renovation performed by the certified renovation firm and discharges all of the certified renovator responsibilities identified in OAR 333-070-0100;

(c) All renovations performed by the certified renovation firm are performed in accordance with the work practice standards as described in OAR 333-070-0090;

(d) The pre-renovation education requirements of OAR 333-070-0095 have been performed;

(e) The recordkeeping requirements of OAR 333-070-0110 are met; and

(f) The certified renovator is in compliance with the responsibilities as identified in OAR 333-070-0100 and 333-070-0090.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0110

Certified Renovation Firm Recordkeeping and Reporting Requirements

(1) A certified renovation firm performing renovations must retain and, if requested, make available to the Authority all records required by these rules necessary to demonstrate compliance with these rules for a period of three years following completion of the renovation.

The three–year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to this rule shall include (where applicable):

(a) Records or reports certifying that a determination had been made by an inspector or risk assessor that lead-based paint is not present on the components affected by the renovation. These records or reports include:

(A) Reports prepared by a certified inspector or certified risk assessor (certified by the Authority, EPA, or an EPA-authorized state or tribal program);

(B) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(b) Signed and dated acknowledgments of receipts;

(c) Certifications of attempted delivery as described;

(d) Certificates of mailing;

(e) Records of notification activities performed regarding common area renovations and renovations in child-occupied facilities;

(f) Documentation of compliance with OAR chapter 333, division 70, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks as described in this rule and that the certified renovator performed the post-renovation cleaning verification. If the certified renovation firm was unable to comply with all of the requirements of this rule due to an emergency, the certified renovation firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(A) Training was provided to workers (topics must be identified for each worker);

(B) Warning signs were posted at the entrances to the work area;

(C) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified;

(D) The work area was contained by:

(i) Removing or covering all objects in the work area (interiors);

(ii) Closing and covering all HVAC ducts in the work area (interiors);

(iii) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(iv) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(v) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(vi) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors);

(vii) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors);

(viii) Waste was contained on-site and while being transported off-site.

(E) The work area was properly cleaned after the renovation by:

(i) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal;

(ii) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors);

(iii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(a) The owner of the building; and

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(4) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(5) The information required to be provided by OAR 333-070-0110(2) may be provided by completing the sample form titled “Sample Renovation Recordkeeping Checklist” or a similar form containing the test kit information required by OAR 333-070-0075(3)(a)(B) and the training and work practice compliance information required by OAR 333-070-0090 and 333-070-0100.

(6) If dust clearance sampling is performed in lieu of cleaning verification as permitted by OAR 333-070-0090(13), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(7) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0115

Inspections and Enforcement

(1) The Authority may:

(a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property

to inspect, investigate, evaluate or conduct tests or take specimens or samples for testing, as necessary to determine compliance with ORS 431.920;

(b) Issue subpoenas to determine compliance with ORS 431.920;

(c) Suspend, revoke or modify a certification to perform lead-based paint activities or renovation if the holder of the certification fails to comply with state or federal statutes or regulations related to lead-based paint;

(d) Suspend, revoke or modify a certified renovator's certification if the renovator fails to comply with state or federal statutes or regulations related to lead-based paint; and

(e) Issue civil penalties not to exceed $5,000 per violation for a violation of ORS 431.920, or any of these rules, including failure or refusal to permit entry or inspection in accordance with this rule.

(A) In issuing civil penalties the Authority shall consider whether:

(i) The Authority made repeated attempts to obtain compliance;

(ii) The certified firm or individual has a history of noncompliance with environmental statutes or regulations;

(iii) The violation poses a serious risk to the public's health;

(iv) The certified firm or individual gained financially from the noncompliance; and

(v) There are mitigating factors, such as a certified firm's or individual's cooperation with an investigation or actions to come into compliance.

(B) The Authority shall document its consideration of the factors in paragraph (1)(e)(A) of this rule.

(C) Each day a violation continues is an additional violation.

