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DIVISION 1

ADMINISTRATION

808-001-0000 Notice

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

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

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

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

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

- (a) Capitol press room;
- (b) Associated Press;
- (c) Oregon Landscape Contractors Association;
- (d) Oregon Association of Nurserymen;
- (e) Southern Oregon Landscaping Association;
- (f) Agri-Business Council.

Stat. Auth.: ORS 183.310 - ORS 183.545, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.341

Hist.: LC 1, f. & ef. 5-17-76; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LSCB 1-1995, f. & cert. ef. 2-2-95; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-001-0002 Temporary Rule

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

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.335

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97

808-001-0005 Model Rules

The Landscape Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act in effect October 3, 2001, with the following exceptions: OAR 137-003-0015, 137-005-0050, 137-005-0060, and 137-005-0070.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Landscape Contractors Board.]

Stat. Auth.: ORS 671

Stats. Implemented: ORS 183.341 & ORS 279
Hist.: LC 2, f. & ef. 5-18-76; LC 3, f. & ef. 2-7-77; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1996, f. & cert. ef. 6-18-96; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-001-0008

Operating Budget

Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2003, and ending June 30, 2005, as approved at the Regular Board Meeting held May 16, 2003. The Board Administrator will amend budgeted accounts as necessary, within the approved budget for the effective operation of the Board. Copies of the budget are available at the Board's office.

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

Stat. Auth.: ORS 670.310, ORS 671.670

Stats. Implemented: ORS 182.462

Hist.: LCB 3-2003, f. 5-27-03, cert. ef. 6-1-03

808-001-0015

Election of Officers

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

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 670.300 & ORS 671.630

Hist.: LC 1-1984, f. & ef. 7-17-84

808-001-0020

Charges for Documents; Refunds

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board's office shall be in writing.

(2) Charges to the general public and to state agencies shall be payable in cash, check, money order, Visa or Mastercard unless billing to such agencies is authorized by the Administrator. Checks or money orders shall be made payable to the Landscape Contractors Board.

(3) The Board accepts Visa and Mastercard submitted in person or by mail, e-mail or fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection.

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

(a) For machine copies requested by other state agencies and by the general public, twenty-five cents per image;

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

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

(d) \$100 for listing of individual landscape contractors or landscape businesses on CD or disk. Requests for searching or formatting the data will be billed as per subsection (e) of this rule. The Administrator may waive this charge for other public agencies.

(e) \$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;

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

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

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

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

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$25 or less unless requested in writing within three years after the date payment is received by the agency, as provided by ORS 293.445(4).

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

(c) When an applicant withdraws their application for a landscape contractor license or renewal or fails to complete the licensing process the agency may retain an application-processing fee of \$20. When an applicant withdraws their application for a landscape

business license or renewal or fails to complete the licensing process, the agency may retain an application-processing fee of \$50.

(6) If the agency receives payment of any fees or penalty by check and the check is returned to the agency 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 183, ORS 293.445 & ORS 671

Stats. Implemented: ORS 183, ORS 192.430, ORS 293.445 & ORS 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1988(Temp), f. 3-17-88, cert. ef. 4-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-001-0030

When Mail Deemed Delivered; Response Time to Notices

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

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

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

(4) OAR 137-003-0520(8) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

Stat. Auth.: ORS 183.415, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02

808-001-0050

Confidentiality and Inadmissibility of Mediation Communications

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

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

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

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

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

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

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

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

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

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

(f) Mediation by an authorized representative acting on behalf of the Landscape Contractors Board in which the parties to the medi-

ation are parties to a claim or arbitration filed under ORS 671.700 to 671.703, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential mediation.

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

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

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

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

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

(9) Exceptions to Confidentiality and Inadmissibility.

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

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

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

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

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

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

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

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

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

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

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

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

(A) A request for mediation; or

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

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

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

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

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

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

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

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

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

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

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

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

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications.

The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

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

Stat. Auth.: ORS 36.224, ORS 670.310 & ORS 671.670

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

Hist.: LCB 2-1999, f. & cert. ef. 5-4-99

808-001-0060

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Exceptions to Confidentiality and Inadmissibility.

