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<b>812-010-0340</b>	Subpoenas; Evidence
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**DIVISION 1**

**ADMINISTRATION**

**812-001-0000**

**Notice of Proposed Rule**

Before adopting, amending, or repealing any rule, the Construction Contractors Board shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin at least 21 days before the effective date of the rule.

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

(3) By mailing 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 a copy of the notice to legislators as provided by ORS 183.335(14).

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.280

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

Hist.: 1BB 4, f. & ef. 12-29-75; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-001-0001**

**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 & ORS 701.235

Stats. Implemented: ORS 183.325 & ORS 701.235

Hist.: BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89

### 812-001-0003

#### Model Rules

The Construction Contractors Board adopts the Attorney General's Model Rules of Procedure, revised September 15, 1997, with the following exceptions: OAR 137-003-0015, 137-005-0050, 137-005-0060, and 137-005-0070.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure are not printed in OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 701

Stats. Implemented: ORS 183.341 & ORS 279

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 1-1986, f. & ef. 5-30-86; BB 3-1988, f. 11-23-88, cert. ef. 12-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 3-1992(Temp), f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1995, f. 6-6-95 cert. ef. 6-15-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

### 812-001-0007

#### Disposal of Large Objects Submitted as Exhibits

Large objects submitted with a claim 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, ORS 701.235 & ORS 701.145

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

### 812-001-0010

#### Response Time to Notices

Time for response to all notices delivered pursuant to ORS 701.080 shall run from the date of mailing.

Stat. Auth.: ORS 183.415 & ORS 701.080

Stats. Implemented: ORS 183.415 & ORS 701.080

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1991, f. & cert. ef. 2-4-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

### 812-001-0015

#### Information Requests

(1) The agency will provide the following information in response to telephone requests for registration information relating to a specific entity:

- (a) Whether or not the entity is or has ever been registered.
- (b) The registration number(s).
- (c) The business names used by the entity of record with the agency.
- (d) Type of business organization (individual proprietorship, partnership, limited liability partnership, limited liability company, or corporation).
- (e) Personal names of owners, partners, members or corporate officers.
- (f) Last known address.
- (g) Category of registration (General Contractor — All-Structures, Specialty Contractor — All-Structures, General Contractor--Residential-Only, Specialty Contractor--Residential-Only, Limited Contractor, and Consultant).
- (h) Employer status (exempt or non-exempt).
- (i) Expiration date or date upon which the registration became inactive and the reason it became inactive.
- (j) The date the entity first became registered.

(k) The number and type of open claims and claims closed during the past three years where the agency issued Final Orders requiring the contractor to pay the claimant. This disclosure will include a brief explanation of the claims process if the caller is not familiar with the claims process.

(2) If more information is required than that listed in section (1) of this rule, the request for information should be made in writing.

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

- (a) Registration number(s).
- (b) Name of registered entity and any assumed business names registered with the agency.
- (c) Type of business (individual proprietorship, partnership, limited liability partnership, limited liability company, or corporation).

(d) Category of registration (General Contractor--All-Structures, Specialty Contractor--All-Structures, General Contractor--Residential-Only, Specialty Contractor--Residential-Only, Limited Contractor, and Consultant).

(e) Employer status (exempt or non-exempt).

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

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

(4) In response to telephone requests from consumers for claims information relating to a specific registrant, the agency will provide the following information by mail:

- (a) For active registrants:
  - (A) Number of open claims on the computer record.
  - (B) Type of each such claim filed.
  - (C) Date upon which each claim was filed.
  - (D) Alleged amount of claim or amount awarded.
- (b) For inactive registrants:
  - (A) Number of claims on the computer record.
  - (B) The status of each claim filed.
  - (C) Type of each claim filed.
  - (D) Date upon which each claim was filed.
  - (E) Alleged amount of claim or amount awarded.
- (5) If more information is required than that listed in section

(4) of this rule, the request for information should be specified in writing.

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

- (a) \$20 for each certification that an entity has or has not been registered with the Construction Contractors Board.
- (b) \$20 for certified copies of documents.
- (c) \$5 for the first 20 copies made and 25 cents per page thereafter.
- (d) \$20 for duplicate tape recordings of agency hearings, Board meetings and Appeal Committee meetings.
- (e) Charge as determined by preparation time and production cost for mailing labels of registrants.
- (f) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time.

(7) 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) When an applicant withdraws their application for registration or fails to complete the registration process, the agency may retain a processing fee of \$40. When an applicant withdraws their application for renewal or fails to complete a renewal, the agency may retain a processing fee of \$40.

(c) 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

Stats. Implemented: ORS 183.310, ORS 183.500, ORS 192.430, ORS 701.235 & ORS 701.250

Hist.: 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1992, f. & cert.

ef. 4-15-92; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 1-1996, f. 4-26-96, cert. ef. 5-1-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1998, f. & cert. ef. 4-30-98; Administrative correction 7-28-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99

## 812-001-0020

### Information Notice to Owners

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised March 9, 1999. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" approved March 9, 1999.

Stat. Auth.: ORS 87.093 & ORS 701.055

Stats. Implemented: ORS 87.093 & ORS 701.055

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99

## 812-001-0025

### 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, ORS 701.235 & ORS 701.280

Stats. Implemented: ORS 192.630

Hist.: 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97

## 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

Hist.: 1BB 3-1984, f. & ef. 5-11-84; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

## 812-001-0040

### Confidentiality and Inadmissibility of Mediation Communications

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

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

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

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

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

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

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

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

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

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

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a claim or arbitration filed under ORS 701.140 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." [Form not included. See ED. NOTE.]

(9) Exceptions to Confidentiality and Inadmissibility.

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

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

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

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

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

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

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation commu-

nication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

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

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

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

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

(A) A request for mediation; or

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

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

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

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

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

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

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

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

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

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

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent that 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 30.402 or state or federal law requires the terms to be confidential.

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

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

Stat. Auth.: ORS 36.224, ORS 670.310 & ORS 701.235

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

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

#### 812-001-0050

#### Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiations of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential

and may be disclosed or introduced into evidence in a subsequent proceeding.

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

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

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

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

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

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

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

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

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

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made *confidential*.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the

rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 36.230(4)  
Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

## DIVISION 2

### DEFINITIONS: AS USED IN THESE RULES AND ORS 701

#### 812-002-0000

##### Acting as a Primary Contractor

“Acting as a primary contractor” occurs when the owner of a structure engages two (2) or more contractors to perform work.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.140 & ORS 701.145  
Hist.: 1 BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0005; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 1-1984 (Temp), f. & ef. 1-24-84; 1BB 2-1984, f. & ef. 4-11-84; 1BB 3-1984, f. & ef. 5-11-84; 1BB 5-1984(Temp), f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; 1BB 4-1985, f. & ef. 12-18-85; 1BB 2-1986, f. & ef. 8-28-86; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 1-1989, f. 4-12-89, cert. ef. 4-14-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1989, f. 12-29-89, cert. ef. 1-1-90; CCB 1-1990(Temp), f. & cert. ef. 3-9-90; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 1-1991, f. & cert. ef. 2-4-91; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 6-1992, f. & cert. ef. 10-19-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 2-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 1-1995, f. & cert. ef. 2-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 1-1996, f. 4-26-96, cert. ef. 5-1-96; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 5-1997(Temp), f. & cert. ef. 11-7-97; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 2-1998(Temp), f. & cert. ef. 2-26-98 thru 6-30-98; CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0020

##### Agency

“Agency” means the administrative agency including the staff of the Construction Contractors Board.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.515  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0040

##### Appurtenance

“Appurtenance” means any accessory improvement to real estate associated with a structure.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 656.027, ORS 701.005, ORS 701.055 & ORS 701.140  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0060

##### Bid

“Bid” as used in ORS 701.055(1) does not include a prospectus for an art project.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 279.073 & ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0080

##### Board

“Board” means the nine-member appointed Construction Contractors Board.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 87.058, ORS 87.093 & ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0100

##### Building Trades or Crafts

“Building trades or crafts,” as used in ORS 701.005(3) 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 & ORS 701.235  
Stats. Implemented: ORS 701.005 & ORS 701.013  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0120

##### Casual, Minor or Inconsequential

“Casual, minor or inconsequential” as used in ORS 701.010(4) means work not of a structural nature which cannot affect the health or safety of the owner or occupant of the structure, the value of which is less than \$500 and does not include work done as a subcontractor to a registrant.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 656.027 & ORS 701.010  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0140

##### Claims

“Claims” as used in ORS 701 are:

(1) “Construction lien claim” is a claim filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien. A construction lien claim may not include excess interest paid as the result of the owner’s inability to refinance at a lower interest rate due to the existence of the lien.

(2) “Employee claim” is a claim for unpaid wages and/or benefits filed by an employee of a registrant or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a registrant for work done by the employee relating to the registrant’s operation as a contractor under ORS chapter 701.

(3) “Material claim” is a claim filed by a supplier who has not been paid for materials sold to a registrant 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 registrant to be used in the performance of the work of a contractor in connection with such a structure. A claim may not be made for non-payment for tools sold to a registrant, for equipment sold to a registrant and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

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

(5) "Primary contractor" claim is a claim by a registered primary contractor against a registered subcontractor.

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 87.058, ORS 87.093 & ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 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(7).

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.280  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0180

##### Contractor Became Aware of the Requirement

"Contractor became aware of the requirement" (to register) as used in ORS 701.065 includes but is not limited to the date the contractor received a letter or a proposed order from the agency indicating that the contractor was performing the work of a contractor and must register with the Construction Contractors Board.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 701.065  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0190

##### Court or Other Entity

"Court or other entity" means a court or other entity authorized by law or the parties to a dispute to effect a resolution to the dispute.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235  
Stats. Implemented: ORS 183.415, ORS 813.460 & ORS 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-002-0200

##### Date the Contractor Becomes Aware of a Lapse in Registration

"Date the contractor becomes aware of a lapse in registration" includes but is not limited to the date a contractor receives a notice from the Construction Contractors Board that his/her registration has been terminated.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.065 & ORS 701.115  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0220

##### Date of Indebtedness

"Date of indebtedness," regarding material claims, is the date of delivery or the date the purchaser takes possession of the materials. If the delivery date is unknown, the date of the invoice applies except that in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.125  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0240

##### Developer

"Developer" is a person who owns property and contracts with a primary contractor to construct, improve or alter one or more structures on the land for the purpose of selling structures.

Stat. Auth.: ORS 670.310, ORS 701.235  
Stats. Implemented: ORS 701.005 & ORS 701.055  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0260

##### Dishonest or Fraudulent Conduct

"Dishonest or fraudulent conduct" 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 registrant as a contractor, 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 registrant's operations as a contractor when the applicant or registrant 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 an application for registration 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 section 812-003-0025(3); 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 279.348 to 279.365; or

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.135  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 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(9).

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.005, ORS 701.010, ORS 701.055 & ORS 701.065  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0300

##### Gardener

"Gardener" as used in ORS 701.005(5)(d) 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 & ORS 701.235  
Stats. Implemented: ORS 701.005  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0320

##### General Contractor

"General contractor," as used in ORS 701.005, means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part whenever the sum of all contracts, on any single property, including materials and labor, exceeds \$2,500.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0340

**Hired Help**

“Help hired,” as used in ORS 701.075(1)(g), includes trading labor, working off debts, and trading labor for goods and/or services.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.075  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0360**

**Inspect**

“Inspect,” as used in ORS 701.005(2), 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 & ORS 701.235  
Stats. Implemented: ORS 701.005  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0380**

**Insurance**

“Insurance” means that the contractor shall have in effect public liability and property damage insurance covering the work of the contractor that is subject to the provisions of this chapter as used in ORS 701.105, and that the contractor will have no policy exclusions that exclude the type of damage that the contractor might cause as a result of the construction work the contractor performs. For example, a contractor who performs excavation work cannot have an insurance policy that excludes explosion, collapse or underground property damage hazards, and a contractor who performs roofing work cannot have an insurance policy that excludes water damage.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 670.600, ORS 701.055, ORS 701.105 & ORS 701.135  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0400**

**Labor**

“Labor” as used in ORS 701.140(4) means work subject to ORS chapter 701 performed as an employee of a registrant as well as work subject to ORS chapter 701 provided through a contractual relationship between a primary contractor and a subcontractor.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.140 & ORS 701.150  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0420**

**Lapse in Registration**

“Lapse in registration” as used in ORS 701.065(2)(b)(A) commences at the time that a registration expires or is terminated for any reason and ends when the registration is renewed or reinstated by the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.065, ORS 701.115 & ORS 701.225  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0440**

**Last-Known Address of Record**

(1) “Last-known address of record” for a contractor, as used in ORS 701.080, means the most recent of:

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

(b) The forwarding address for the contractor, 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 & ORS 701.235  
Stats. Implemented: ORS 701.080  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

**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 claimant what was agreed to be provided under the terms of the contract minus any amount due and unpaid the registrant; or

(2) The dollar amount paid to the registrant less the reasonable value of any work properly performed by the registrant.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.085 & ORS 701.140  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**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 in addition to ORS chapter 701 (i.e. contract law, corporate law, etc.);

(2) In the interest of fairness and equity, requires rulings against persons or entities outside the jurisdiction of the agency; and/or

(3) Is outside the expertise of the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0500**

**Nurseryman**

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 571.005 & ORS 701.005  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**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 & ORS 701.235  
Stats. Implemented: ORS 701.010 & ORS 701.145  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0540**

**Owner of a Structure**

“Owner of a structure” means a person not required to be registered under ORS chapter 701 who has a structure built by or who purchases a structure from a contractor or developer or who owns, leases, or rents a structure on which alterations or repairs are being or have been made. Owner of a structure may also include the following agents of such persons as defined above:

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

(2) 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 & ORS 701.235  
Stats. Implemented: ORS 701.010 & ORS 701.225  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0560**

**Owner, Shareholder or Officer of the Business**

“Owner, shareholder or officer of the business” as used in ORS 701.102 includes any individual who has management authority, a controlling financial interest, or business decision-making responsibility for a business.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.102  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0580****Person**

"Person" means a self-employed individual, a partnership, limited liability partnership, a corporation, limited liability company, or other entity.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 87.005, ORS 87.093, ORS 445.080, ORS 656.021, ORS 656.029 & ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98

**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 registered 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 & ORS 701.235  
Stats. Implemented: ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-002-0620****Registrant or Applicant**

"Registrant or applicant" shall include the owner, individual partners (including joint ventures), individual members, or individual corporate officers who make application to register or subsequently operate the individual proprietorship, partnership (joint venture), limited liability partnership, limited liability company, or corporation as well as the individual proprietorship, partnership (joint venture), limited liability partnership, limited liability company, and corporation.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98

**812-002-0640****Renewal**

"Renewal" (of registration) as used in ORS 701.065 and ORS 701.115 includes but is not limited to the act of submitting a replacement bond, a bond rider, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 670.410, ORS 701.055, ORS 701.065, ORS 701.075, ORS 701.105, ORS 701.115, ORS 701.125 & ORS 701.130  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98

**812-002-0660****Residential Work**

"Residential work" includes:

- (1) Work involving modular and mobile homes, which come within the jurisdiction of the Board as structures at the time they are placed on support blocking or permanent foundations in the place they will be used.
- (2) Work involving residential apartments of four units or less, homes, floating homes, condominiums, or appurtenances, other structures, or improvements on residential property.
- (3) Any building with a ground area of 4,000 square feet or less and not more than 20 feet in height.
- (4) Tree pruning, tree and stump removal, and tree and limb guying regardless of whether the property is residential or non-residential.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**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 & ORS 701.235  
Stats. Implemented: ORS 701.005  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**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(2).

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 87.058, ORS 279.073, ORS 646.605 & ORS 701  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**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 & ORS 701.235  
Stats. Implemented: ORS 279.400, ORS 701.055, ORS 701.061, ORS 701.140, ORS 701.145, ORS 701.410, ORS 701.420, ORS 701.430, ORS 701.435, ORS 701.742 & ORS 742.061  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0740****Substantial Completion**

"Substantial completion" may occur at the time of but not be limited to 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, most or all of payment is made.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

**812-002-0760****Work as a Contractor Includes**

"Work as a contractor," as used in ORS 701.055(1) includes, but is not limited to:

- (1) Except as modified by section (9) 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) Chimney or flue cleaning.
- (3) Concrete, asphalt and other testing that involves structural modifications, and soils testing associated with planned or existing structures.
- (4) Construction management.
- (5) Excavation, backfill, grading, and trenching for the structure or its appurtenances or to accomplish proper drainage and not for landscaping.
- (6) 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.
- (7) 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 contractor 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.
- (8) Labor only, regardless of whether compensated by the hour or by the job.