(D) A civil penalty imposed under this rule shall comply with ORS 183.745.

(2) An individual who is issued a notice of suspension, revocation or modification shall have the right to a contested case hearing under ORS chapter 183.

(3) The Authority shall maintain a publicly available list of individuals whose certification has been suspended, revoked, modified, or reinstated.

(4) Unless a final order specifies otherwise:

(a) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) prior to certification being reinstated.

(b) An individual whose certification has been revoked shall take an initial renovator or dust sampling technician course in order to become certified again.

(c) A certified renovation firm whose certification has been revoked may reapply for certification after one year from the date of revocation.

(d) If the certified renovation firm's certification has been suspended and the suspension ends less than five years after the certified renovation firm was initially certified or re-certified, the certified renovation firm does not need to do anything to re-activate its certification once the period of suspension has expired.

Stat. Auth.: ORS 183.310-183.540, 183.745, 431.920, 431.922, 431.994

Stats. Implemented: ORS 183.310-183.540, 183.745, 431.920, 431.922, 431.994

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0120
Certification Fees and Refunds

(1) Fees for the certification of certified renovation firms.

(a) Certification: $250

(b) Recertification: $250

(2) Fee Waivers. A renovation firm that has applied to EPA for certification or is certified by the EPA may request a waiver of the certification fee if the firm:

(a) Is required to be certified by the Authority; and

(b) Provides documentation that the date of application to EPA for certification or the date of certification is prior to May 3, 2010.

(3) Refund policy.

(a) An incomplete application shall be returned with the application fee minus a $50 administration fee.

(b) If an applicant requests that a complete application be withdrawn within 30 days of its receipt by the Authority, the Authority shall refund the applicant $200 minus a $50 administration fee.

(c) No fees will be refunded if the Authority has begun to process an application.

(4) Lost certificate. A $15 fee will be charged for the replacement of a certified renovation firm certificate.

(5) Certificate replacement. Certified renovation firms seeking certificate replacement must submit the replacement application form and a payment of $15 in accordance with the instructions provided with the application package.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0125
Training Program Accreditation Required

(1) A training program may seek accreditation to offer courses in either of the following disciplines: renovator or dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Application process. The following are procedures a training program must follow to receive Authority accreditation to offer renovator courses or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application with the appropriate fee to the Authority containing the following information:

(A) The training program's name, address, and telephone number;

(B) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements; and

(C) A statement signed by the training program manager certifying that the training program meets the requirements established in OAR 333-070-0130 and 333-070-0135. If a training program uses EPA model training materials, or training materials approved by an EPA-authorized program, the training program manager shall include a statement certifying that as well.

(b) If a training program does not use EPA model training materials or training materials approved by an EPA-authorized program, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they have compared the course to the English language version and found the translation to be accurate.

(c) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in section (4) of OAR 333-070-0135.

(d) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(e) If a training program meets the requirements in OAR 333-070-0130 and 333-070-0135, then the Authority will approve the application for accreditation no more than 60 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant.

(f) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application. An individual whose application is denied shall have the right to a contested case hearing under ORS chapter 183.

(g) If the applicant's application is denied, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of OAR 333-070-0130 and 333-070-0135.

(4) A training program must not provide, offer, or claim to provide renovator or dust sampling technician courses without applying for and receiving accreditation from the Authority.

(5) Refresher courses only.

(a) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the Authority containing the following information:

(A) The refresher training program's name, address, and telephone number;

(B) A list of courses for which it is applying for accreditation;

(C) A statement signed by the training program manager certifying that:

(i) The refresher training program meets the minimum requirements established by section (18) of OAR 333-070-0135; and

(ii) The training program uses EPA-developed model training materials, or training materials approved by a state or Indian tribe that has been authorized by the EPA under 40 CFR § 745.324 to develop its refresher training course materials, if applicable.

(D) If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized state or Indian tribe:

(i) A copy of the student and instructor manuals to be used for each course; and

(ii) A copy of the course agenda for each course.