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

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

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 36.224, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 36.230(4)

Hist.: LCB 2-1999, f. & cert. ef. 5-4-99

DIVISION 2

DEFINITIONS AND STANDARDS

808-002-0020

Minimum Standards for Written Contracts and Billings

(1) Landscaping contracts and subcontracts shall include, but not be limited to, the following:

- (a) Landscaping business name, license number, business address and telephone number;
- (b) Consumer's name and address;
- (c) Address or location of work to be performed if different from the consumer's address;
- (d) A list of plant materials, if any, together with the size and quantity;
- (e) General description of the work to be performed;
- (f) Estimated time for completion or estimated completion date;
- (g) Price and payment schedule;
- (h) Description of guarantee; if no guarantee such a statement shall be included;
- (i) Signatures of the business licensee and consumer;
- (j) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(2) All billings by a licensed landscaping business shall include the following:

- (a) Name, address and telephone number of the licensed landscaping business;
- (b) Name and address of the consumer;
- (c) Total contract price and amount paid to date;
- (d) The amount now due and the work performed for the amount due.

Stat. Auth.: ORS 183, ORS 671.670 & ORS 670.310
Stats. Implemented: ORS 671.625

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-020-0010 & 808-020-0020; LCB 1-1991, f. & cert. ef. 7-22-91; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00

808-002-0100

Definitions Generally

Except where the context requires otherwise, the definitions in this division govern the interpretation of ORS 671.510 to 671.990 and OAR chapter 808.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.510 - ORS 671.990
Hist.: LCB 3-1999, f. & cert. ef. 11-17-99

808-002-0120

Action on the Bond or Deposit

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.700
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0130

Administrative Law Judge

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

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implements ORS 671.703
Hist.: LCB 6-2003, f. & cert. ef. 10-1-03

808-002-0140

Agency

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-

98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0160

Board

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.630
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0200

Casual, Minor, or Inconsequential

"Casual, Minor, or Inconsequential" work includes the replacement of shrubs and trees, reseeding of lawn, and decorative placement of rock or other materials, and includes activities that do not affect the health or safety of the public or property owner, and does not include construction of irrigation systems, or other plumbing, drainage, grading, or the construction of fencing, decks, walkways, or retaining walls.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0220

Claims

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

(1) "Breach of contract claim" means a claim for amounts due from a landscaping business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.710.

(2) "Material or equipment claim," means a claim for amounts due from a landscaping business for material or for renting or supplying equipment to a landscaping business.

(3) "Employee claim" is a claim for unpaid wages or benefits filed by an employee of a landscaping business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscaping business for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 671.

(4) "Negligent or improper work claim" means a claim for amounts due from a landscaping business as a result of negligent or improper work subject to ORS 671.510 to 671.710.

(5) "State tax and contribution claim" means a claim filed by the State of Oregon for amounts due from a landscaping business for taxes and contributions due to the State of Oregon from a landscaping business.

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.510 - ORS 671.720
Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02

808-002-0240

Compensation

"Compensation" means payment made in the form of money, goods, or services in return for landscape contracting.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.510 - ORS 671.720
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-

0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0250

Construction of Irrigation Systems

(1) "Construction of irrigation systems", as used in ORS 671.520(2)(a) includes, but is not limited to:

- (a) Replacing one, or more, sprinkler heads with dissimilar sprinkler heads;
- (b) Replacing more than three sprinkler heads with substantially similar sprinkler heads;
- (c) Replacing any irrigation water line;
- (d) Altering an existing irrigation system; or
- (e) Draining water from a system by disconnecting the system, forcing water out of the system through the use of compressed air and reconnecting the system.