(9) 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.

(10) Preparation, detailing, and/or cleaning of new structures prior to occupancy.

(11) Sandblasting, pressure washing, or chemical treatment.

(12) Scaffolding, shoring, and other construction site specialty work.

(13) Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 448.279, ORS 448.115, ORS 671.510 - ORS 671.710 & ORS 701.055

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0780

##### Work as a Contractor Does Not Include

“Work as a contractor,” as used in ORS 701.055, 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 registered contractors to perform the improvement of lots.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 634.116, ORS 701.010, ORS 701.055 & ORS 701.085

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0800

##### Work Period

“Work Period” as used in OAR 812-003-0020, OAR 812-004-0320, and OAR 812-004-0600 means the time period from the date a contractor accepts a payment, offers a written proposal or enters into a contract, 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 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 813.460 & ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-002-0820

##### Work Regulated under ORS Chapter 446

“Work regulated under ORS chapter 446,” as used in ORS 701.005(7), means the installation of manufactured dwellings and their accessory buildings, as defined in ORS 446.003.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 446.003, ORS 701.005 & ORS 701.280

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

#### 812-002-0840

##### Written Contract

“Written contract,” as used in ORS 701.055(14), may include, but is not limited to, the following basic elements:

(1) Contractor’s name, address, and registration number;

(2) Customer’s name and address;

(3) Address where work is to be performed;

(4) General description of work to be performed;

(5) Estimated start and completion dates;

(6) Price; and

(7) Signatures of contractor and customer, with dates signed.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.055

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98

### DIVISION 3

### REGISTRATION

#### 812-003-0000

##### Registration Generally

(1) A certificate of registration will be issued to one entity only. Other entities shall not be included in that certificate, but each shall be separately registered and shall separately meet the requirements of registration. No entity may perform work subject to ORS chapter 701 through the use of another entity’s certificate of registration.

(2) The Board adopts the form “Independent Contractor Certification Statement” as approved October 24, 1989, as required by ORS 701.075(3).

(3) If an entity registered as an individual, partnership, or corporation seeks to change to another entity, the former registration may be terminated. The new entity must register anew.

(4) All partners within a partnership shall be on record with the Construction Contractors Board. Partnerships consisting of spouses shall be treated the same as partnerships consisting of unrelated persons. Registration becomes invalid upon any change in the composition of that partnership.

(5) Each entity shall:

(a) List on its application for registration or renewal all assumed business names under which business as a contractor is conducted. All assumed business names listed shall be on record with the Corporation Division; and

(b) Provide evidence to the agency that the applicant’s responsible managing individual has completed the education required by ORS 701.280 as governed by Division 6 of these rules.

(c) List on its application for registration or renewal the Standard Industrial Classification (SIC) code number of its main construction activities.

(6)(a) A certificate of registration is valid for the term for which it is issued only if the following conditions are met throughout the registration period:

(A) The surety bond remains in effect and undiminished by payment of Construction Contractors Board final orders; and

(B) The insurance required by ORS 701.105 remains in effect; and

(C) If the registrant is an individual, survival of the individual; or

(D) If the registrant is a partnership or limited liability partnership, no change in the composition of that partnership, by death or otherwise; or

(E) If the registrant is a corporation or limited liability company, survival of that corporation or limited liability company, including compliance with all applicable laws governing corporations or limited liability companies.

(b) If the registrant's bond is cancelled, the registration will lapse 30 days from the date the cancellation is received by the agency.

(c) An entity whose certificate of registration has lapsed is considered nonregistered from the date the lapse occurred until the date the registration is backdated and renewed, reissued, or reinstated. During a period of lapse, the entity shall not perform the work of a contractor.

(d) A period of lapse will end and the certificate of registration previously issued will again become valid on the date upon which the agency receives a new bond or a notice of reinstatement for the existing bond or on the effective date of a back-dated bond or back-dated reinstatement for the existing bond.

(e) If a certificate of registration becomes invalid, the agency may require the return of the certificate and pocket card(s).

(7) 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 certificate of registration, nor shall any person claim by advertising or by any other means to be licensed, bonded, insured, or registered unless that person holds a current, valid certificate of registration.

(8) Registration 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 registration number.

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

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

(d) Except as set forth in sub paragraph (e) all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's registration number. This rule is effective upon filing for all contractors filing for new registration, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.

(e) Sub paragraph (d) does not apply to a company whose primary business is other than construction and to which the State Department of Employment has assigned a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(9) The initial two-year registration fee for all registration applications received on or after January 1, 1999, are as follows:

- (a) Residential-Only Contractor — \$190;
- (b) Limited Contractor — \$190;
- (c) All-Structures Contractor — \$225;
- (d) Consultant — \$190.

(10) The two-year renewal fee for all registration renewals with a renewal date of January 1, 1999, and after and all other registration renewal applications received by the agency on or after January 1, 1999, are as follows:

- (a) Residential-Only Contractor — \$160;
- (b) Limited Contractor — \$160;
- (c) All-Structures Contractor — \$190;
- (d) Consultant — \$160.

(11) The reinstatement fee is \$15 for Consultants, Residential-Only and Limited Contractors, and is \$20 for All-Structures contractors.

(a) Except as set forth in (b), the reinstatement fee shall be charged for any renewal, reissue, or reinstatement received by the agency after the prior registration expiration date.

(b) The agency may waive the reinstatement fee if:

(A) The properly-completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(B) The registrant's failure to meet the renewal date was caused entirely or in part by an agency error or omission.

(12) A person registered as a General Contractor — All-Structures may also perform the work of a Specialty Contractor — All-Structures. A person registered as a General Contractor — Residential-Only may also perform the work of a Specialty Contractor--Residential-Only.

(13) A Limited Contractor may perform Specialty Contractor, General Contractor, residential and/or nonresidential construction work, so long as all of the following conditions are met:

(a) The registrant's annual gross business sales do not exceed \$40,000;

(b) The registrant 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 registrant is based on time and materials, the amount charged by the registrant shall not exceed \$5,000;

(d) The registrant consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with subsection (a).

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

(14) A Consultant may perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.

(15) The following surety bond amounts are required:

(a) For those applicants applying for a new registration or reissue prior to July 1, 1999, and for those applicants applying for renewal prior to August 1, 1999, the bond amount required is as follows:

- (A) General Contractor — All Structures — \$10,000;
- (B) General Contractor — Residential — \$10,000;
- (C) Specialty Contractor — All Structures — \$ 5,000;
- (D) Specialty Contractor — Residential — \$ 5,000;
- (E) Limited Contractor — \$ 2,000.

(b) As required by ORS 701.085 as amended by chapter 325, 1999 Session Laws, for those applicants applying for a new registration or reissue on or after July 1, 1999, and for those applicants applying for renewal on or after August 1, 1999, or with an expiration date of August 1, 1999, or later the bond amount required is as follows:

- (A) General Contractor — All Structures — \$15,000;
- (B) General Contractor — Residential — \$15,000;
- (C) Specialty Contractor — All Structures — \$10,000;
- (D) Specialty Contractor — Residential — \$10,000;
- (E) Limited Contractor — \$ 5,000;
- (F) Consultant — \$10,000.

(16) The following general liability insurance amounts are required:

(a) For those applicants applying for a new registration or reissue prior to July 1, 1999, and for those applicants applying for renewal prior to August 1, 1999, the following general liability insurance amount is required as follows:

- (A) General Contractor — All Structures — \$500,000;
- (B) General Contractor — Residential — \$100,000;
- (C) Specialty Contractor — All Structures — \$500,000;
- (D) Specialty Contractor — Residential — \$100,000;
- (E) Limited Contractor — \$100,000.

(b) As required by ORS 701.105, for those applicants applying for a new registration or reissue on or after July 1, 1999, and for those applicants applying for renewal on or after August 1, 1999, or with an expiration date of August 1, 1999, or later the

following general liability insurance amount is required as follows:

- (A) General Contractor — All Structures — \$500,000;
- (B) General Contractor — Residential — \$500,000;
- (C) Specialty Contractor — All Structures — \$500,000;
- (D) Specialty Contractor — Residential — \$300,000;
- (E) Limited Contractor — \$100,000;
- (F) Consultant—\$300,000.

(17) A fee of \$20 shall be charged for any changed or added registration category.

(18) On all construction projects regulated under the state Prevailing Wage Law, ORS 279.348 to 279.365 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.055(11) 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.

(a) 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 839-016-0610.

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

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

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

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

[ED. NOTE: The Forms referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310, ORS 701.235, ORS 701.280 & ORS 701.992

Stats. Implemented: ORS 701.055, ORS 701.075, ORS 701.102, ORS 701.125 & ORS 701.280

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 2-1982, f. 4-1-82, ef. 7-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0010; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 1-1987, f. & ef. 3-5-87; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 8-1992(Temp), f. & cert. ef. 12-4-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 4-1996, f. 11-7-96, cert. ef. 11-8-96; CCB 5-1996, f. 11-25-96, cert. ef. 11-27-96; CCB 7-1996, f. & cert. ef. 12-11-96; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99

## 812-003-0002

### Employer Status

Contractors shall register as either nonexempt (employer with employees) or exempt (no employees) as provided in ORS 701.035, as modified by chapter 216 Oregon Laws 1995.

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

(a) Sole proprietors, partnerships, limited liability partnerships, corporations, limited liability companies with one or more employees; and

(b) Partnerships, limited liability partnerships, corporations, and limited liability companies with more than two partners, corporate officers, or members, if any of the partners, corporate officers, or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, or grandchildren.

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

(3) The maximum number of exempt individuals in an entity without employees other than same-family partners, members, or corporate officers shall be:

(a) Two partners in a partnership, limited liability partnerships;

(b) Two members in a limited liability company; and

(c) Two corporate officers in a corporation.

(4) An exempt contractor may work with the assistance of individuals who are employees of a nonexempt contractor so long as the nonexempt contractor:

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

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

(5) Nonexempt entities shall supply employer account numbers for workers' compensation, unemployment, state Department of Revenue, and IRS identification, as specified in ORS 701.075.

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

(7) Partnerships and limited liability partnerships without employees other than the partners may be classed as "nonexempt-no construction work" when the entity certifies that all partners qualify as nonsubject workers as provided in ORS 656.027, by virtue of their not being directly involved in construction work. Such partnerships need supply no employer account numbers except the IRS account number.

(8) Corporations qualifying as exempt as provided by ORS 656.027(9) shall supply Employment Division and Department of Revenue account numbers unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation. Exempt corporations shall supply IRS account numbers. Limited liability companies shall supply IRS account numbers unless the limited liability company has one member only and has no employees.

(9) Out-of-state contractors with no Oregon employees shall supply their home state account numbers, and need not supply an Oregon workers' compensation account number, as provided in OAR 436-050-0055, if they certify that their employees will not work at any job site involving a public contract.

Stat. Auth.: ORS 670.310, ORS 701.235, ORS 701.280, ORS 701.992 & ORS 183.310 - ORS 183.500

Stats. Implemented: ORS 701.035 & ORS 701.135

Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 4-1999, f. & cert. ef. 6-29-99

## 812-003-0005

### Record Changes

(1) Requests for record changes necessitating a new certificate of registration shall be accompanied by a \$20 fee.

(2) Requests for name changes of the registrant shall be accompanied by a rider to the security to cover the new name.

(3) No charge will be made for address changes on the record.

(4) With the exception of record changes due to agency error, record change requests shall be submitted in written form.

Stat. Auth.: ORS 701.130

Stats. Implemented: ORS 701.130

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0015; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1999, f. & cert. ef. 9-10-99

## 812-003-0012

### Independent Contractors

(1) This rule has been adopted jointly by the Construction Contractors Board, Employment Department, Department of Insurance and Finance (Workers' Compensation Division), and Department of Revenue of the State of Oregon under the authority of ORS 670.605.

(2) As used in the various provisions of ORS Chapters 316, 656, 657, 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 and this rule are met:

(a) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(b) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(c) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(d) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(e) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodical retainer;

(f) The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;

(g) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(h) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(A) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(B) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(C) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(D) Labor or services are performed only pursuant to written contracts;

(E) Labor or services are performed for two or more different persons within a period of one year; or

(F) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

(3) For the purposes of subsection (2)(b) of this rule, "assumed business registrations or professional occupation licenses" do not include certificates or permits required pursuant to ORS Chapter 767.

(4) For the purposes of subsection (2)(e) of this rule, "periodical retainer" includes but is not limited to partial payments made periodically during the term of the contract.

(5) For the purposes of paragraph (2)(h)(F) of this rule, evidence that "the individual or business entity assumes financial responsibility for defective workmanship or for services not provided" is not limited to the ownership of performance bond, warranties, errors, and omission insurance, or liability insurance relating to the labor or services to be provided.

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.280

Stats. Implemented: ORS 670.605

Hist.: CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95

### 812-003-0015

#### Applications for Registration

(1)(a) The application required under subsection (3)(a) of this rule together with the fee required and the original, fully-executed surety bond shall be on file with the agency before a certificate of registration may be issued, except as provided in section (b) of this rule.

(b) The effective date of a certificate of registration or renewal may be prior to the date of receipt of all documents and/or fees required by law and by these rules if the agency determines that delays in receipt of required documents and/or fees were caused by agency error. Additionally, if the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a registration prior to receipt of all documents and/or fees if the surety concurs with the agency's decision to pre-date the registration.

(2)(a) An Applicant for registration or renewal shall certify that the applicant has procured insurance, from an insurance company authorized to do business in Oregon, as required by ORS 701.105 and will continue to meet those insurance requirements for as long as the applicant is registered. New registrants shall provide a certificate of insurance issued by an insurance company licensed in Oregon. The agency may also require such certification from renewing registrants. As a minimum, for all registrants, certification shall include the name of the insurance company, policy number, effective dates of coverage, and coverage amount, and may also include the agent's name, and agent's telephone number.

(b) This certification constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.

(c) If the requirements of subsection (2)(a) of this rule have been met, and the agency receives a notice of cancellation, the agency may send a notice to the registrant, by regular mail, reminding the registrant of the obligation imposed by the registrant's insurance certification.

(d) The registrant shall maintain the insurance required by ORS 701.105 in effect continuously until the certificate of registration is terminated, revoked, or expired. If the registrant, in performance of work subject or ORS chapter 701, through failure to comply with this subsection, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurance company had the required insurance been in effect, the agency may assess a civil penalty against the registrant in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.135.

(3)(a) A complete application for registration includes:

(A) A completed application form;

(B) A completed "Independent Contractor Certification Statement";

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

(D) The certification of insurance coverage showing not less than the minimum amount required per occurrence for property damage and personal injury;

(E) A properly executed bond; and

(F) The application fee.

(b) The agency may return an incomplete application for registration to the applicant with an explanation of the deficiencies.

(4) A certificate of registration shall be issued by the agency effective the date on which all fees required by law have been paid and all documents required by law and by those rules are on file with the agency.

[ED. NOTE: The forms referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310, ORS 701.235, ORS 701.280 & ORS 701.992

Stats. Implemented: ORS 701.075

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 2-1979, f. & ef. 12-29-79; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0025; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99

## 812-003-0020 Bonds

(1) A "properly executed bond" must be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the registrant and surety to use the most recent revision of the surety bond form. The agency may accept, as properly executed, a bond unsigned by the principal, unless the surety notifies the agency in writing or concurrently with the issuance of the surety's first bond, that such bonds should not be accepted.

(2) The surety bond's effective date is the date on which the registrant has first met all requirements for registration or renewal. The bond shall be continuous. The surety will be responsible for ascertaining the bond's effective date.

(3) A surety bond may be cancelled only after the surety has given 30 days' notice to the agency. Cancellation will be effective 30 days after receipt of the cancellation notice. The bond shall cover final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

(4) The name of the entity as it appears on the bond must be the same as the name on the application:

(a) If the entity is an individual proprietorship, the bond must include the name of the owner;

(b) If the entity is a partnership, the bond must include the names of all partners (except limited partners) and any business name(s) used;

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

(d) If the entity is a corporation, the bond must be issued showing the corporate name; or

(e) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company; or

(f) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a registered and bonded entity will be processed regardless of business names used by such entity.