(E) A description of the facilities and equipment to be used for lecture and hands-on training;

(F) A copy of the course test blueprint for each course;

(G) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(H) A copy of the quality control plan as described in section (4) of OAR 333-070-0135.

(b) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(c) If a refresher training program meets the requirements in section (5) of this rule, then the Authority will approve the application for accreditation no more than 60 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant.

(d) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application. An applicant who receives a denial shall have the right to a contested case hearing under ORS chapter 183.

(6) Accreditation shall be valid for four years and shall not be transferrable.

(7) The Authority may accredit a training program that has been accredited by the EPA or an EPA-authorized state or tribal program upon receiving evidence of that accreditation and that the training program has:

(a) Completed any additional requirements established by the Authority; and

(b) The training manager has read and understands the accreditation standards as described in these rules.

(8) Accreditation based on a valid accreditation issued by EPA or an EPA-authorized state or tribal program shall be

issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal accreditation.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10

333-070-0130

Minimum Personnel Requirements for Training Program Accreditation

For a training program to obtain accreditation from the Authority to offer renovator courses or dust sampling technician courses, the program shall:

(1) Employ a training manager who has:

(a) At least two years of experience, education, or training in teaching workers or adults; or

(b) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(c) Two years of experience in managing a training program specializing in environmental hazards; and

(d) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) Designate a qualified principal instructor for each course who has:

(a) Demonstrated experience, education, or training in teaching workers or adults;

(b) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized Lead-Based Paint Activities or Lead Renovation, Repair and Painting training program; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) Have a principal instructor responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) Have documents that serve as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in sections (1) and (2) of this rule. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in OAR 333-070-0150. Those documents include the following:

(a) Official academic transcripts or diploma as evidence of meeting the education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(c) Certificates from lead-specific training courses, as evidence of meeting the training requirements.

(5) Ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0135

Minimum Curriculum Requirements for Training Program Accreditation

(1) In order to become accredited in the following disciplines a training program shall provide training courses that meet the following training hour requirements:

(a) The renovator course must provide a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(b) The dust sampling technician course shall provide a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Hands-on training activities must cover dust sampling methodologies.

(2) A student shall be required to pass a course test or a proficiency test and a hands-on-skill assessment for each course offered.

(a) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in sections (16), (17) and (18) of this rule.

(b) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(c) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(3) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(a) The name, a unique identification number, and address of the individual;

(b) The name of the particular course that the individual completed;

(c) Dates of course completion/test passage; and

(d) For renovator and dust sampling technician course completion certificates, a photograph of the individual.

(4) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of principal instructor competency.

(5) Courses offered by the training program must teach the work practice standards contained in OAR 333-070-0090, in such a manner that trainees are provided with the knowledge needed to perform the renovations they will be responsible for conducting.

(6) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this rule.

(7) The Authority may audit the training program to verify the contents of the application for accreditation as described in OAR 333-070-0130 and OAR 333-070-0135.

(8) The training manager shall provide the Authority with notification of all renovator or dust sampling technician courses offered. The original notification must be received by the Authority at least seven business days prior to the start date of any renovator or dust sampling technician course.

(9) The training manager shall provide the Authority updated notification when renovator or dust sampling technician courses will begin on a date other than the start date specified in the notification, as follows:

(a) For renovator or dust sampling technician courses beginning prior to the start date provided to the Authority, an updated notification must be received by the Authority at least seven business days before the new start date.

(b) For renovator or dust sampling technician courses beginning after the start date provided to the Authority, an updated notification must be received by the Authority at least two business days before the start date.

(10) The training manager shall update the Authority of any change in location of renovator or dust sampling technician courses at least seven business days prior to the start date.

(11) The training manager shall update the Authority regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the Authority at least two business days prior to the start date.