(2) Construction of irrigation systems does not include replacing three or fewer sprinkler heads with the same or similar type sprinkler heads.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310, ORS 671.670

Stats. Implemented: ORS 671.520

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0260

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 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.545, ORS 671.578, ORS 671.610, ORS 671.625, ORS 671.703, ORS 671.707 & ORS 671.710

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00

808-002-0280

Date Work Completed

"Date Work Completed" is:

- (a) The date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or
- (b) The date the landscaping business ceased work, if the landscaping business fails to substantially fulfill the provisions of the contract.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.710

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2000, f. & cert. ef. 2-1-00

808-002-0290

Days

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

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-002-0300

Defective Materials

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.610

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0320

Defective Work

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.610; ORS 670.600

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0340

Employ

"Employ," as used in ORS 671.530(5) and ORS 671.565(1), means working as an employee under the direction and control of the landscaping business.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.530, 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0360

Employee

"Employee" means an individual working for compensation when both the employer and employee are in compliance with applicable employer/employee requirements of ORS chapter 305, 314, 316, 317, 318, 656, 657, and state and federal wage and hour laws.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 305, ORS 314, ORS 316, ORS 317, ORS 318, ORS 656, ORS 657, ORS 671.525, ORS 671.520, ORS 671.565, ORS 671.660 & ORS 447.060

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2000, f. & cert. ef. 2-1-00

808-002-0420

Full Year of Training

"Full Year of Training at an Accredited School or College" means 36 quarter hours or 24 semester hours of classes relating to landscape contracting.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0440

Given Job Site

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.540

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef.

7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0448

Hearing Officer

“Hearing officer” means a person authorized to conduct hearings for the Hearing Officer Panel.

Stat. Auth.: ORS 183.325 - 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.690 - ORS 671.710

Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00

808-002-0460

Irrigation Repair

“Irrigation Repair” includes maintenance of a system that is already installed, including the drainage and winterizing of an irrigation system for the purpose of yearly freeze protection and does include altering an existing system.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.540 & ORS 671.615

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0480

Irrigation Systems

“Irrigation systems” as used in ORS 671.520(2)(a) means construction or repair of drainage, and irrigation sprinkler systems, which consists of installing one or more main lines; section, lateral, or zone valves and lines; and risers and heads which are used to water plants, shrubs, trees, and lawns.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.520

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0500

Landscaping Work

“Landscaping Work” as used in ORS 671.540(9) and (10) means plan and install lawns, shrubs, vines, trees, and other decorative vegetation including the preparation of property on which the vegetation is to be installed, and the construction of ornamental water features and drainage and irrigation systems for decorative vegetation.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.530, ORS 671.540 & ORS 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0520

Landscaping Work on Residential Property

“Landscaping work on residential property that is directly related to local building code requirements or occupancy ordinances” as used in ORS 671.540(10) means landscaping work performed on

specific residential dwelling sites and does not include landscaping work performed in open spaces, tracts, and common areas.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.540

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0540

Last-Known Address of Record

(1) “Last-known address of record” for a landscape contractor or landscaping business, as used in section 14, chapter 409, Oregon Laws 2001, means the most recent of:

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

(b) The forwarding address for the landscape contractor or landscaping business, 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 671.670

Stats. Implemented: Sec. 14, Ch. 409, OL 2001

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0560

Legal Entity

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

Stat. Auth.: ORS 183.325 - 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.510 - ORS 671.720

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2000, f. & cert. ef. 2-1-00

808-002-0580

Legal Holiday

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 187

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0600

LIBDI License

“LIBDI License” means landscape irrigation backflow device installer license as described in ORS 671.615.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.615

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97

97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0620

Maintenance

“Maintenance” means the regular and practical care of existing landscapes and would include, but are not limited to, the mowing, trimming and edging of lawns, planting of annuals, perennials and bulbs and pruning of vegetation to a height of no more than 15 feet above ground level, removal of trees up to 15 feet in height where the diameter of the tree is 4 inches or less when measured at 6” to 12” above soil line. Limbs may be removed when the diameter of the limb is 3 inches or less at its origin. Replacement planting may occur under the definition of maintenance when the combined total of all plantings including labor, material and mark up does not exceed \$500.00 per site per year as per ORS 671.540(3). Irrigation repair and maintenance is not included in the definition of this work.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.540

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03

808-002-0665

Monetary Damages

“Monetary damages” may include, but is not limited to:

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

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00

808-002-0670 [Renumbered to 808-002-0870]

808-002-0680

Nature and 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 671 (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; or

(3) Is outside the expertise of the agency.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 4-2002, f. & cert. ef. 12-4-02

808-002-0720

Nursery Stock

“Nursery Stock” includes:

(1) All botanically classified plants or any part thereof, such as floral stock, herbaceous plants, bulbs, buds, corms, culms, roots, scions, grafts, cuttings, sod, stolens, fruit pits, seeds of fruits, forest and ornamental trees and shrubs, berry plants; and

(2) All trees, shrubs, and vines and plants collected in the wild that are grown or kept for propagation or sale.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.520

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0725

Office of Administrative Hearings

“Office of Administrative Hearings” means the Office of Administrative Hearings established under chapter 75, Oregon Laws 2003.