(5) If at any time an entity amends, deletes, or adds a business name(s) the agency must be notified within 30 days of the date of the change.

(6) If an entity registers as an individual, partnership, limited liability partnership, corporation, or limited liability company, and seeks to change the registered entity to one of the other types, the application must be accompanied by a new bond. 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.

(7) Bond documents received at the agency office via electronic facsimile shall be accepted as original documents only when the following conditions have been met:

(a) The originating surety has on file with the agency an original letter, including the facsimile transmission origination number, authorizing the agency to accept such electronically transmitted facsimile documents as originals; and

(b) The facsimile documents originate from the surety's origination number on file with the agency, display the origination number, and are transmitted directly to the agency's facsimile equipment;

(c) The surety shall provide the original bond document to the agency upon request.

(8) In accordance with ORS 701.085(7), the agency may require an applicant (any person applying to renew or reinstate his/her registration or applying for a new registration) or licensee, to file a bond of up to five times the normally required amount (up to \$75,000 for a General Contractor, \$50,000 for a Specialty Contractor or Consultant, or \$25,000 for a Limited Contractor) or licensee, if it determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant or licensee, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance; or

(b) Three or more open owner claims filed on three or more different structures by three or more different owner claimants; or

(c) Five or more claims open at one time.

(9) A properly executed bond shall include the following:

"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

This 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 amount of the penalty of this bond.

This bond shall become effective on the date the principal meets all requirements for registration or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 701, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

This bond shall not be valid for purposes of registration in accordance with ORS chapter 701 unless filed with the Construction Contractors Board within sixty (60) days of the date shown below."

(10) If a claim is filed against a registrant for work done during the work period of a contract entered while the security required under ORS 701.085 or 701.095 is in effect, the security shall be held until final disposition of the claim.

(11) Any contractor registered as of November 7, 1997, who maintains registration in accordance with this chapter shall be in compliance with this rule until the renewal of the contractor's certificate of registration. At that time, the contractor shall provide a continuous bond that is in compliance with this rule.

(12) This rule permits sureties to file a single rider to amend their present bonds on file with the Construction Contractors Board.

(a) The rider shall be received by the Board prior to November 14, 1997, and shall specify that bonds on file as of January 1, 1998, shall be read to include the new bond conditions as follows:

This rider converts all existing bond forms to continuous until canceled bond forms as required by OAR 812-003-0020. All bonds shall remain in force continuously unless the surety gives written notice to the Construction Contractors Board of its intent to cancel the bond.

The bonds shall cover final orders relating to work performed during the work period of a contract entered into prior to the cancella-

tion.

These bonds may be canceled by the surety and the surety relieved of further liability for work performed on contracts entered into after cancellation by giving thirty (30) days' written notice to the principal and the Construction Contractors Board.

To the extent that the language of the exiting bonds being converted may vary from the new language, the new language will be controlling.

(b) This rule shall be liberally construed to effect its purpose of making a practical transition to the new bond form. Nothing in this rule shall be construed to increase the bond amount without a separate increase rider.

(c) Sureties that elect to file a rider shall also file a certificate that the bond principals have been advised of the intended election by the surety.

Stat. Auth.: ORS 701.105

Stats. Implemented: ORS 701.085

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0030; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 5-1997(Temp), f. & cert. ef. 11-7-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00

## 812-003-0025

### Renewal and Reissue of Registration

(1) A certificate of registration may be renewed or reissued upon the applicant's completion of the renewal form or application form prescribed by the agency and upon payment of the fee or fees, and if it appears to the agency that the required surety is in effect, by receipt by the agency of a new continuous until canceled bond; and if the applicant has supplied the required certification of insurance coverage. Registrants shall submit a signed acknowledgment that if the registrant qualifies as an independent contractor the registrant understands that the registrant and any heirs of the registrant will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the registrant's insurance coverage and that the registrant's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the registrant.

(2) A registrant may qualify for Limited Contractor registration and reduce the bond to \$5,000 upon certification that the registrant will not enter into contracts that exceed \$5,000, that the registrant's gross business sales of work subject to ORS chapter 701 was less than \$40,000 in the previous twelve months, is expected to be less than \$40,000 during the next twelve months, and that the registrant agrees that if the registrant's gross construction business volume exceeds \$40,000 during the coming year the registrant will immediately increase the bond amount to \$10,000 or \$15,000, and increase the insurance coverage if necessary, to meet the requirements of the appropriate registration category. The reduced bond may be accomplished by submission of a decrease rider to an existing bond or the submission of a new bond. The effective date on either the decrease rider or the new bond must be the registration renewal date or after. In addition, the agency may refuse to authorize a reduced amount until any pending claim(s) against the registrant are resolved.

(3) If a registrant provides a decrease rider to an existing bond in accordance with this rule prior to the registration renewal date, the agency will determine the effective date to be the date of renewal or reissue.

(4) The effective date of renewal shall be the previous registration expiration date when:

(a) All requirements for renewal are met prior to the previous registration expiration date; or

(b) All requirements for renewal, including submission of either a valid continuous until canceled bond or back-dated new

bond, certification of insurance coverage, and payment of renewal fee plus reinstatement fee, are met, providing the contractor applies for renewal not more than one year after the registration lapses.

(5) If the contractor applies for renewal more than one year after the registration lapses, the effective date of reissue shall be the date all requirements for registration, including, but not limited to, submission of a newly issued continuous until canceled bond or reinstatement of an existing continuous until canceled bond, certification of insurance coverage, notarized acknowledgment as required by ORS 701.075(3)(b) on or after October 1, 1995, and payment of new registration fee.

(6) For liens perfected and claims commenced on or after January 1, 1998:

(a) The time period under ORS 701.065(2)(a)(A) for a completed application for registration to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be registered;

(b) The time period under ORS 701.065(2)(b)(A) for a completed application for registration renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in registration.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310, ORS 701.235, ORS 701.280 & ORS 701.992

Stats. Implemented: ORS 701.102, ORS 701.065 & ORS 701.115

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0035; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 4-1995, f. & cert. ef. 10-5-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99

## 812-003-0030

### Revocation or Suspension of Registration

(1) If the agency adjudges one or more claims against a registrant which that entity or that entity's bond or security deposit fails to pay in full, the Agency will revoke, suspend, or refuse to issue or reissue a certificate of registration, unless the entity submits proof to the agency that it is subject to the automatic stay of Title 11 of the United States Bankruptcy code, or that the amounts adjudged against the entity represent debts that:

(a) Have been included in an order of discharge in a bankruptcy case; and

(b) In a Chapter 11 case, the registrant is in compliance with the terms of the Chapter 11 Plan and Order confirming the plan such that the agency may not revoke, suspend, or refuse to issue or reissue a certificate of registration.

(2) If the agency fails to revoke or suspend a certificate of registration, or if the agency issues or reissues a certificate of registration on account of a bankruptcy discharge or the bankruptcy automatic stay, as set forth in section (1) of this rule, and the entity's discharge is later revoked or the automatic stay is later terminated thereby freeing the agency from the restrictions of the bankruptcy code, the agency shall then revoke, suspend, or refuse to issue or reissue a certificate of registration as if no bankruptcy had taken place.

Stat. Auth.: ORS 183.310 to ORS 183.545, ORS 670.310, ORS 701.235 & ORS 701.280

Stats. Implemented: ORS 701.100 & ORS 701.135

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 5-1981(Temp), f. 12-30-81, ef. 1-1-82; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0040; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1995, f. & cert. ef. 2-2-95

**DIVISION 4**

**CLAIMS**

**812-004-0001**

**Application of Rules**

(1) A claim filed by an owner involving nonresidential construction, when the total contract price is \$25,000 or less, shall be processed in accordance with the rules in this division unless the claimant opts to process the claim under ORS 701.145(5) to (8).

(2) A claim filed by an owner of nonresidential property, when the total contract exceeds \$25,000, or a claim filed by a person who is not an owner involving nonresidential construction shall be processed under ORS 701.145(5) to (8) provided the claim is timely filed under ORS 701.145(3).

(3) Processing of a claim under ORS 701.145(5) to (8) shall be suspended until the claimant files a Statement of Claim in substantial compliance with OAR 812-004-0340 except that the claimant need not comply with OAR 812-004-0340(2)(c) and (i), (5) and (7).

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235,  
Stats. Implemented: ORS 701.102, ORS 701.140 & ORS 701.145  
Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-27-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

**812-004-0120**

**Liability of Registrants**

A registrant, as defined in OAR 812-002-0620, participating in a corporation wholly owned by the registrant, or a limited liability partnership, limited liability company, joint venture or partnership, may be held individually liable for claim actions brought under ORS 701.140 to 701.150, whether or not the corporation, limited liability partnership, limited liability company, joint venture or partnership was registered as required by ORS chapter 701.

Stat. Auth.: ORS 813.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.102, ORS 701.140 & ORS 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-004-0140**

**Liability of Contractor for Claim Related to Contractor's Property**

(1) If an employee claim, material claim or subcontractor claim arises from property owned by a registered contractor, the registered contractor is a contractor subject to ORS chapter 701 unless the contractor supplies pre-contract written notice to suppliers, subcontractors, and other potential claimants 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(6).

(2) If a registered contractor files a claim against another registered contractor arising from property owned by the contractor filing the claim, the contractor filing the claim 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 & ORS 701.235  
Stats. Implemented: ORS 701  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-004-0160**

**Establishment of Co-Claimant**

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 183.455, ORS 701.140 & ORS 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-004-0180**

**Claimant's Responsibility to Pursue Claim**

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

(2) The agency may close a claim without further notice to the claimant if:

(a) The claimant fails to respond to correspondence from the agency, or to provide requested information or documentation within a time limit specified in that correspondence or request; or

(b) The claimant fails to respond in writing to agency correspondence or request, after being instructed to do so by the agency.

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.145  
Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-004-0200**

**Court Judgments and Other Authorized Entity Determinations**

(1) "A court judgment or other authorized entity determination" means a judgment or determination by a court or other entity, as that phrase is defined in Division 2.

(2) A court judgment or other authorized entity determination shall constitute the basis for a claim in the following categories:

(a) A claimant obtained a court judgment or other authorized entity determination against a contractor before filing a Statement of Claim;

(b) A claimant filed a previous claim which was closed by the agency because the claimant also initiated litigation against the contractor, and the litigation resulted in a judgment in favor of the claimant;

(c) A claimant filed a claim which the agency ceased processing until litigation initiated by the contractor against the claimant was completed, and the litigation resulted in a judgment in favor of the claimant; or

(d) A claimant filed a claim which the agency ceased processing because of its nature and complexity, the claimant pursued the matter through the courts, and the litigation resulted in a judgment in favor of the claimant.

(3) If the claim falls within the categories in sections (2)(a) and (b) of this rule, a court judgment or other authorized entity determination constitutes the basis for a claim only if the claim and the court judgment or other authorized entity determination are both timely filed in accordance with ORS 701.145 (3) and the claim is within the jurisdiction of ORS chapter 701.

(4) If the claim falls within the categories in sections (2)(c) and (d) of this rule, the claim shall be considered timely filed if the claimant submits the court judgment or other authorized entity determination to the agency within 30 days of the date of final action by the court and the claim was filed in accordance with ORS 701.145 (3).

(5) A claim based on court judgment or other authorized entity determination may include attorney fees, court costs, interest or service charges if these items are included as part of a court judgment or other authorized entity determination.

(6) Upon receipt of a timely-filed judgment or other authorized entity determination, the agency shall take one of the following actions:

(a) Issue a proposed order providing the contractor and the claimant with an opportunity to request a hearing within 21 days of the date of mailing the proposed order; or

(b) Schedule a contested case hearing.

(7) Facts and issues within the jurisdiction of the Board previously determined by a court or other authorized entity will not be re-litigated 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.

Stat. Auth.: ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145  
Hist.: 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0054; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB

3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0020; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0044

#### 812-004-0220

##### Construction Lien Claims

(1) Upon acceptance of a construction lien claim, the agency shall send a copy of the claim to the contractor and shall initiate an investigation to determine the validity of the claim.

(2) For a construction lien claim to be valid, the following conditions must be met:

(a) The claimant must have paid the primary contractor 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 a lien to be filed against the claimant's property;

(b) The lienor must have delivered to the claimant a "Notice of the Right to Lien" as specified in ORS 87.018, 87.021, and 87.025;

(c) The lienor must have filed the lien with the recording officer of the county in accordance with ORS 87.035; and

(d) Either foreclosure proceedings must have been filed in accordance with ORS 87.055 or the claimant must have paid the lienor to prevent the filing of foreclosure proceedings.

(3) If the contractor contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the registrant's account, the primary contractor may subpoena the lienor and pertinent records to any hearing held by the agency.

(4) If at any time prior to the issuance of a final order the agency determines that the lien is unenforceable or invalid, the agency shall dismiss the claim. Prior to such dismissal, the lienor shall be notified, by certified mail, of the lienor's opportunity to become a party to the claim and to request a hearing, as provided by ORS 183.310.

(5) A construction lien claim 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 in discharging the lien. An award to an owner for costs in discharging a lien shall not exceed the amount of the lien.

(6) The agency may reduce the amount awarded to the claimant by:

(a) Any amount the claimant owes the primary contractor; and

(b) Any amount included for tools or equipment not fabricated into the structure.

(7) If a claimant files two or more claims against a contractor relating to work performed under the same contract and if the claimant has not paid the contractor the full amount of the contract, the amount awarded on each claim will be reduced on a pro rata basis. A proposed or final order may not be issued on a claim until all claims involving the claimant and the contractor 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 claim, the agency shall send notice to the claimant that:

(a) The claimant has the right to request a stay of the proceedings until the agency's processing of the claim is complete;

(b) The agency will hold the claim open for 60 days from the date of the notice to allow the claimant to obtain a stay;

(c) The agency will close the claim if evidence is not received within 60 days from the date of the notice that a stay has been obtained; and

(d) Upon timely receipt of evidence that a stay has been obtained, the agency will resume processing the claim.

(9) If a construction lien claim involves the same facts and issues as any other open claim, the agency shall process the claims together.

Stat. Auth.: ORS 87.057, ORS 87.058, ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 87.058 & ORS 701.145

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1981, f. & ef. 3-11-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0069; 1BB 1-1985(Temp), f. & ef. 2-7-85; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0046

#### 812-004-0240

##### Exhaustion of Surety Bond

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

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.145

Stats. Implemented: ORS 813.415, ORS 183.460, ORS 701.085, ORS 701.145 & ORS 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0250

##### Exclusion of Certain Damages from Award

No monetary award shall be made for attorney fees, interest or other administrative damages, except:

(1) Attorney fees, court costs, interest and service charges included in an award under OAR 812-004-0220(5);

(2) Amounts included in a court order; or

(3) Interest expressly allowed as damages under a contract, which is the basis for an owner claim.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 813.415, ORS 183.460 & ORS 70.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

##### Filing of Claims

#### 812-004-0300

##### Filing Date of Claims

Claims submitted to the agency shall be deemed to have been filed when a Statement of Claim in substantial compliance with rule 812-004-0340 is received by the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0320

##### Jurisdictional Requirements

(1)(a) Claims will be processed only against registered entities.

(b) For owner claims, employee claims, primary contractor claims, and subcontractor claims, the entity against whom the claim is filed will be considered registered if that entity was registered during all or part of the work period.

(c) For material claims, the entity against whom the claim is filed will be considered registered if one or more invoices involve material delivered while the entity was registered. Damages will be awarded only for material delivered within the period of registration.

(d) If a claim is a primary contractor claim or a subcontractor claim, the claimant must have been registered at the time the bid was made or the contract was entered into and must have remained registered continuously throughout the work period. This registration requirement for claimants does not apply to persons who are exempt from registration under ORS 701.010(7).

(2) Claims will be accepted only when one or more of the following relationships exists between the claimant and the registrant:

(a) A direct contractual relationship based on a contract entered into by the claimant and the registrant, or their agents;

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

(c) A real estate purchase conditioned upon an inspection report or repairs made by the registrant; or

(d) A sewage disposal claim filed pursuant to ORS 701.140(6).

(3) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equip-

ment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(4) The agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a claim previously filed by the same claimant against the same registrant.