(12) Each notification required by sections (8) through (11) of this rule, including updates shall include the following:

(a) Notification type (original, update, cancellation);

(b) Training program name, the Authority accreditation number, address, and telephone number;

(c) Course discipline, type (initial/ refresher), and the language in which instruction will be given;

(d) Date(s) and time(s) of training;

(e) Training location(s), telephone number, and address;

(f) Principal instructor's name; and

(g) Training manager's name and signature.

(13) Renovator or dust sampling training courses may not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(14) The training manager shall provide the Authority notification after the completion of any renovator or dust sampling technician course. This notice must be received by the Authority no later than 10 business days following course completion. The notification shall include the following:

(a) Training program name, accreditation number, address, and telephone number;

(b) Course discipline and type (initial/refresher);

(c) Date(s) of training;

(d) The following information for each student who took the course:

(A) Name;

(B) Address;

(C) Date of birth;

(D) Course completion certificate number;

(E) Course test score; and

(F) A digital photograph of the student;

(e) Training manager's name and signature.

(15) Notifications required by this rule can be accomplished by using an Authority approved form or can be provided in writing with the information.

(a) All notifications shall be in writing and submitted to the Authority:

(A) By mail through the U.S. Postal Service or other commercial delivery service;

(B) By facsimile;

(C) In person; or

(D) Electronically via electronic mail or through the Authority’s web-based system if one is established.

(b) A training program providing notifications through the U.S. Postal Service should allow three additional business days for delivery in order to ensure that the Authority receives the notification by the required date.

(c) Instructions for notifications and sample forms can be obtained from the Authority’s website at www.healthoregon.org/lead.

(16) Renovator Training Course. A renovator training course shall include the following subjects:

(a) Role and responsibility of a renovator;

(b) Background information on lead and its adverse health effects;

(c) Background information on, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;

(d) Procedures for using EPA recognized test kits to determine whether paint is lead-based paint;

(e) Renovation methods to minimize the creation of dust and lead-based paint hazards;

(f) Interior and exterior containment and cleanup methods;

(g) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing;

(h) Waste handling and disposal;

(i) Providing on-the-job training to other workers; and

(j) Record preparation.

(17) Dust sampling technician. A dust sampling technician course shall include the following subjects:

(a) Role and responsibility of a dust sampling technician;

(b) Background information on lead and its adverse health effects;

(c) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;

(d) Dust sampling methodologies;

(e) Clearance standards and testing; and

(f) Report preparation.

(18) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in either of the following disciplines: renovator and dust sampling technician. To obtain the Authority accreditation to offer refresher training, a training program shall meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under sections (16) and (17) of this rule, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(A) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(B) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(C) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(D) Refresher courses for renovator and dust sampling technician must last a minimum of four training hours.

(E) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

(19) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of a corresponding training course as described in OAR 333-070-0135(1).

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0140

Re-Accreditation of Training Programs

(1) Unless reaccredited, a training program's accreditation (including refresher training accreditation) shall expire four years after the date of issuance. If a training program meets the requirements of this rule, the training program shall be reaccredited.

(2) A training program seeking reaccreditation shall submit an application to the Authority no later than 60 days before its accreditation expires. If a training program does not submit its application for reaccreditation by that date, the Authority cannot guarantee that the program will be reaccredited before the end of the accreditation period.

(3) The training program's application for reaccreditation shall contain:

(a) The training program's name, address, and telephone number.

(b) A list of courses for which it is applying for reaccreditation.

(c) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the student's ability to learn.

(d) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in OAR 333-070-0130 and 333-070-0135 as applicable; and

(B) The recordkeeping and reporting requirements of OAR 333-070-0150 shall be followed.

(e) A payment of appropriate fees in accordance with these rules.

(4) The Authority may audit the training program to verify the contents of the application for reaccreditation as described in OAR 333-070-0140.

(5) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(6) If a training program meets the requirements in section (2) of this rule, then the Authority will approve the application for reaccreditation no more than 60 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant.