Stat. Auth: ORS 670.310 & ORS 671.670

Stats. Implements ORS 671.703

Hist.: LCB 6-2003, f. & cert. ef. 10-1-03

808-002-0730

Ornamental Water Features

“Ornamental Water Features” as used in ORS 671.520(6) means fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions including but not limited to installation of:

(a) Pumps.

(b) Filters.

(c) Ultra violet sterilizers.

(d) Plumbing for self contained units.

Stat. Auth.: ORS 670.310, ORS 671.670

Stats. Implemented: Sec. 14, Ch. 409, OL 2001

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0735

Owner or Holder of a Direct or Indirect Interest in a Person

(1) “Owner or holder of a direct or indirect interest in a person”, as used in ORS 671.610, includes:

(a) An officer of the corporation if the person is a corporation;

(b) A partner of the partnership, limited liability partnership or foreign limited liability partnership if the person is a partnership, limited liability partnership or foreign limited liability partnership as those business entities are defined in ORS 67.005;

(c) A general partner of the limited partnership if the person is a limited partnership as that entity is defined in ORS 67.005;

(d) A manager of the manager-managed limited liability company if the person is a manager-managed limited liability company as that entity is defined in ORS 63.001;

(e) A member of the member-managed limited liability company if the person is a member-managed limited liability company as that entity is defined in ORS 63.001;

(f) An individual who has a financial interest in the person and exercises authority and control over the person; and

(g) An individual who has a financial interest in a business and exercises authority and control over the business if the business owns more than fifty percent of the person.

(2) “Owner or holder of a direct or indirect interest in a person”, as used in ORS 671.610, does not include the interest of an investor who has no right to manage a business.

Stat. Auth.: ORS 670.310, ORS 671.670

Stats. Implemented: ORS 671.610

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0745

Ornamental Water Feature Repair

“Ornamental Water Feature Repair” includes maintenance of an ornamental water feature that is already installed, including the drainage and winterizing of an ornamental water feature for the purpose of yearly freeze protection. Ornamental water feature does include altering an existing ornamental water feature.

Stat. Auth.: ORS 670.310, ORS 671.670

Stats. Implemented: ORS 671.520

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0760

Person

“Person” means any legal entity.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.510 - ORS 671.720

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0780 Plan and Install

“Plan and Install” as used in ORS 671.520(2)(a)(b) means the ability to lay out verbally or in sketch or scale drawing form a landscape project for implementation, including preparation, construction, and planting; and the actual preparation, construction, and planting of the landscape project. Plan and install does not include landscape designers who are exempt from licensing as defined in 671.540(11) and (12).

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.520, 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0785 Primary Contractor

“Primary contractor” is an entity who has a contract, either oral or written, with the owner of the property to perform work subject to ORS Chapter 671, or who is holding itself out to be a licensed contractor in connection with property it owns; who may engage one or more subcontractors to perform all or part of the work; and who may have responsibility for the entire project which is the subject of the contract. Responsibility for the entire project includes coordinating work, seeing that prompt and proper payment is made to all subcontractors and suppliers, thereby preventing the filing of construction liens against the property.