(5) Claims 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.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0340

##### Form of Claims

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

(2) The claimant shall provide the following information if applicable:

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

(b) The name, address, telephone number, and registration number of the registrant;

(c) The amount claimant alleges to be due from the registrant after crediting payments, offsets and counterclaims in favor of the registrant to which claimant agrees;

(d) Identification of the type of claim;

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

(f) A copy of the contract, if the contract was in writing;

(g) Job location;

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

(i) Payments, offsets and counterclaims of the contractor, if known;

(j) Whether the project is residential or commercial/industrial;

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

(l) Copies of any adjudication by a court or by binding arbitration.

(3) Subcontractor claims and material claims shall include copies of each original invoice relating to the claim and a recapitulation showing the date, number, amount and description of each invoice submitted.

(4) Employee claims shall include copies of time cards or other evidence of the amount of compensation claimed.

(5) Construction lien claims shall include evidence that the claimant 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 lien claimant, if applicable, and any foreclosure documents.

(6) Material claims shall include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, and each invoice amount.

(7) Claims involving negligent or improper work shall include a list of the alleged negligent or improper work.

Stat. Auth.: ORS 701.140 & ORS 701.145

Stats. Implemented: ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0360

##### Addition of Claim Items at On-Site Investigation

If the agency does an on-site investigation of a claim, the claimant may add new claim items up to and through the initial on-site investigation. New items added to a timely filed claim under this rule shall be considered timely filed.

Stat. Auth.: ORS 670.310, ORS 701.140, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

## Administrative Processing of Claims

#### 812-004-0400

##### Initial Administrative Processing of Claims

Upon acceptance of a claim, the agency shall send a copy of the claim to the registrant and shall initiate an investigation to determine the validity of the claim. The investigation may include an on-site investigation.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0420

##### Processing Owner and Primary Contractor Claim Together

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

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0440

##### Contracts with Arbitration Agreements

(1) If a claim is received that is based upon a contract that contains an agreement by the parties to arbitrate disputes arising out of the contract, the specific terms of the arbitration agreement supersede agency rules except as set forth in ORS 701.180. Unless the contract requires arbitration by the agency, the agency will take the following action:

(a) Inform the claimant that the agency will accept the claim for processing only if both parties agree to waive arbitration or the contractor does not respond to the waiver request or start arbitration under the contract within 30 days after the date the agency notifies the contractor that a claim has been filed;

(b) The waiver required under subsection (a) of this section must be written, signed, and received by the agency within 30 days of the date the agency notifies the parties that a waiver is required;

(c) If the agency receives no waiver from the claimant within 30 days of the date the agency notified the parties that a waiver is required, the claim will be closed and will not be reopened;

(d) If the contractor does not waive arbitration under the contract, the agency will allow the contractor the remaining time to commence arbitration. If the contractor fails to submit evidence to the agency that arbitration under the contract commenced within the 30 days of the date the agency notified the contractor that a claim was filed, the agency will resume processing the claim;

(e) If arbitration under the contract is commenced and the contractor submits evidence substantiating this within the period referred to in subsection (d) of this section, the agency will discontinue processing the claim until the arbitration is completed.

(2) The waiver required under section (1) of this rule must be written and signed by the party waiving arbitration.

(3) If arbitration under the contract is properly commenced under subsection (1) of this rule, the claim file will remain open and the claimant's potential access to the contractor's bond will be retained if the claimant takes the following action:

(a) Within six months of the date on which the agency discontinued processing the claim and no less frequently than every sixth month thereafter, delivers to the agency a written report setting forth the current status of the arbitration proceeding; and

(b) Within 30 days of the date of final action by the arbitrator, delivers to the agency a copy of the arbitration award or decision.

(4) If the claimant fails to comply with the requirements of section (3) of this rule, the agency may close the claim. A claim closed in this manner will not be reopened.

(5) If the claimant is unsuccessful in obtaining an arbitration award upon completion of arbitration under the contract, the claim will be closed.

(6) If the claimant is successful in obtaining an arbitration award under the contract, the agency will resume processing the claim. Any monetary damages awarded the claimant will be based upon the amount of the arbitration award.

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

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 701.145 & ORS 701.180

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0053; 1BB 3-1984, f. & ef. 5-11-84; 1BB 2-1985(Temp), f. & ef. 3-5-85; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0015; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0042

#### 812-004-0460

##### Agency Recommendation of Resolution

If it appears that the registrant has breached a contract or performed work negligently or improperly, the agency may recommend to the claimant and registrant a resolution consistent with the terms of the contract, generally accepted building practices, and industry standards.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0480

##### Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may schedule an on-site meeting among the parties for the purposes of investigation and discussion of a settlement. A settlement proposal may be presented by the agency to the claimant and registrant for their consideration and agreement.

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

(3) Settlement agreements may be considered by the agency to be substituted contracts and damages may be based on the settlement.

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

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0500

##### Claim Closure, Discontinuance of Processing and Dismissal

(1) If the agency seeks to conduct an on-site investigation and the claimant refuses to allow an on-site investigation or refuses to allow the contractor to attend the on-site investigation, the agency may close the claim and once closed the claim will not be reopened.

(2) If claimant and registrant agree to a settlement, the agency may close the claim without notice to the claimant if:

(a) The claimant notifies the agency that the terms of the settlement agreement have been fulfilled; or

(b) The claimant does not notify the agency in writing, within 30 days of the date shown on the settlement agreement for completion, that the terms of the settlement agreement have not been fulfilled.

(3) If at any time during the processing of the claim the agency finds that the issues involved in the claim have been submitted to a court for determination, to arbitration or to any entity authorized by law or the parties to effect a resolution, it may discontinue processing the claim.

(4) If at any time during the processing of the claim the agency finds that the nature or complexity of the issues are such that a

court would be a more appropriate forum for adjudication, it may discontinue processing the claim.

(5) If upon investigation of a claim it appears to the agency that the registrant has breached a contract or performed work negligently or improperly, but that the monetary value of damages sustained by the claimant is less than any amount due and unpaid to the registrant from the claimant under the terms of the contract, the agency shall dismiss the claim.

(6) If the agency dismisses a claim, the claimant may contest the dismissal by stating an amount alleged to be due and owing from the registrant and requesting a hearing within 21 days of the date of dismissal.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0520

##### Processing of Claim Submitted to Court or Other Entity

(1) "Court or other entity" has the meaning given that phrase in Division 2.

(2)(a) The agency may refuse to continue processing a claim under the authority of ORS 701.145(2)(a) and close the claim if:

(A) Submission of the matter to a court or other entity was initiated by the claimant and was not in response to an action before the court or other entity initiated by the registrant against the claimant, or was initiated by the registrant and the claimant failed to file counter suit with the court or other entity, thus failing to allow the court or other entity to hear all issues and to make a judgment on all issues in dispute;

(B) The agency notified the claimant that closure of the claim file will prevent that claim from having access to the surety bond; and

(C) The claimant, having been so notified by the agency, has not, within 21 days of such notification, submitted evidence to the agency that the matter has been withdrawn from the court or other entity to which it was submitted.

(b) A claim closed under this section may not be reopened.

(3)(a) The agency may refuse to continue processing a claim under the authority of ORS 701.145(2)(a), and later resume processing the claim if:

(A) Submission of the matter to a court or other entity was initiated or commenced by a person other than the claimant, including but not limited to, a suit to foreclose a lien, or a breach of contract complaint filed in a court of competent jurisdiction against the claimant;

(B) The facts and issues under determination by the court or other entity relate to the same facts and issues contained in the original Statement of Claim filed with the Construction Contractors Board;

(C) The claimant has, within six months of the date on which the agency refused to further process the claim, and no less frequently than every sixth month thereafter, delivered to the agency a written report setting forth the current status of the action before the court or other entity; and

(D) The claimant has, within 30 days of the date of final action by the court or other entity, delivered to the agency a copy of the judgment or decision together with a copy of the complaint or other pleadings upon which the judgment or decision is based.

(b) If the claimant fails to comply with any provision of this section, the agency may issue an order dismissing the claim.

(4)(a) The agency may refuse to continue processing a claim because of nature or complexity under the authority of ORS 701.145(2)(d), and later resume processing the claim if:

(A) The claimant, within 90 days of refusal by the agency to further process the claim, files an action in a court of competent jurisdiction relative to the same facts and issues contained in the original Statement of Claim filed with the Construction Contractors Board;

(B) The claimant, within 10 days of filing the action, delivers a copy of that action to the agency;

(C) The claimant, no less frequently than every sixth month after the filing of the action, delivers to the agency a written report setting forth the current status of the action before the court; and

(D) The claimant, within 30 days of the date of final action by the court, delivers to the agency a copy of the judgment.

(b) If the claimant fails to comply with any provision of this section, the agency may, without notice to the claimant, close the claim. A claim closed under this section shall not be reopened.

(5) The agency may, at any time, demand from the claimant a report on the current status of any action before a court or other entity. Such demand shall be in writing, and sent to the claimant's last address known to the agency. The claimant shall deliver a written response to the agency within 30 days of the date the demand letter is mailed by the agency, setting forth the current status of the action before the court or other entity. If a timely written response is not received by the agency from the claimant, the agency may, without notice to the claimant, close the claim. A claim closed under this section shall not be reopened.

(6) If the agency resumes processing a claim under sections (3) and (4) of this rule, the agency shall accept a judgment of a court of competent jurisdiction or a decision of another entity as the final determination of the merits of the claim.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0540

##### Establishing Monetary Damages, Issuing Proposed Order or Setting for Hearing

(1) The claimant may seek monetary damages if the agency has not discontinued processing the claim and:

(a) The claimant disagrees with the resolution recommended by the agency;

(b) The registrant cannot or will not comply with the recommended resolution; or

(c) The parties signed the settlement agreement proposed by the agency but, through no fault of the claimant, the terms of the settlement agreement have not been fulfilled by the contractor, and the agency is so advised in writing by the claimant within 30 days of the date the settlement agreement was to have been completed.

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount alleged to be due and owing from the registrant, limited to items of complaint in the Statement of Claim and those claim items added up to and through any initial on-site investigation. The agency may require the claimant to submit, in support of the amount alleged, one or more estimates from registrants for the cost of correction of the items of complaints.

(3) After a complete declaration of damages and supporting evidence is received, the agency may:

(a) Issue an order proposing dismissal of the claim or payment of an amount by the registrant to the claimant and giving opportunity for hearing; or

(b) Set a contested case hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount is proper.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0560

##### Hearing Request

To be timely, a request for hearing must be in writing and received by the agency within 21 calendar days from the date a proposed order is mailed by the agency.

Stat. Auth.: ORS 183.415

Stats. Implemented: ORS 183.415

Hist.: 1BB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004

#### 812-004-0580

##### Challenge to Investigation Report

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

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 701.145(12)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-004-0590

##### Arbitration of Claims in Which Less than \$1,000 is Sought

Notwithstanding any other provision of these rules, and regardless whether the agency has issued a proposed order in the matter, if no party at a hearing seeks \$1,000 or more, the matter will be arbitrated under Division 10 of these rules and will not be determined as a contested case.

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

Stats. Implemented: ORS 701.145

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-004-0600

##### Payment from Surety Bonds

(1) The agency may notify the surety company of claims pending.

(2) The agency shall notify the surety company of claims ready for payment. This notice shall constitute notice that payment is due on the claim. Claims are ready for payment when all of the following have occurred:

(a) A final order has been issued, and 30 days have elapsed to allow the registrant a reasonable time in which to pay the order;

(b) The agency has received no evidence that the registrant has complied with the final order;

(c) The agency has not granted a stay of enforcement of the final order pending judicial review by the Court of Appeals; and

(d) All other claims filed against the registrant 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 claim.

(3) Claims related to a job that are satisfied from a surety bond shall be paid as follows:

(a) If a surety bond was in effect when the work period began, payment shall be made from that surety bond.

(b) If no surety bond was in effect when the work period began, but a surety bond subsequently became effective during the work period of the contract, payment shall be made from the first surety bond to become effective after the beginning of the work period.

(c) A surety bond that is liable for a claim under subsection (a) or (b) of this section is liable for all claims related to the job and subsequent surety bonds have no liability for any claim related to the job.

(4) If during a work period the amount of a surety bond is changed and a claim is filed relating to work performed during that work period, the claimant may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) Unless the order provides otherwise, if a final order provides that two or more registrants are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds of the registrants, payment shall be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment shall be made from the remaining bond or in equal amounts from the remaining bonds. If one of the registrants liable on the claim makes payment on the claim, that payment shall reduce the payments required from that registrant's bond under this section by an amount equal to the payment made by the registrant.

Stat. Auth.: ORS 670.310, ORS 701.150 & ORS 701.235

Stats. Implemented: ORS 701.150

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-

98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

CCB 4-1995, f. & cert. ef. 10-5-95; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

## DIVISION 5

### CIVIL PENALTIES

#### 812-005-0000

##### Civil Penalties

(1)(a) Except as provided under authority of ORS 701.135(2), if the agency intends to revoke or suspend a certificate of registration, 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. The notice may include the statement that an answer to the assertions or charges will be required.

(b) 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:

(A) An admission or denial of each factual matter alleged in the notice;

(B) A short and plain statement of each relevant defense the respondent may have.

(c) 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;

(d) 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.

(2) The Administrator of the Board may immediately suspend or refuse to renew a registration without a prior hearing, in accordance with ORS 701.135(2), in cases where the Administrator of the Board has in its possession a prima facie case of a wrongful act as described in ORS 701.135(2)(a)(A)(D) 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 701.135(2).

(3) 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).

(4) The agency may revoke, suspend, or refuse to issue or reissue the registration of any contractor who fails to pay on demand a civil penalty which has become due and payable.

(5) Notwithstanding any back-dating of a renewal, a person shall be in violation of ORS 701.055(1) 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 registered with the Board.

(6) At the agency's discretion, all or part of a civil penalty may be suspended, if:

(a) The respondent provides written proof of having completed one or more prerequisite education courses as provided by Division 6 of these rules; and/or

(b) The respondent makes timely payment of any agreed-upon reduced penalty amount; and/or

(c) The respondent provides other consideration found to be acceptable by the agency.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310, ORS 701.235, ORS 701.280 & ORS 701.992

Stats. Implemented: ORS 701.102

Hist.: 1BB 7-1980(Temp), f. & ef. 11-4-80; 1BB 8-1980, f. & ef. 12-9-80; 1BB 2-1981, f. & ef. 6-4-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-11-080; 1BB 4-1985, f. & ef. 12-8-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94;

#### 812-005-0005

##### 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 701.055(1) and section 812-003-0000(7), which may be reduced to \$200 if the respondent registers 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 701.055(1) and section 812-003-0000(7), when one or more previous violations have occurred, or when an inactive, invalid, or misleading registration number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without registering and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent registers within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor registers within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, invalid, or misleading registration 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 701.055(11); and

(7) \$1,000 per offense for hiring a nonregistered 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 registration number in advertising or on contracts, in violation of OAR 812-003-0000(8): 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 812-003-0000(5): First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055 (13), 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.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(2), suspension of the Certificate of Registration until the contractor provides the agency with proof of conformance with the application and \$1,000.

(14) Knowingly assisting a non-registered contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS chapters 316, 656, or 657, ORS 701.035 or ORS 701.075, as authorized by ORS

701.100, \$1,000 and suspension of the Certificate of Registration until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, \$400.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the Certificate of Registration until the contractor complies with the order.

(19) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000; second and subsequent offenses, \$5,000, per violation and suspension of the Certificate of Registration until the fraudulent conduct is mitigated in a manner satisfactory to the agency.

(20) 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 279.354; or

(e) Failing to comply with the posting requirements of ORS 279.350: \$1,000 and suspension of the Certificate of Registration 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.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) and (20), where more than two violations have occurred: \$5,000 and revocation of the Certificate of Registration.

(22) When, as set forth in ORS 701.135(1)(h), the number of registered contractors working together on the same task on the same job site, where one of the contractors is registered 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 registration for the third offense, and three-year revocation of registration for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) 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.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0080(1)-(14): \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0080(15)(b)-(h): \$750 per offense.

(27) 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.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0080(1)(d): \$400 per offense.

Stat. Auth.: ORS 183.310 – ORS 183.500, ORS 670.310, ORS 701.235, ORS 701.280, & ORS 701.992

Stats. Implemented: ORS 701.992

Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-

5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98 ; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00

## DIVISION 6

### PREREQUISITE EDUCATION

#### 812-006-0010

##### General

(1) The following rules apply to the implementation of prerequisite education under ORS 701.280 and are not applicable to those registrants exempt under that statute.