(7) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application. An applicant whose application is denied shall have the right to a contested case hearing under ORS chapter 183.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0145

Suspending, Revoking, or Denying a Training Program's Accreditation; Civil Penalties

(1) The Authority may:

(a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property to inspect or investigate as necessary to determine compliance with ORS 431.920;

(b) Issue subpoenas to determine compliance with ORS 431.920;

(c) Suspend, revoke, or deny an accreditation if the holder of the accreditation fails to comply with state or federal statutes or regulations related to lead-based paint; and

(d) Issue civil penalties not to exceed $5,000 per violation for a violation of ORS 431.920, or any of these rules, including failure or refusal to permit entry or inspection in accordance with this rule.

(A) In issuing civil penalties the Authority shall consider whether:

(i) The Authority made repeated attempts to obtain compliance;

(ii) The training program has a history of noncompliance with environmental statutes or regulations;

(iii) The violation poses a serious risk to the public's health;

(iv) The training program gained financially from the noncompliance; and

(v) There are mitigating factors, such as the training program's cooperation with an investigation or actions to come into compliance.

(B) The Authority shall document its consideration of the factors in paragraph (1)(d)(A) of this rule.

(C) Each day a violation continues is an additional violation.

(D) A civil penalty imposed under this rule shall comply with ORS 183.745.

(2) An accredited training program that is issued a notice of suspension, revocation or denial shall have the right to a contested case hearing under ORS chapter 183.

(3) The Authority shall maintain a publicly available list of training programs whose accreditation has been suspended, revoked, denied, or reinstated.

(4) Unless a final order specifies otherwise:

(a) An accredited training program whose accreditation has been revoked may reapply for reaccreditation after one year from the date of revocation.

(b) If the training program's accreditation has been suspended and the suspension ends less than four years after the training program was initially accredited or reaccredited, the training program does not need to do anything to reactivate its accreditation once the period of suspension has expired.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

333-070-0150

Training Program Record Keeping Requirements

An accredited training program shall:

(1) Maintain, and make available to the Authority upon request, the following records:

(a) All documents that demonstrate the qualifications of the training manager and principal instructors.

(b) Current curriculum/course materials and documents reflecting any changes made to these materials.

(c) The course test blueprint.

(d) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used;

(D) The pass/fail rate;

(E) The quality control plan as described in section (4) of OAR 333-070-0135; and

(F) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

(e) Any other material not listed above in this section that was submitted to the Authority as part of the program's application for accreditation.

(2) Retain the records required at the address specified on the training program accreditation application or as amended for a minimum of three years and six months.

(3) If a training program modifies its application by changing its address, it shall also notify the Authority in writing within 30 days of its intent to transfer records to the new address.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10

333-070-0160

Accreditation Fees

The following fees are established:

(1) Course Fee Schedule:

(a) Course — Accreditation Fee — Reaccreditation fee:

(b) Renovator Initial — $560 — $340:

(c) Dust Sampling Technician Initial — $560 — $340:

(d) Renovator Refresher — $400 — $310:

(e) Dust Sampling Technician Refresher — $400 — $310

(2) Student Fee Schedule:

(a) Course — Fee:

(b) Renovator Initial — $17:

(c) Renovator Refresher — $17:

(d) Dust Sampling Technician Initial — $17:

(e) Dust Sampling Refresher — $17.

(f) The student fee is to be paid by the training program at the completion of each training course. The $17 fee is per student that successfully completes the course. The fee shall be paid by the training program to the Authority within 10 days after completion of the training course.

(3) Fee Waivers. A training program, that has applied for accreditation by the EPA to provide Renovator or Dust Sampling Technician training may request a waiver of the accreditation fees if the training program provides documentation that the date of application for accreditation by EPA or date of accreditation is prior to May 3, 2010.

(4) Firms with current accreditation by EPA or an EPA-authorized state or tribal program shall pay a prorated fee of the appropriate fee listed above, divided by 48, times the number of months remaining in the current accreditation, beginning with the month following application to the Authority.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11