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671
Hist.: LCB 5-2003, f. & cert. ef. 8-1-03

808-002-0800 Renew License

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

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.600, 671.610, 671.660
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0820 Residential Dwelling

“Residential Dwelling” as used in ORS 671.540(9) means a residence, including a site-built home, a modular home constructed off site, a manufactured dwelling, or a duplex.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-

98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0840 Residential Property

“Residential Property” as used in ORS 671.540(9) and (10) means property upon which one or more “residential dwellings”, as defined in the proceeding paragraph, are constructed or will be constructed.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0870 Respondent

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

Stat. Auth.: ORS 183.325 - 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.690 - ORS 671.710
Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2002, f. & cert. ef. 12-4-02, Renumbered from 808-002-0670

808-002-0880 Sod and Seed

“Sod and Seed” means planting grass seed or laying sod for architectural horticulture.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.520
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010

808-002-0900 Work is Performed Pursuant to a Permit Issued by the Local Building Official

“Work is performed pursuant to a permit issued by the local building official” as used in ORS 671.540(9) and (10) means irrigation or ornamental water feature work for which the general contractor has:

- Obtained, from the appropriate building official, a permit to tap into the potable water system and install irrigation backflow prevention device(s); and
- Subcontracted with a licensed plumbing contractor or a licensed landscaping business to tap into the potable water supply and install the backflow prevention device(s); and
- Complied with all other conditions the local building official may require related to installing the irrigation work.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-002-0920

Work Period

"Work Period" means the time period from the date a landscaping business accepts a payment, offers a written proposal which is later accepted as a contract or enters into a contract, whichever occurs first, until the date the work is substantially completed or the landscaping business ceases work.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.710

Hist.: LCB 3-1999, f. & cert. ef. 11-17-99

DIVISION 3

LICENSES

808-003-0010

Advertising

All written advertising shall include the landscaping business license number.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.530

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0012

808-003-0015

Application for License

(1) Application for a landscaping business license shall be on forms provided by the agency and shall be accompanied by:

- (a) Required fee;
- (b) Surety bond or deposit as required under ORS 671.690;
- (c) Certificate of liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(c) List of licensed landscape contractors, with accompanying license numbers, employed by the business as required under ORS 671.565; and

(d) List all assumed business names under which the landscaping business is conducted. All assumed business names listed shall be on record with the Corporation Division.

(2) Application for a landscape contractor's license shall be on forms provided by the agency and shall be accompanied by:

- (a) Required examination fee;
- (b) Verification of experience and/or transcripts or copies of completion certificates from courses of study;
- (c) If applicable, name of employing licensed landscaping business or businesses; and

(d) Required license fee.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.560 & ORS 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0018

Landscape Contractors Working for More than One Landscaping Business

ORS 671.565 specifies that each landscaping business shall employ at least one person with a landscape contractor's license to supervise the landscaping operation of the business. If the licensed landscape contractor owns the landscaping business or is employed full-time by the landscape business there is a rebuttable presumption that the licensed landscape contractor is supervising the landscaping operation of the business. If a landscape contractor works for more than one landscaping business, and the landscape contractor is the only licensed landscape contractor employed by the landscaping business, then the licensed landscape contractor must demonstrate that he or she is, in fact, supervising the landscaping operation of the business. At a minimum the licensed landscape contractor must perform the following services:

(1) Review and initial the landscape plan and written contract for each job;

(2) Visit the construction site at least once during construction and at least once per week for projects that take more than one week to complete.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: 671.565

Hist.: LCB 2-1998, f. & cert. ef. 4-30-98

808-003-0020

Assumed Business Names

Before license or renewal of a landscaping business:

(1) An assumed business name shall be registered with the Corporation Division of the State of Oregon.

(2) A corporation or other business entity shall be registered to do business in Oregon with the Corporation Division of the State of Oregon.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88;

Renumbered from 808-010-0033; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0025

Alternative Experience

(1) In lieu of experience required by ORS 671.570(1)(a), an applicant may submit documentation showing two years of related landscaping experience by identifying six individual projects per calendar year for two years. For the maximum, two years' experience, the applicant may document 24 projects, six per calendar year, for four years.