(2) The purpose of ORS 701.280 and these rules is to improve the professional business competency of construction contractors by providing reasonable standards for prerequisite education required under ORS 701.280.

(3) Hours of education refer to clock hours, not credit hours.

(4) An applicant for registration, who is not otherwise exempt from the requirements of ORS 701.280, shall provide evidence that the registrant's responsible managing individual has completed the prescribed four-hour education core course and at least twelve additional hours of approved elective education, as provided by these rules, at the time of the applicant's first registration.

(5) Evidence of completion shall consist of the provider-issued course completion number, which the registrant shall provide at the time of registration or renewal on the application/renewal form. The course completion number supplied to the agency by the applicant, and the course completion list supplied to the agency by the provider, shall constitute satisfactory evidence of completion.

(6) Effective January 1, 2000, the agency shall not accept a course completion number for an initial registration that was issued more than two years before the date of registrant's initial application.

(7) Upon initial application for registration, each applicant shall designate one individual as the applicant's responsible managing individual, who shall be:

(a) Responsible for completing any education required by ORS 701.280; and

(b) The owner, if the applicant is a sole proprietorship;

(c) A partner, if the applicant is a partnership or limited liability partnership;

(d) A member, if the applicant is a limited liability company; or

(e) A corporate officer, if the applicant is a corporation; or

(f) A designated full-time permanent employee, if, by petition, an applicant has documented that no owner, partner, member, or corporate officer of the applicant is directly involved in construction in Oregon, and that the employee is the supervisor of Oregon construction operations of the applicant. An individual who is not an owner, partner, member, or corporate officer may not be designated as the responsible managing individual of more than one registrant.

(8) An applicant for reissue of a registration that has lapsed for 24 consecutive months or more who is not otherwise exempt from the requirements of ORS 701.280 shall provide evidence of completing all required education.

(9) The registrant must continue to employ a responsible managing individual who has completed the requirements of ORS 701.280 for a minimum of four years.

Stat. Auth.: ORS 701.280

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 3-1997, f. & cert. ef. 10-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 3-1998, f. & cert. ef. 2-26-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-006-0020

##### Exemptions

In lieu of the education required under ORS 701.280, an applicant may:

(1) Demonstrate that education completed meets or exceeds the requirements of ORS 701.280 by providing to the agency:

- (a) The date, location, and provider of the education; and
- (b) A published description issued by the provider of the course and topics covered; and
- (c) Evidence of completion, such as a transcript, completion certificate, or verification signed by the instructor;
- (d) A copy of a college diploma in law, business, or construction management and evidence of completion of the initial four-hour core education as described in OAR 812-006-0050(2); or

(2) Provide evidence satisfactory to the Board that the responsible managing individual:

(a) Has been the owner, partner, LLC member or corporate officer for five out of the last seven years of a construction business that has been in legal operation prior to the person's application; and has completed the initial four-hour core education as described in OAR 812-006-0050(2);

(b) Has completed the licensing requirements of ORS 446.395 for manufactured dwelling installers;

(c) Is an out-of-state contractor under subcontract to a registered contractor and has petitioned the agency requesting a one-time-only temporary 30-day registration;

(d) Has petitioned the agency stating that the entity does no construction work and only leases employees to registered contractors;

(e) Has petitioned and proven to the satisfaction of the nine-member Board that the applicant is qualified if the applicant has been registered with the Board for five years or more, whose registration has lapsed for more than two years, and has completed the initial four-hour core education as described in OAR 812-006-0050(2);

(f) Was exempt from or completed the education requirement under ORS 701.280 as the responsible managing individual for a previous registrant whose registration has lapsed for 24 months or less; or

(g) Was an owner, partner, LLC member, or corporate officer, of a previous registrant who was registered before July 1, 1990, and whose registration has lapsed for 24 months or less.

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.280

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

### 812-006-0030

#### Education Provider Accreditation

(1) Except for accredited courses offered by Oregon community colleges, colleges, and universities, no education shall meet the requirements of ORS 701.180 unless it is offered by a provider accredited by the agency.

(2) To receive agency accreditation, individuals and organizations shall make application and sign an accreditation agreement with the agency prior to offering core or elective courses. The agreement shall include, but not be limited to, provisions for:

(a) Recording the name, address, phone number, and name of responsible administrator of the provider;

(b) Demonstrating the education and experience qualifications of instructors, including the submission of instructor resumes;

(c) Describing the classes to be offered, including content, objectives, and evaluation methodology;

(d) Describing provisions for notifying the agency of times, locations, and cost of course offerings;

(e) Describing the method of publicizing the availability of courses offered for the construction industry and public;

(f) Describing agency-assigned unique completion record numbers for each participant;

(g) Describing minimum three-year record-keeping requirements;

(h) Describing the format for providing completion records to the agency;

(i) Describing the certificate to be issued to participants who complete the classes; and

(j) Describing the self-diagnostic evaluation instrument that may be made available to applicants completing the core course.

(3) Providers shall make reasonable efforts to publicize the availability of their course offerings to the construction industry and public.

(4) Any accredited education provider that violates its agreement with the agency, such as by using instructors not included in the agreement, may have its accreditation revoked by the agency.

Stat. Auth.: ORS 701.280

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92

### 812-006-0040

#### Instructors

(1) No individual shall instruct core or elective courses offered by providers accredited under these rules unless the name and resume of that instructor are on file with the agency.

(2) It shall be the responsibility of providers to submit the names and resumes of instructors to the agency.

(3) The Agency shall approve all instructors prior to their instructing any Agency-accredited classes. Instructors shall have appropriate experience in training/education and business/law.

(4) The agency shall keep on file a list of instructors teaching approved core and elective courses as submitted by accredited providers.

Stat. Auth.: ORS 701.280

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 3-1993, f. & cert. ef. 6-9-93

### 812-006-0050

#### Education Subjects

(1) The agency shall have the right to evaluate and approve course outlines, methodology, materials, and other curriculum decisions based on written evaluation criteria approved by the Training Board and made available to providers. The agency may suspend or terminate a provider's accreditation if a provider's classes do not meet the approved criteria.

(2) The initial four-hour core education shall consist of the following topics and sub-topics:

(a) Construction Contractors Board role and authority, registration requirements and application procedures, including business organization, independent contractor definition, and claims and enforcement programs;

(b) Oregon employer requirements, including unemployment insurance, workers' compensation, tax withholding, Oregon wage and hour regulations, other employer responsibilities;

(c) Tax accounting, including income taxes, transit taxes, withholding, local business license taxes;

(d) Oregon building codes, specialty codes, permits, inspections, and specialty licensing;

(e) Occupational safety, including OSHA requirements and hazards communication, overhead electrical wire safety;

(f) Environmental protection, including DEQ requirements for asbestos abatement activities;

(g) Contract law, including contract basics, typical problems of construction contracting; and

(h) Oregon lien law, including notice delivery requirements, perfecting a lien, foreclosure, and time lines.

(3) Each participant in the initial core education course may complete a self-diagnostic evaluation to assist in choosing the most beneficial elective courses.

(4) The additional twelve hours of elective education shall consist of at least four different three-hour-minimum courses chosen from among the following courses, offered by a provider accredited by the agency with each course covering at least the topics listed:

(a) Basic Contract Law, including contracts with owners and subs, special terms and conditions for construction, change orders, breach, anticipatory breach;

(b) Oregon's Lien Law, including notices, delivery documentation, filing procedures, deadlines, establishing priority, alternative solutions;

(c) Basic Accounting and Record keeping, including cash and accrual methods, advantages and disadvantages of single and double entry bookkeeping, financial statements, tax accounting and forms, types of records to keep, record keeping systems;

(d) Codes and Licenses, including how to use code books, when a permit and/or specialty building trade licenses are required, common code and inspection problems, and recent code changes;

(e) OR-OSHA and Workers' Compensation, including hiring practices, safety policy, safety committee, first aid, accident investigation, hazard communication, workers' compensation insurance;

(f) Job site Safety and Security, including theft and accident prevention and protection, claims, liability, insurance, workers' compensation, overhead electric line safety, excavation, fall protection, equipment grounding, personal protective equipment and asbestos;

(g) Current Employee/Independent Contractor Issues, including Fair Labor Standards Act, minimum wage, overtime wage payment, child labor, and other Oregon wage and hour regulations, definitions of "direction and control," recent legislation, administrative rules, recent administrative law decisions, workers' compensation, employer liability law;

(h) Construction Finance and Other Money Matters, including job costing, loan applications, preparation of draw requests, overhead, cost of goods, uses of working capital, asset purchasing vs renting;

(i) Government Construction Work, including qualifications, bidding, minority contractor qualifications, information sources, application procedures, proposal writing, overview of bidding and RFP processes, and Oregon qualifications based selection processes, techniques and strategies to obtain public improvement contracts;

(j) Project Management and Scheduling for General Contractors, including specification development, subcontractor management;

(k) Dispute Prevention/Dispute Resolution, including punch lists, communication, documentation, negotiation, mediation, arbitration, litigation, three Construction Contractors Board dispute resolution processes, dispute resolution statutes, and partnering;

(l) Environmental Protection Requirements, Permits, and Techniques, including erosion control, tree care, wildlife habitat protection, salvage, reuse and use of recycled content materials, waste reduction options;

(m) Cultural Diversity and Construction, including civil rights laws; Equal Employment Opportunity Commission; sexual harassment; statutory and case law; Americans with Disabilities Act; Oregon Program for Minority Contractors; advantages of a diverse workplace; developing improved communication skills; recruiting, retaining, understanding, and appreciating diversity on the jobsite;

(n) Estimating, including marketing considerations, plan review, measurement, costing methods, calculations, computer applications, inclusions/exclusions, allowances, and final products;

(o) Customer Service, Sales, and Marketing.

(p) Lead-Based Paint Law, including Residential Lead-Based Paint Hazard Reduction Act, and Construction Contractors Board and Oregon Health Division licensing requirements.

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

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 3-1997, f. & cert. ef. 10-3-97; CCB 3-1998, f. & cert. ef. 2-26-98

## DIVISION 7

### TEMPORARY LICENSING OF INDIVIDUALS AND REGISTRATION OF FIRMS ENGAGED IN LEAD-BASED PAINT ACTIVITIES

#### 812-007-0000

##### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 701.515.

(2) Purpose.

(a) The purpose of these rules is to address Oregon's need for a qualified and properly trained work force to perform inspection, risk assessment and abatement of hazards associated with lead-based paint. Establishing these rules will ensure that individuals and firms will conduct lead-based activities in a way that will safeguard the environment and protect human health, specifically, the health of building occupants (especially children under six years of age) and the workers themselves;

(b) These rules prescribe the requirements for licensing of individuals and registration of firms engaged in lead-based paint activities in target housing and child occupied facilities and assure that a properly trained and certified work force is available to assist in the identification and control of hazards associated with lead-based paint.

(c) These rules will also ensure through licensing, that inspections for identification of lead-based paint, risk assessments for the evaluation of lead-based paint hazards, and abatement for the permanent elimination of lead-based paint hazards are conducted safely, effectively and reliably.

(d) These rules cover a contractor who offers to abate a residence of lead-based paint hazards or who offers to conduct a lead-based paint inspection in a residential dwelling of child occupied facility.

(3) Scope.

(a) These rules are limited to the establishment of licensing for the disciplines of lead-based paint Inspector, Risk Assessor, Supervisor, Project Designer, Worker, and registration of Firms engaged in these activities;

(b) These rules prescribe the requirements for, and the manner of, licensing applicants for Inspector, Risk Assessor, Supervisor, Project Designer, Worker, and registration of firms employing this personnel, to assure the protection of the public, especially buildings occupied by children six years old and under, as required by federal law;

(c) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain a license or registration, or that otherwise are contrary to the public interest, for which Construction Contractors Board may deny, suspend, or revoke a license or registration.

(d) These rules establish fees to extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0005, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97

#### 812-007-0010

##### 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 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; CCB 1-1997, f. & cert. ef. 5-15-97

#### 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 lead-based paint hazards including, but not limited to:

(a) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(b) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

(c) Specifically, abatement includes, but is not limited to:

(A) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards as described in subsections (1)(a) and (1)(b) above.

(B) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under subsection (1)(d) of this definition.

(C) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under subsection (1)(d) of this section.

(D) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(d) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited Training Program" means training program provisionally accredited or accredited by the Health Division, either directly or through a reciprocity agreement with other jurisdictions, to provide training for individuals engaged in lead-based paint activities.

(3) "Administrator" means the Administrator of the Construction Contractors Board.

(4) "Approved" means approved in writing by the Construction Contractors Board.

(5) "Certified" means successful completion of a training program accredited by the Health Division, passage of a certification examination administered by the Division and satisfaction of any other requirements for the appropriate discipline, and submission and approval of the appropriate application by the Division for inspection, risk assessment or abatement activities in target housing and child occupied facilities.

(6) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities that the Division has issued a certificate under these rules.

(7) "Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week, (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit last 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.

(8) "Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(9) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but are not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(10) "Contact hour" means 60 minutes of lead-based paint related training which may include a break of not more than ten minutes.

(11) "Course Completion document" means documentation issued by an accredited training provider to an individual as proof of successful completion of a Division approved lead-based paint course.

(12) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during a course or continuing education instruction.

(13) "Deteriorated paint" means paint that is cracking, chipping, peeling, blistering, flaking, worn, chalking, alligating or otherwise separating from the substrate of a building component.

(14) "Discipline" means a specific type or category of lead-based paint activity.

(15) "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.

(16) "Division" means the Health Division of the Department of Human Resources.

(17) "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," revised October, 1997; Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Based Contaminated Soil, September, 1995; and EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling, March 1995.

(18) "Firm" means a sole proprietorship, corporation, association, firm, partnership, and joint stock companies.

(19) "Hands-on-training" means training during which students practice skills that they will be expected to perform at the work site.

(20) "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.

(21) "Inspector" means an individual who is certified by the Health Division and licensed by the Construction Contractors Board to conduct in target housing and child occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, in accordance with OAR 333-069-0070 and 812-007-0070.

(22) "Job tasks" means the specific activities performed in the context of work.

(23) "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.

(24) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk-assessment, and abatement.

(25) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects.

(26) "Licensed" means an individual or a firm who has been certified by the Health Division in one or more disciplines and has completed the requirements for licensing or registration by the Construction Contractors Board.

(27) "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 or interior or exterior components with small surface areas (windowsills, baseboards, soffits, trim).

(28) "Person" means an individual.

(29) "Project designer" means an individual who is certified by the Health Division and licensed by the Construction Contractors Board to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for lead abatement projects in target housing and child occupied facilities, including occupant notification and protection, clean-up and clearance, and abatement reports.

(30) "Public agency" means an entity that functions as part of a governmental body or organization at the local, state, or federal level.

(31) "Refresher training course" means a minimum 7 hour training program accredited by the Health Division to update an individual's knowledge and skills so that he/she can effectively and safely continue to practice in the field.

(32) "Residential building" means a structure which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(33) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based hazards.

(34) "Risk assessor" means an individual who is certified by the Health Division and licensed by the Construction Contractors Board to conduct in target housing and child occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based hazards; and who may conduct a lead-hazard screen in accordance with OAR 333-069-0070 and 812-007-0070.

(35) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

(36) "Supervisor" means an individual who is certified by the Health Division and licensed by the Construction Contractors Board to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with OAR 333-069-0070 and 812-007-0070.

(37) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

(38) "These rules" means OAR 812-007-0000 through 812-007-0090.

(39) "Worker" means an individual who is certified by the Health Division and licensed by the Construction Contractors Board to conduct, to perform work-site lead-based paint abatement activities in target housing and child occupied facilities in accordance with OAR 333-069-0070 and 812-007-0070.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0015, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

## 812-007-0030

### Certification, License and Registration Required

(1) No individual shall offer to perform or perform lead-based paint inspection, risk assessment, or abatement activities in target housing or child-occupied facilities without first receiving certification from the Health Division and a license from the Construction Contractors Board and without being an owner or employee of a firm that is certified by the Health Division and registered with the Construction Contractors Board, except if such

an individual is exempt from Construction Contractors Board licensing requirements.

(2) No firm or public agency shall offer to perform or perform lead-based paint inspection, risk assessment or abatement activities in target housing or child-occupied facilities without first receiving a certification from the Health Division and a registration certificate from the Construction Contractors Board and without having as an owner or employee an individual who is certified by the Health Division and licensed by the Construction Contractors Board, except if such a firm or public agency is exempt from Construction Contractors Board licensing requirements.

(3) All licenses to perform lead-based paint activities issued under ORS 701.515 shall terminate within one year from date of issue and are renewable upon meeting all the requirements as determined by the Construction Contractors Board.

(4) Licensed individuals and registered firms conducting lead-based activities shall comply with the work practice standards for performing lead-based paint activities as prescribed in these rules.

(5) It shall be considered a violation of these rules for any individual or firm to conduct any of the lead-based paint activities described unless the individual has received certification from the Health Division and license from the Construction Contractors Board, except if such a person, is exempt from Construction Contractors Board registration or licensing requirements.

(6) A certificate for an individual will be issued by the Division in the form of an identification card and a numbered certificate. This card will identify each discipline a person is certified in and must be worn in plain view at all times while conducting inspection, risk assessment, or abatement activities.

(7) The Construction Contractors Board shall issue a numbered license to the individual. The Construction Contractors Board shall issue a numbered registration certificate to each firm.

(8) A public agency whose employees perform "in house" lead-based paint services need not be certified; but shall furnish the Health Division with a letter of compliance certifying the following:

(a) The agency will use only certified individuals of the appropriate discipline to conduct lead-based paint activities as described in these rules; and

(b) The agency will follow the standards for conducting lead-based paint activities as prescribed in these rules; and

(c) The agency will maintain records of all such activities per these rules.

(d) The letter of compliance will be signed by an individual designated to sign on the agency's behalf.

(9) A firm or public agency that contracts with another firm or public agency to conduct lead-based paint activities on its behalf need not be certified but must be registered with the Construction Contractors Board.

(a) The contracting firm or public agency shall submit to the Health Division a letter of compliance stating the following:

(A) The firm or agency will use only certified individuals of the appropriate discipline to conduct lead-based paint activities as described in these rules; and

(B) The firm or agency will follow the standards for conducting lead-based paint activities as prescribed in these rules; and

(C) The firm or agency will maintain records of all such activities per these rules.

(D) The letter of compliance will be signed by an individual designated to sign on the firm or agency's behalf.

(b) The contracting firm shall submit to the Health Division, upon request, a copy of the contract agreement between the contracting firm and the certified firm or firms.

(10) Employees or agents of regulatory agencies are exempt from these rules if: (1) those employees or agents are acting in a regulatory capacity, and (2) if they are carrying out activities within the scope of the agency's regulatory authority, and (3) if they have been trained in a manner consistent with the public and environmental health objectives of these rules.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0020, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

**812-007-0040**

**Application Requirements and Eligibility Requirements**

(1) No person or firm shall conduct or offer to conduct activities in target housing and child occupied facilities, shall conduct such activities without first receiving a certificate from the Health Division to conduct such activities and without first obtaining a license or registration from the Construction Contractors Board to conduct such activities.

(2) An individual must do the following to qualify for a license:

(a) Submit an application on a form presented by the Construction Contractors Board together with the license fee; and

(b) Submit a copy of the certificate issued by the Health Division showing that the individual is qualified to perform the activities.

(3) A firm must do the following to qualify for a registration:

(a) Become registered with the Construction Contractors Board as a Specialty or General Contractor, All Structures; and

(b) Have as an owner or employee one or more individuals who have obtained a license from the Construction Contractors Board to perform the activities; and

(c) Submit an application on a form prescribed by the Construction Contractors Board together with the fee payment; and

(d) Submit a copy of the certificate issued by the Health Division showing that the firm is qualified to conduct the activities.

(4) Following are the minimum eligibility requirements for specific activities:

(a) Inspector. To qualify, an individual shall complete all elements on the application form and meet the following eligibility requirements:

(A) Successfully complete Lead Inspectors Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint inspection training course must consist of at least 24 contact hours with at least eight hours of hands-on training.

(B) Pass the certification examination administered by the Health Division for inspector.

(b) Risk Assessor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(A) Successfully complete Lead-Based Risk Assessment Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint inspection and risk assessment training course must consist of at least 40 contact hours with at least 12 hours hand-on training (e.g., 24 contact hours inspector and 16 contact hours risk assessor training).

(B) Pass the certification exam administered by the Health Division for risk assessor;

(C) Have completed one of the following education and applicable experience criteria:

(i) Certification as an industrial hygienist, an engineer, a registered architect, or an environmentally related scientific field such as an environmental scientist; or

(ii) A bachelor's degree in biological, chemical or physical sciences, or a related field and at least one year experience in an occupation conducting inspections and assessing health, safety or environmental hazards (e.g., lead, asbestos, or environmental remediation work), or in the construction or building trades; or

(iii) A high school diploma or its equivalent, plus at least three years of experience in an occupation conducting inspections and assessing health, safety or environmental hazards (e.g. lead, asbestos, or environmental remediation work).

(c) Supervisor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(A) Successfully complete the Supervisor & Contractor Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint supervisor & contractor training course must consist of at least 32 contact hours with at least eight hours hands-on training;

(B) Pass the certification exam administered by the Health Division for supervisor;

(C) Have completed one of the following experience requirements:

(i) One year of experience as a certified lead-based paint abatement worker; or

(ii) At least two years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.

(d) Abatement Worker. To qualify, an individual shall complete all elements on the application form and successfully complete the Abatement Worker Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint abatement worker training course must consist of at least 16 contact hours with at least eight hours hands-on training.

(e) Project Designer. To qualify, an individual shall comply with all application requirements and the following minimum eligibility requirements:

(A) Successfully complete the Project Designer Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint supervisor and project designer accredited training course must consist of at least 40 contact hours with at least eight hours hands-on training (e.g., 32 contact hours supervisor and eight contact hours project designer training).

(B) Have completed one of the following education and applicable experience criteria:

(i) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or

(ii) Four years of experience in building construction and design or a related field.

(5) Applicants for certification may offer a refresher course in the same discipline in satisfaction of the training requirement if the following conditions are met:

(a) The original, standard training course was successfully completed after July 1995; or

(b) If an inspector training course, it incorporates the changes made by the revision of chapter 7 of the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," revised October 1997.

(c) The training course was offered by a training provider that at the time was approved in writing by the Health Division to offer lead-based paint training courses; or

(d) The training course was accredited by the Health Division.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0025, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

**812-007-0050**

**Renewal**

(1) To maintain a license and a certification in a particular discipline, or as a firm, certified individuals and firms shall apply annually to the Health Division for renewal of certification within one year of the issue date of the original certification.

(a) Individuals and firms shall apply for renewal by submitting a certification renewal application available from the Health Division, and by paying the appropriate fee per OAR 333-069-0090.

(b) Firms shall apply for renewal by completing a firm certification renewal application, and by paying the appropriate fee per OAR 333-069-0090.

(2) Recertification is required for individuals three years after the issue date of certification. To obtain recertification, an individual shall fulfill the following:

(a) Submit to the Health Division an application for recertification that shall include two (2) passport photographs and the appropriate fee for OAR 333-069-0090.

(b) Submit to the Health Division a copy of the training course completion certificate from an accredited lead-based paint refresher-training course in the appropriate discipline.

(c) Pass a qualifying examination (if applicable) administered by the Health Division.

(d) Meet minimum qualification requirements for the discipline for which recertification is being applied.

(3) An individual, whose certification has been expired for more than six months, shall be required to successfully complete a refresher course in that discipline and pass a qualifying examination administered by the Health Division before the certification may be renewed.

(4) Applicants for license renewal shall submit required documentation and complete the Construction Contractors Board renewal form along with the appropriate fee.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renum from 812-007-0030, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

#### 812-007-0060

##### License Issuance

(1) The Construction Contractors Board shall inform the applicant, in writing, when his/her application is granted, denied or incomplete and of the additional information or documentation that is requirement to complete the application.

(a) When granted, the license shall be mailed to the applicant and the effective date of the license will be the date applicant meets all Construction Contractors Board requirements unless otherwise agreed in writing between the parties.

(b) A unique certification number will be assigned to each license holder.

(c) An application may be withdrawn at any time by written request to the Construction Contractors Board.

(2) If denied, the Construction Contractors Board shall state, in writing, the reasons for denial.

(3) A license shall be non-transferable and shall be effective for one year from date of issue.

Stat. Auth.: ORS 701.500 - ORS 701.515

Stats. Implemented: ORS 701.500 - ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renum from 812-007-0035, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

#### 812-007-0070

##### Work Practice Standards

(1) When performing any lead-based paint activity described by a certified and licensed individual as an inspection, lead hazard screen, risk assessment or abatement, a certified and licensed person must perform that activity in compliance with these rules, documented methodologies, and according to procedures and work practice standards.

(2) Inspection. An inspection shall be conducted only by a person certified by the Health Division and licensed by Construction Contractors Board as an inspector or risk assessor. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing by the Construction Contractors Board.

(a) Locations shall be selected according to documented methodologies and tested for lead-based paint as follows:

(A) In target housing and child occupied facilities, each component with a distinct painting history shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint; and

(B) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

(A) Inspection date;

(B) Building address;

(C) Date of construction;

(D) Apartment identification (numbers, letters, and names if applicable);

(E) Name, address and telephone number of owner or owners of each unit;

(F) Name, signature, and certification number of each inspector and risk assessor conducting testing;

(G) Name, address and telephone number of the certified and registered firm employing each inspector and/or risk assessor;

(H) Each testing method and device and/or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any x-ray fluorescence (XRF) device; and

(I) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(3) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the Health Division and licensed by Construction Contractors Board as a risk assessor, except if such a person, is exempt from Construction Contractors Board licensing requirements, and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children six years and under shall be collected.

(b) A visual inspection shall be conducted to determine presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined, using documented methodologies, to be in poor condition and to have a distinct painting history shall be tested for the presence of lead.

(d) In target housing, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multi-family dwellings and child occupied facilities, in addition to floor and window composite dust sampling as required in target housing, also common areas composite dust samples shall be collected where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(A) Information in a risk assessment report as specified in section (4) below including paragraphs (4)(i)(A) through (4)(i)(N) and excluding paragraphs (4)(i)(O) through (4)(i)(R). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(B) Any recommendations for follow-up risk assessment and other further actions.

(4) Risk assessment. A risk assessment of target housing or child-occupied facility shall be conducted only by a person certified by the Health Division and licensed by the Construction Contractors Board as a risk assessor. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing requirements of Construction Contractors Board. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) Each surface with deteriorated paint determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using documented methodologies, to be a potential lead-based paint hazard and having a distinct painting history, shall also be tested for the presence of lead.

(d) In target housing, dust samples (either composite or single-surface samples) shall be collected from the floor and window in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) In multi-family dwellings and child-occupied facilities, the samples required in subsection (4)(d) of this section shall be taken. In addition, window and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

(A) Common areas adjacent to samples target house of child-occupied facility; and

(B) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, window and floor dust samples (either composite or single-surface samples) shall be collected in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from exterior play areas and building dripline/foundation areas where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report, which shall include as a minimum the following information:

- (A) Assessment date;
- (B) Address of each building;
- (C) Date of construction of buildings;
- (D) Apartment identification (number, letters, names if applicable);
- (E) Name, address, and telephone number of each owner of each building;
- (F) Name, signature, and certification number of each risk assessor conducting the assessment;
- (G) Name, address and telephone number of the certified firm employing each risk assessor;
- (H) Name, address and telephone number of each laboratory conducting analysis of collected samples;
- (I) Results of the visual inspection;
- (J) Testing method and sampling procedure employed for paint analysis;
- (K) Specific locations of each painted component tested for the presence of lead;

(L) All data collected from on-site testing, including quality control data, and if used, the serial number of any x-ray fluorescence (XRF) device;

(M) All results of laboratory analysis on collected paint, soil, and dust samples;

(N) Any other sampling results;

(O) Any background information collected pursuant to subsection (4)(b) of this section;

(P) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint or other assessments of lead-based paint related hazards;

(Q) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards;

(R) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement. An abatement shall be conducted only by a person certified by the Health Division and licensed by the Construction Contractors Board. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing by the Construction Contractors Board. Abatement shall be conducted as follows:

(a) Certified and licensed supervisor is required for each abatement project and shall be onsite during all work site preparation, abatement activities and during post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager, or answering service, and able to be present at the work site in no more than two hours.

(b) The certified and licensed supervisor and certified and registered firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) Any firm or individual conducting lead-based paint abatement activities in target housing or child-occupied facilities shall notify the Health Division at least seven (7) business days before the start date of the project by completing and submitting a "Notice of Abatement" form available from the Health Division.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified and licensed supervisor or project manager, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(e) These work practices shall be restricted during abatement:

(A) Open-flame burning or torching of lead-based paint is prohibited;

(B) Uncontained hydroblasting or high-pressure washing of lead-based paint is prohibited;

(C) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(D) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(E) Operating a heat gun on lead-based paint is permitted only at temperatures below 750°F.

(f) When soil abatement is conducted, the lead contaminated soil shall be replaced with soil that is not lead-contaminated, if soil is removed, or the lead contaminated soil shall be permanently covered, if soil is not removed.

(g) The following post-abatement clearance procedures shall be performed only by a certified and licensed risk assessor:

(A) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(B) Clearance sampling for lead-contaminated dust shall be conducted following the visual inspection and any post-abatement cleanup.

(C) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of 1 hour after completion of final post abatement cleanup activities.

(D) Post-abatement clearance activities shall be conducted based upon the extent or manner of abatement activities conducted in or to the target housing or child-occupied facility as follows:

(i) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one window and one dust sample shall be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(ii) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways or stairwells in the target housing or child-occupied facility. One dust sample shall be taken from one window and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(iii) Following an exterior paint abatement, a visual inspection shall be conducted of all horizontal surfaces in the outdoor living area closest to abated surfaces to determine cleaning of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is noted. Also, the inspection shall determine the presence of paint chips at the building dripline or next to the foundation below any abated exterior surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(E) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(F) The certified and licensed risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each dust sample with clearance levels for lead in dust on floors and windows. If residual lead levels in a dust sample exceed clearance levels, all components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(h) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(A) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(B) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (5)(g) of this section.

(i) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(A) Start and completion dates of abatement;

(B) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(C) The occupant protection plan;

(D) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date of clearance testing;

(E) The results of clearance testing and all soil analyses and the name of each laboratory conducting analysis of collected samples;

(F) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Sampling. Any paint chip, dust, or soil samples collected pursuant to these work practice standards shall be collected by a certified and licensed inspector or risk assessor. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing by the Construction Contractors Board. Such sample shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(7) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or post abatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(8) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months. Also, the certified firm or individual shall provide copies of these reports to the building owner who contracted for the services.

(9) Certified individuals and firms shall, upon request, make available to the Health Division records and documents regarding regulated lead-based paint activities so that the Health Division may inspect said records and documents for the purpose of monitoring compliance with these rules. The Health Division shall respect the proprietary nature of business records.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

## 812-007-0080

### Denial, Suspension or Revocation of Certification

(1) The Construction Contractors Board may deny issuance of, suspend, or revoke a license for an individual or a registration for a firm for circumstances including but not limited to the following:

(a) Performing work requiring license at a job site without having a current valid original license identification card worn in view at the job site inspection;

(b) Permitting the duplication or use of the individual's own certificate or license by another;

(c) Performing work for which appropriate certification and license has not been received from the Health Division and the Construction Contractors Board;

(d) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under Construction Contractors Board rules;

(e) Failing to comply with local, state, or federal relevant statutes or regulations including execution of a consent agreement in settlement of an enforcement action;

(f) Failing to comply with work practices and standard of these rules and other generally accepted work practices;

(g) Obtaining certification or license through fraudulent representation of documentation satisfying eligibility requirements;

(h) Failing to renew certification and license in a timely manner.

(2) The Construction Contractors Board may deny issuance of, suspend, or revoke license for an individual for circumstances including but not limited to the following:

(a) Obtaining training documentation through fraudulent means;

(b) Gaining admission to and completed education through fraudulent representation of initial or previous education documentation.

(3) The Construction Contractors Board may deny issuance of, suspend, or revoke registration of a firm for circumstances including but not limited to the following:

(a) Performing work requiring certification or license at a job site with individuals who are not certified or licensed.

(b) Failure to maintain required records.

(4) Hearings on the denial, suspension or revocation of a license shall be conducted as a contested case in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renum-  
ber from 812-007-0040, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-  
1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

#### 812-007-0090

##### Fees

The following fees are established:

(1) Contractor firms shall pay a non-refundable fee of \$50 in addition to the regular contractor registration fee for an endorsement on their Construction Contractors Board registration that will allow them to perform lead-based paint activity for one year.

(2) Inspectors, risk assessors, supervisors and project designers shall pay a non-refundable license fee of \$50 for a one-year license.

(3) Abatement workers shall pay a non-refundable license fee of \$25 for a one-year license.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renum-  
ber from 812-007-0045, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 5-  
1999, f. & cert. ef. 9-10-99

### DIVISION 8

#### CERTIFICATION OF INDIVIDUALS AND REGISTRATION 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 registration 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.

(3) Scope.

(a) These rules are limited to the establishment of certification for individuals and registration 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 registration 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.: Ch. 814, 1997 OL

Stats. Implemented: Ch. 814, 1997 OL

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98

#### 812-008-0020

##### Definitions

The following definitions apply to Division 008 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.

(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) "Enter" means to go into an area and observe all visible components.

(13) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time.

(14) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(15) "Home inspection" means an inspection of more than one inspection category as set forth in 812-008-0080(4) through (14). A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction.

(16) "Installed" means attached or connected such that the installed item requires tools for removal.

(17) "Normal operating controls" means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

(18) "Observe" means the act of making a visual examination.

(19) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(20) "On-site water supply quantity" means the water quantity based on the rate of flow of water.

(21) "Operate" means to cause systems or equipment to function.

(22) "Oregon certified home inspector" means a person certified pursuant to chapter 814, 1997 Oregon Laws and OAR chapter 812.

(23) "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.

(24) "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.

(25) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(26) "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.

(27) "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.

(28) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(29) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

(30) "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.

(31) "Test" means a test administered by the agency.

(32) "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.: Ch. 814, 1997 OL

Stats. Implemented: Ch. 814, 1997 OL

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98

### 812-008-0030

#### Certification and Registration Required

(1) Except as provided in ORS 701.350(1) and 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 registered with the agency.

(2) Except as provided in ORS 701.350(2) and 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 registered with the agency as a General Contractor, Specialty Contractor or Consultant, and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) No person, including persons listed in section (3)(b) of chapter 814, 1997 Oregon Laws as being exempt from ORS 701.350(1) and (2), shall use the title Oregon certified home inspector without receiving such certification from the agency.

(4) Certified individuals and registered business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

(5) All certificates to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

Stat. Auth.: ORS 355 & ORS 701.350

Stats. Implemented: ORS 355 & ORS 701.350

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99

### 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 registrant;

(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 registration:

(a) Become registered with the agency as a general 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) Effective July 1, 1999 through January 1, 2001, in order to qualify to take the test, an applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Each completed, with a passing grade, three-hour minimum credit class in home inspection, construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university (one point for each class, 10 points maximum).

(b) Each completed, with a passing grade, minimum three-hour class certified by the agency (one point for each class, 10 points maximum).

(c) Each completed "ride-along" inspection performed under the direct supervision of an Oregon Certified Home Inspector (one point each ride-along, 10 points maximum).

(4) Upon providing acceptable documentation, the applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Each completed 12 months working for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, or real estate (two points each completed 12 months, 16 points maximum).

(b) Each completed 12 months legally working as a home inspector in Oregon or another state or country (four points each completed 12 months, 16 points maximum).

(c) Certified member of a professional home inspector association whose membership criteria have been certified by the agency in the last 12 months (four points each certification, eight points maximum).

(d) Each letter of recommendation from an Oregon-certified home inspector (1/2 point each recommendation, four points maximum).

(5) Applicants who apply to take the test before July 1, 1999, are exempt from the requirement in OAR 812-008-0040(3) if they pass all five sections of the test before January 1, 2000.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 2-1999, f. & cert. ef. 5-4-99;

CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99

### 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, fire-places and wood stoves.

(c) 20 percent: Electrical.

(d) 20 percent: Plumbing.

(e) 20 percent: Agreements, reports and standards.

(3) To be certified, applicants must successfully pass the test.

(4) All applicants shall show proof of the following to take the test shall be at least 18 years old.

(5) 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.

(6) The passing score shall be 75 percent or higher based on 100 percent possible.

(7) Applicants shall score 75 percent or higher on each of five sections of the test.

(8) Applicants shall not take the same test version on consecutive attempts.

(9) The agency will notify applicants by mail of their test scores on each section of the test.

(10) Applicants who fail one or more sections of the test need not retake test sections already passed except as provided in (11) below.

(11) Applicants shall pass all sections of the test within one year or retake all sections of the test.

(12) Applicants shall complete the certification process within one year from the date the person was declared qualified for certification or retake the entire test.

(13) Applicants shall show picture identification before taking the test.

(14) Applicants shall not be accompanied by another individual while taking the test unless it is a translator.

(15) Applicants needing a translator shall pay for translator.

(16) Applicants taking the test shall not leave the testing room.

(17) Applicants shall not retain notes or other materials during the test.

(18) Applicants who attempt and fail the first test may take the second test in no less than 30 days. The applicant must wait at least 90 days to take the test on all subsequent attempts.

(19) Applicants shall not review test questions or answer sheets.

Stat. Auth.: ORS 355 & ORS 701.350

Stats. Implemented: ORS 355 & ORS 701.350

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 5-1998(Temp), f. & cert. ef. 5-28-98 thru 7-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99

#### 812-008-0060

##### Certification Issuance

(1) When granted, the certificate shall be mailed to the applicant.

(2) The effective date of the certificate will be the date applicant meets all agency requirements.

(3) A unique certification number will be assigned to each certificate.

(4) All certificates shall be issued in the name of the individual who passed the test.

(5) An application may be withdrawn at any time by written request to the agency.

(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 one, two, three or four years from date of issue.

Stat. Auth.: Ch. 814, 1997 OL

Stats. Implemented: Ch. 814, 1997 OL

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98

#### 812-008-0070

##### Requirements for Renewal of Certification

(1) The 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 of \$150 (listed in OAR 812-008-0110); and

(c) If the certification for renewal has an expiration date on or after March 31, 2001, a statement of completed continuing education, on an agency form.

(2) The statement of completed continuing education referred to in subsection (1)(c) of this rule shall contain the following:

(a) For applicants renewing in 2001, a listing of no less than 15 approved continuing education units (CEUs) completed by Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought on an agency form; and

(b) For applicants renewing after 2001, a listing of no less than 30 approved continuing education units (CEUs) completed by Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought on an agency form; and

(c) A signed declaration by the Oregon certified home inspector that the statement of completed continuing education units is true.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99

#### 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 courses. All required CEUs per renewal may be from this category.

(2) One CEU for each year served as a member of the Board, or of the Board's Home Inspector Advisory Committee, or as an elected officer of a recognized association of home inspectors. No more than five CEUs per renewal may be from this category.

(3) Courses in approved subject areas in OAR 812-008-0074(1) that provide for college credit given by institutions of higher learning (community colleges or state universities) are approved for hours in home inspector continuing education

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-008-0074

##### Approved Course Subjects and Education Providers

(1) The following subject areas are approved for continuing education: Report writing, communication skills, business practices, legal issues, ethics, agency study guide items, building codes, and agency standards of practice.

(2) Education provider applicants shall submit application form, instructor qualifications, course content outlines, course materials and other materials as required by the agency.

(3) The agency shall approve education providers' courses based on written evaluation criteria approved by the agency and made available to providers. Criteria include:

(a) Instructor has experience in subject matter.

(b) Instructor has licenses, certificates, and/or degrees in subject matter.

(c) Instructor has background in training or adult education.

(d) Instructor has knowledge of home inspection industry.

(e) Criteria used to approve and evaluate instructors are stringent and ongoing.

(f) Goals and objectives are clear and are appropriate for Oregon home inspectors.

(g) Course is in approved subject area stated in OAR 812-008-0074(1).

(h) Course content is relevant and appropriate for Oregon home inspectors.

(i) Course content is thorough.

(j) Course can be evaluated against CCB standards of practice and study guide.

- (k) Course materials are accurate and current.
- (l) Course is instructor-led.
- (m) Input is received from home inspection industry.
- (4) The agency shall approve education providers' programs based on written evaluation criteria approved by the agency and made available to providers. Criteria include:
  - (a) Instructors are qualified.
  - (b) Criteria used to approve and evaluate instructors are stringent and ongoing.
  - (c) Goals and objectives are clear and appropriate for Oregon home inspectors.
  - (d) Course is in approved subject area stated in OAR 812-008-0074(1).
  - (e) Course content is relevant and appropriate for Oregon home inspectors.
  - (f) Course can be evaluated against CCB standards of practice and study guide.
  - (g) Course materials are accurate and current.
  - (h) Course is instructor-led.
  - (i) Input is received from home inspection industry.
- (5) Education providers' courses and programs approved by the agency shall be granted retroactive credit for certified home inspectors for two years.
- (6) The agency may terminate a provider's right to offer a course or their program if the course(s) do not meet the agency's approved criteria.

Stat. Auth.: ORS 701.350 & ORS 701.355  
 Stats. Implemented: ORS 701.350 & ORS 701.355  
 Hist.: CCB 5-1999, f. & cert. ef. 9-10-99

#### 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.

Stat. Auth.: ORS 701.350 & ORS 701.355  
 Stats. Implemented: ORS 701.350 & ORS 701.355  
 Hist.: CCB 4-1999, f. & cert. ef. 6-29-99

#### 812-008-0078

##### Agency Verification of an Oregon Certified Home Inspector's Statement of Completed Continuing Education

- (1) Within 30 days of written request from the agency, an Oregon certified home inspector shall submit to the agency proof satisfactory to the agency that the Oregon certified home inspector completed the continuing education listed in the statement of completed continuing education in OAR-812-008-0070(2).
- (2) The agency may at any time undertake such investigation as it deems appropriate to verify that the Oregon certified home inspector has completed the continuing education listed in the statement of completed continuing education.

Stat. Auth.: ORS 701.350 & ORS 701.355  
 Stats. Implemented: ORS 701.350 & 701.355  
 Hist.: CCB 4-1999, f. & cert. ef. 6-29-99

#### 812-008-0080

##### Standards of Practice and Standards of Behavior

Sections (1) through (14) of this rule set forth the minimum standards of practice required by Oregon certified home inspector. Section (15) of this rule sets forth the standards of behavior of Oregon certified home inspectors.

##### (1) Purpose and Scope:

- (a) Home inspections undertaken according to Division 8 shall be based solely on the property conditions, as observed at the time of the home inspection;
- (b) 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:
    - (i) State that the home inspection is in accordance with standards and practices set forth in Division 8 of OAR chapter 812;
    - (ii) Describe the services provided and their cost;
    - (iii) State where the planned inspection differs from the standard home inspection categories as set forth in 812-008-0080(4) through (14); and
    - (iv) Conspicuously state whether the home inspection includes a pest and dry rot inspection to discover wood destroying organisms and that such inspections are available for a fee;
    - (v) 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 812-008-0080; and
  - (C) Submit a written report to the client that shall:
    - (i) Describe those systems and components as set forth in 812-008-0080(4) through (14);
    - (ii) Identify all systems and components designated for inspection in 812-008-0080 that have been inspected, and identify any systems or components designated for inspection that were not inspected, and state the reason for not inspecting;
    - (iii) State whether any inspected system or components do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling; and
    - (iv) State the Construction Contractors Board registration number of the business and the name, certification number and signature of the person undertaking the inspection.
- (c) 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;
- (d) All written reports, bids, contracts, and an individual's business cards shall include the Oregon certified home inspector's certification number.

- (2) General Limitations:
  - (a) Inspections undertaken in accordance with Division 8 are visual and are not technically exhaustive;
  - (b) "Residential structures" and "appurtenances" thereto are defined in ORS chapter 701.005 and OAR chapter 812-008-0020.

##### (3) General Exclusions:

- (a) Oregon certified home inspectors may, but 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.
- (b) 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.

**(4) Structural Components:**

(a) The Oregon certified home inspector shall observe visible structural components including:

- (A) Foundation;
- (B) Floors;
- (C) Walls;
- (D) Columns or piers;
- (E) Ceilings; and
- (F) Roofs.

(b) The Oregon certified home inspector shall describe the type of:

- (A) Foundation;
- (B) Floor structure;
- (C) Wall structure;
- (D) Columns or piers;
- (E) Ceiling structure; and
- (F) Roof structure.

(c) 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.

**(5) Exterior:**

(a) The Oregon certified home inspector shall observe:

- (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.

(b) The Oregon certified home inspector shall:

(A) Describe wall cladding materials;

(B) Operate all entryway doors and a representative number of windows;

(C) Operate garage doors manually or by using permanently installed controls for any garage door operator; and

(D) Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing.

(e) The Oregon certified home inspector is not required to observe:

(A) Storm windows, storm doors, screening, shutters, and awnings;

(B) Presence of safety glazing in doors and windows;

(C) Garage door operator remote control transmitters;

(D) Geological conditions;

(E) Recreational facilities (including spas, saunas, steam-baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); or

(F) Detached buildings or structures.

**(6) Roofing:**

(a) The Oregon certified home inspector shall observe:

(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.

(b) The Oregon certified home inspector shall:

(A) Describe the type of roof covering materials; and

(B) Report the method used to observe the roofing and components.

**(7) Plumbing:**

(a) 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.

(b) 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.

(c) 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;

(d) 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:

(i) Water conditioning systems;

(ii) Fire and lawn sprinkler systems;

(iii) On-site water supply quantity and quality;

(iv) On-site waste disposal systems;

(v) Foundation irrigation systems;

(vi) Whirlpool tubs, except as to functional flow and functional drainage;

(vii) Swimming pools and spas; or

(viii) Solar water heating equipment.

**(8) Electrical:**

(a) The Oregon certified home inspector shall observe:

(A) Service entrance conductors;

(B) Service equipment, grounding equipment, main overcurrent device, and main 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 circuit interrupters; and

(H) Smoke detectors.

(b) 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.

(c) The Oregon certified home inspector shall report:

(A) Any observed 110 volt aluminum branch circuit wiring;

and

(B) The presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central security system.

(d) 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 except ground fault circuit interrupters;

(C) Dismantle any electrical device or control other than to remove the covers of the main or auxiliary distribution panels;

(D) Observe:

(i) Low-voltage systems except to report the presence of solenoid-type lighting systems;

(ii) Security system devices, heat detectors, or carbon monoxide detectors;

(iii) Telephone, security, TV, intercoms, lightning arrestors or other ancillary wiring that is not a part of the primary electrical distribution system; or

(iv) Built-in vacuum equipment.

**(9) Heating:**

(a) 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.

(b) The Oregon certified home inspector shall describe:

(A) Energy source; and

(B) Heating equipment and distribution type.

(c) The Oregon certified home inspector shall operate the systems using normal operating controls;

(d) The Oregon certified home inspector shall open readily accessible panels provided by the manufacturer or installer for routine homeowner maintenance;

(e) The Oregon certified home inspector is not required to:

(A) Operate automatic safety controls;

(B) Ignite or extinguish solid fuel fires;

(C) Observe:

(i) The interior of flues;

(ii) Fireplace insert flue connections;

(iii) Humidifiers; or

(iv) The uniformity or adequacy of heat supply to the various rooms.

**(10) Central Air Conditioning:**

(a) 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.

(b) The Oregon certified home inspector shall describe:

(A) Energy sources; and

(B) Cooling equipment type.

(c) The Oregon certified home inspector shall operate the systems using normal operating controls;

(d) The Oregon certified home inspector shall open readily openable panels provided by the manufacturer or installer for routine homeowner maintenance;

(e) 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.

**(11) Interiors:**

(a) The Oregon certified home inspector shall observe:

(A) Walls, ceiling, and floors;

(B) Steps, stairways, balconies, and railings;

(C) Counters and cabinets; and

(D) Doors and windows.

(b) 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.

(c) 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.

**(12) Insulation and Ventilation:**

(a) The Oregon certified home inspector shall observe:

(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.

(b) The Oregon certified home inspector shall describe:

(A) Insulation in unfinished spaces; and

(B) Absence of insulation in unfinished space adjacent to heated living areas.

(c) 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.

**(13) Built-in Kitchen Appliances:**

(a) 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.

(b) 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.

(c) 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.

(14) **Site:**

(a) The Oregon certified home inspector shall observe:

(A) Walks, driveways, and patios;

(B) Visible site drainage systems;

(C) Site grade and water drainage at the foundation; and

(D) Visibly accessible retaining walls and rockeries.

(b) The Oregon certified home inspector shall describe:

(A) Tripping hazards and other adverse conditions in walks and drives;

(B) Site grade and drainage;

(C) Site retaining walls;

(D) Earth to wood proximity.

(c) The Oregon certified home inspector is not required to report on:

(A) Fences or privacy walls;

(B) Ownership of fencing, privacy walls, retaining walls;

(C) Condition of trees, shrubs, or vegetation; or

(D) Soil or geological conditions, site engineering, property boundaries, encroachments, or easements.

(15) **Standards of Behavior:**

(a) An Oregon certified home inspector shall not 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) Opinions expressed by Oregon certified home inspectors shall only be based on their education, experience, and honest convictions;

(c) An Oregon certified home inspector shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was undertaken;

(d) No Oregon certified home inspector shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties;

(e) No Oregon certified home inspector shall give any gift, rebate or kickback to any person for the purposes of obtaining an engagement to perform a home inspection. However, this section shall not apply to items of nominal value given as part of an advertising promotion of general distribution;

(f) No Oregon certified home inspector shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property;

(g) 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. No Oregon certified home inspector shall 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;

(h) An Oregon certified home inspector shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

Stat. Auth.: ORS 701.350 & ORS 355

Stats. Implemented: ORS 701.350 & ORS 355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-008-0090

##### Revocation of Certification

The Construction Contractors Board may revoke the certificate of an Oregon certified home inspector or the registration 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 812-008-0080(1) through (14).

(2) Comply with one or more of the "Standards of Behavior" set forth in OAR 812-008-0080(15).

(3) Comply with OAR 812-008-0078(1).

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99

#### 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) Certification, \$75 per year.

(5) Certification renewal (two years), \$150.

(6) All prescribed fees are non-refundable.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99

### DIVISION 9

#### CONTESTED CASE HEARINGS AND APPEAL COMMITTEE

##### Contested Case Hearings, Claims

#### 812-009-0020

##### Hearing Notice and Limitation on Final Order

A notice of hearing shall state the amount sought by the claimant. The agency shall not issue a final order in an amount greater than that shown in the notice of hearing.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-009-0040

##### Scheduling of Hearing

Unless otherwise agreed to by the administrative law judge and the parties, the agency shall schedule contested case hearings no sooner than 21 calendar days from the date the parties are served notice of hearing pursuant to ORS 701.080 and ORS 183.415.

Stat. Auth.: ORS 183.415, ORS 701.080, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-009-0060

##### Hearing Postponement

(1) Postponement of a hearing may be granted at the request of a party if:

(a) The request is promptly made after the party receives the notice of hearing or is promptly made after emergency or unforeseen circumstances arise; and

(b) The party has good cause as stated in the request, for not attending the hearing at the time and date set. For the purposes of this section, good cause exists when:

(A) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(B) Failure to grant the postponement would result in undue hardship to the requesting party.

(2) An administrative law judge may postpone a hearing on his or her own motion for any reason.

Stat. Auth.: ORS 183.415, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1978, f. & ef. 12-4-78; 1BB 2-1979, f. & ef. 12-19-79; 1BB 1-1980, f. & ef. 2-29-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0005

#### 812-009-0080

##### Administrative Law Judge

A contested case hearing may be held before an administrative law judge of the agency.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701.145(12)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0100**

**Burden of Proof and Failure to Meet Burden**

A claimant must prove that damages occurred, that those damages were caused by the registrant and the monetary value of those damages. If the claimant fails to carry this burden of proof, the administrative law judge shall dismiss the claim.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0120**

**Determination of Validity of Claim**

In determining the validity of the claim, the administrative law judge shall determine:

(1) Whether the claim arose out of a transaction within the scope of ORS chapter 701;

(2) Whether the agency has jurisdiction over the matters at issue; and

(3) Whether the claimant was damaged, whether proven damages were caused by the registrant and the monetary value of any proven damages.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0140**

**Failure to Appear**

(1) If the claimant, after being properly served notice of hearing in accordance with these rules, fails to appear at a hearing, the administrative law judge may dismiss the claim unless the administrative law judge finds that failure to appear was caused by circumstances outside the control of the claimant.

(2) If the registrant, after being properly served notice of hearing in accordance with these rules, fails to appear at the hearing, the administrative law judge may issue an order based upon the claimant's presentation of a prima facie case, unless the administrative law judge finds that the registrant's failure to appear was caused by circumstances outside the registrant's control.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0160**

**Order Based on Hearing**

(1) Based upon evidence received at the hearing, the administrative law judge will prepare findings of fact and conclusions and issue an order.

(2) Orders may direct specific performance on the part of the registrant, order the registrant to pay monetary damages to the claimant or dismiss the claim.

(3) The administrative law judge may consider any amounts due and unpaid to the registrant from the claimant under the terms of the contract and may reduce the amount of any order by that amount.

(4) Except as provided in OAR 812-009-0200, the order shall automatically become a final order 21 days after the date of issue if no exceptions are filed in accordance with OAR 812-004-0400.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0180**

**Recording of Hearing**

The record of agency hearings will include a tape recording of the proceeding. The agency may dispose of tape recordings of agency hearings when ninety days have passed after issuance of a final order in the matter. However, if a petition for judicial review is timely filed, the agency may not dispose of tape recordings of agency hearings until the Court of Appeals has completed its judicial review.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0200**

**Final Order by Administrative Law Judge**

Notwithstanding OAR 812-009-0160, in accordance with ORS 701.145(12), the board delegates authority to administrative law judges to issue final orders in claim hearings if:

(1) The total amount claimed to be due to any claimant in a hearing does not exceed \$2,500;

(2) The parties voluntarily agree to a settlement of any claim in accordance with ORS 183.415(5); or

(3) The hearing was requested by respondent after the parties voluntarily agreed to a settlement of a claim and the following conditions exist:

(a) The settlement's essential terms are limited to the respondent's agreement to pay money to claimant in exchange for claimant's release of the claim; and

(b) The amount of the final order does not exceed the amount the respondent agreed to pay under the settlement agreement.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701.145(12)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**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.

Stat. Auth.: ORS 183.310, ORS 670.310, ORS 701.235 & ORS 701.992

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0320**

**Administrative Law Judge; Entry of Agency Evidence**

Contested case enforcement hearings may be held before an administrative law judge of the agency. The agency's evidence may be entered into the record by the administrative law judge, or by another representative of the agency.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 701.145(12)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

**812-009-0340**

**Agency Representation by Officer or Employee**

(1) As authorized by the Attorney General as provided in ORS 183.450(7)(a), agency officers and employees may appear, but not make legal argument, on behalf of the agency in compliance hearings involving:

(a) Imposition of civil penalties; and

(b) Refusals to reissue and suspensions in the following classes of hearings:

(A) Failure of a registrant to pay a final order of the Board;

(B) Violations of employer status regulations, including violations of ORS chapters 656, 657, and 316, in accordance with ORS 701.100; and

(C) Other compliance and claims hearings as approved in writing by the Attorney General on an individual case basis.

(2) Legal argument as used in ORS 183.450(8) has the same meaning as in OAR 137-003-0008.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.450

Hist.: BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 5-1993, f. 12-7-93, cert.

ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 8-1998, f. 10-29-

98, cert. ef. 11-1-98, Renumbered from 812-001-0006

**812-009-0360**

**Order Based on Hearing**

If a hearing is conducted, the administrative law judge will prepare findings of fact and conclusions based upon evidence received at the hearing and issue a proposed order for a specific sanction or a final order dismissing the matter.

Stat. Auth.: ORS 183.310, ORS 670.310, ORS 701.235 & ORS 701.992

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

### Exceptions; Appeal Committee

#### 812-009-0400

##### Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or contractor may file written exceptions if they believe that the administrative law judge has made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2) To be considered, the first exceptions must be received by the agency within 21 days of the date of mailing the proposed order. If one party files timely exceptions, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final as set forth in OAR 812-009-0160;

(b) If exceptions are timely received, the matter will be set for consideration by the Board's Appeal Committee at its next regular meeting for which agenda space is available.

(4) 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 Committee meeting date if the original exceptions were timely received.

(5) Claimant and registrant may appear before the members of the Committee to argue for or against the proposed order.

(6) The agency may waive the 15-day requirement contained in section (4) of this rule.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.460 & ORS 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 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. Written argument in opposition to the proposed order will be accepted up to 15 days before the Appeal Committee meeting date if the original exceptions were timely received. The agency may waive the 15 day requirement.

(3) 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, ORS 670.310, ORS 701.235, ORS 701.280 & ORS 701.992

Stats. Implemented: ORS 183.460 & ORS 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 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. Time allowed for oral argument before the Committee may be limited to five minutes for each side. After hearing any 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.

(2) The Committee may affirm the proposed order and findings of fact, modify either or both, or send the case back to a new

hearing. Unless the case is sent back to a new hearing, the agency will issue a final order after the Committee meeting.

(3) Final orders are subject to judicial review as set forth in ORS chapter 183.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.460 & ORS 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

## DIVISION 10

### CCB ARBITRATION BY THE BOARD

#### 812-010-0020

##### Applicability of Rule

This rule shall apply when:

(1) The parties to a claim filed under ORS 701.140 and 701.145 jointly agree, in writing, that the agency shall arbitrate the matter;

(2) A timely claim is filed relative to work performed under a contract which contains an arbitration clause specifying that the Construction Contractors Board shall arbitrate disputes arising from the contract;

(3) No party at a hearing seeks \$1,000 or more, as provided in ORS 701.145(10) and OAR 812-004-0590; or

(4) Arbitration by the Construction Contractors Board is ordered by a court in accordance with ORS 36.310.

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

Stats. Implemented: ORS 183 & ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0040

##### Arbitration of Disputes Outside Jurisdictional Requirements

Construction disputes which do not meet timeliness filing or other jurisdictional requirements for claims as set forth in ORS 701.145(3) may be arbitrated by the agency if both parties agree in writing to submit the dispute to the Construction Contractors Board for binding arbitration. The agency may refuse to accept for arbitration any dispute for which the agency has not accepted a claim for processing.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0060

##### Appointment of Arbitrator

The agency administrator or chief administrative law judge shall appoint an arbitrator.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0080

##### Delegation of Duties

The duties of the agency under these rules may be carried out through such representatives as the agency administrator or chief administrative law judge may direct.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0100

##### On-Site Investigation, Mediation

At the discretion of the agency or arbitrator, the arbitration hearing may be preceded by an on-site investigation or mediation.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0110

### Declaration of Amounts Alleged to be Due and Owing

(1) The party asserting the claim shall file with the agency on a form provided by the agency a declaration stating the amount alleged to be due and owing from any other party to the proceeding, together with such supporting documents as the agency may require.

(2) If any other party to the proceeding asserts a counterclaim, that party shall file with the agency a declaration stating the amount alleged to be due and owing from any other party to the proceeding, together with such supporting documents as the agency may require.

(3) Notwithstanding section (2) of this rule, a party is not required to file a declaration stating the amount alleged to be due and owing from any other party to the proceeding, if the party alleges only an offset.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145  
Hist.: CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0120

#### Time and Place of Arbitration Hearing; Notice; Effect of Amount Appearing in Notice

(1) The agency shall fix a time and place for the arbitration hearing, for which the agency will give at least 21 days advance notice, unless otherwise agreed to by the parties.

(2) The notice of arbitration hearing shall state the amount sought by each party asserting a claim or counterclaim. Unless otherwise agreed by the parties prior to or at the arbitration hearing, the arbitrator shall not issue an award to a party in an amount greater than that shown in the notice of arbitration hearing as being sought by that party.

(3) The arbitrator may reduce an award by any offset proven at the hearing, regardless whether the party asserting the offset filed a prehearing declaration as to the offset, and regardless whether the amount of the offset asserted was shown in the notice of arbitration hearing, provided the offset is equal to or less than the amount of the award to the other party, before the offset is applied.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0140

#### Qualifications of Arbitrator

No person shall serve as arbitrator in any arbitration if that person has any financial or personal interest in the result of the arbitration. Upon objection of a party to the continued service of an arbitrator, the agency administrator or chief administrative law judge shall determine whether the arbitrator should be disqualified. Such decision shall be final.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0160

#### Substitution of Arbitrator

The agency administrator or chief administrative law judge may substitute another arbitrator at any time before the arbitration hearing begins.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0180

#### Representation by Counsel

Any party may be represented at the hearing by an attorney. A corporation may appear or be represented by an officer of the corporation who is not a member of the Oregon State Bar, as provided by ORS 701.160.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9) & ORS 701.160

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 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 any witness who is not a party during the testimony of other witnesses. The arbitrator shall determine whether any other person may attend the hearing.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0220

#### Adjournment and Continuance

Hearings may be recessed and later continued by the arbitrator. Parties requesting continuance must show good cause. The arbitrator will determine whether to grant a continuance. The arbitrator's determination shall be final.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0240

#### Oaths

The arbitrator shall take the oath provided by ORS 36.325.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0260

#### Recording of Hearing

(1) Unless otherwise agreed by the parties and the arbitrator, the arbitrator shall make a tape recording of the hearing.

(2) The agency may dispose of tape 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, the agency will not dispose of the tape recording of the hearing until the court makes final determination of the matter.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

### 812-010-0280

#### Conduct of Hearing; Authority of Arbitrator

The hearing shall be conducted by the arbitrator in whatever manner will most expeditiously permit full presentation of the evidence and arguments of the parties. Normally, the hearing shall be completed within one day. In addition to the powers prescribed in these rules, the arbitrator shall have the powers provided by ORS 36.335. 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 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

### 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, fails to appear. An award shall not be made solely on the default of a party. The arbitrator may require the attending party to submit such evidence as the arbitrator may require for the making of an award.

(2) Notwithstanding section (1) of this rule, an arbitrator may dismiss a claim without an evidentiary hearing if the party making the claim fails to appear after due notice and without good cause.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0320

##### Discovery

(1) Parties to an arbitration are encouraged to exchange information informally, prior to the hearing. After making reasonable attempts to obtain any of the following, a party may make written request of the arbitrator for an order directing the other party to comply:

- (a) Production of documents, objects, or other information relevant to the dispute;
- (b) Permission to enter upon private property to inspect improvements relevant to the dispute; or
- (c) Other forms of discovery.

(2) The arbitrator may, at the arbitrator's discretion, order compliance. This rule does not require discovery. If the arbitrator does order discovery, the arbitrator shall control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 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 shall be the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed with the agency prior to or at the hearing.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0360

##### Close of Hearing

When satisfied that the parties have completed their presentations, the arbitrator shall close the hearing.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 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 fails to state objections prior to the close of the hearing shall be deemed to have waived the right to object.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0400

##### Service of Notices and Other Communications

Initial notice of an arbitration hearing directed by the agency to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered certified or post office receipt secured. Any other communication, including the arbitrator's award, directed by the agency to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail.

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

Stats. Implemented: ORS 701.080 & ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0420

##### Time, Form, and Scope of Award

(1) The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The award shall be in writing and shall be signed by the arbitrator.

(3) The arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0440

##### Payments from Registrant's Bond

If an award requires payment by a registrant and the registrant fails to pay the award, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. Payments from the bond shall be limited to sums for arbitration claims which are timely filed in accordance with ORS 701.145(3) and for only those claim items which are within the scope of ORS chapter 701 and for which the registrant was required to be registered.

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

Stats. Implemented: ORS 701.145(9) & ORS 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0460

##### Filing with Court, Exceptions

(1) Any party to an arbitration may file the award with the clerk of the circuit court selected to render judgment on the award under ORS 36.350.

(2) By proceeding with arbitration under these rules, parties shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) A party against whom an award is made may file with the circuit court written exceptions to the award, for any of the causes listed in ORS 36.355(1), under ORS 36.350 and ORS 36.355. The party filing the exceptions shall deliver a copy of the exceptions to the agency within seven calendar days from the date of filing with the circuit court.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0480

##### Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules shall be interpreted and applied by the agency administrator or chief administrative law judge.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0500

##### Exclusion of Liability

Neither the agency, any agency employee nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99