(2) To qualify under subsection (1), the applicant shall submit documentation for each project on forms provided by the agency. The following shall be provided for each project, for use by the agency in verifying the information:

- (a) Name and address of person for whom the project was done;
 - (b) Description of work done;
 - (c) Cost of project (must be \$100 or more but less than \$500 for a single non-recurring project);
 - (d) Date of project; and
 - (e) Copy of contract, if available.
 - (f) Signature of client
 - (g) Telephone number of client for verification purposes
- (3) An applicant will be deemed to have qualifying experience under ORS 671.570(1)(b) if the applicant:

(a) Completes the Certified Landscape Technician (CLT) program administered by the Oregon Landscape Contractors Association or Associated Landscape Contractors of America; or

(b) Obtains an Associate, Bachelor's or Master's Degree in horticulture or other related fields from an accredited school or college, which includes the completion of a cooperative work experience requirement; or

(c) Holds an active license under ORS 701 and holds a current certification with the International Society of Arboriculture (ISA) as a Certified Arborist.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 1-1985, f. & ef. 7-1-85; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0016; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 2-1998, f. & cert. ef. 4-30-98; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03

808-003-0030

Completion of Application

Applicants shall complete license process within the following time periods, or reapply and, if applicable, retake exams:

(1) Landscaping business license — Within one year from the date the initial application was received by the Agency.

(2) Landscape contractor's license — one year from the date of passage of exams and eligibility for license.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.670

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0017; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95

808-003-0035

Limited Licenses

(1) In addition to an all phases license, new limited licenses may be issued only for the following:

- (a) Standard; or
- (b) Irrigation and LIBDI.

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

- (a) General;
- (b) Irrigation;

- (c) Irrigation and LIBDI;
- (d) Sod & Seed;
- (e) Trees.

(3) The "All Phases" license shall include standard, irrigation, and LIBDI, unless, in lieu of LIBDI, the landscape contractor has signed an agreement with the Board prior to April 30, 1995 stating that the contractor will not perform LIBDI work, with the penalty for violation of the agreement being \$1,000 and suspension of the license.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0020; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 1-1994, f. 5-26-94, cert. ef. 6-1-94; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0040

Limitation of Service by License

(1) A licensed landscaping business shall perform only those phases of landscape contracting for which its landscape contractor employees are licensed.

(2) The landscape contracting service or services a licensee offers shall be limited to the following:

(a) An all phases holder is entitled to perform all areas of landscape contracting, including the installation of backflow prevention equipment unless, in lieu of LIBDI, the landscape contractor has signed an agreement with the Board prior to April 30, 1995 stating that the contractor will not perform LIBDI work.;

(b) A general limited license holder may perform all landscape contracting functions except irrigation;

(c) An irrigation limited license holder may only perform irrigation functions;

(d) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(e) A tree limited license holder may only install new or transplant trees, remove trees, prune trees, remove tree limbs or stumps, or engage in tree or limb guying only;

(f) A Standard limited license holder may perform all areas of landscape contracting except irrigation and backflow prevention;

(g) An irrigation limited license holder may perform only irrigation and backflow prevention equipment work.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow prevention equipment shall be done by plumbers licensed by the State Plumbers Board or by landscape contractors who have been qualified by examination and are licensed by the Landscape Contractors Board to install backflow prevention devices. If the device is installed by a landscape contractor, the landscape contractor shall obtain all required permits and shall install the devices in conformance with the permits;

(b) If a landscape contractor or a landscaping business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow prevention devices or fails to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape contractor's and the landscaping business's license.

Stat. Auth.: ORS 183.325 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0045

Limitation of Service by License

(1) Landscape contractors holding limited licenses may add to the phase of landscape contracting they perform by taking and passing additional exams. Licensees shall submit the required fees and a written request to take the additional exams.

(2) The following tests must be taken and passed to hold a standard landscape license:

(a) General license holders must take Laws and Rules, General A, General B, General C, and General D;

(b) Sod & Seed license holders must take General A, General B, General C, and General D.

(c) Tree license holders must take General A, General B, General C, and General D.

(3) Holders of a General license, Sod & Seed license or a Tree license must take and pass the irrigation and LIBDI sections of the landscape examination to become licensed to perform irrigation work.

(4) If a landscape business' phases of license change because its employed landscape contractors' phases of license changes or because an employed landscape contractor ceases to be employed by the business, the business shall notify the agency in writing within ten (10) days of the change of license phase to obtain an updated license.

(a) If the individual license holder for a business leaves the employ of the business, the individual license holder must notify the agency in writing (regular mail, fax or email) within ten (10) days of date of departure; and

(b) The business for which this licensee worked must immediately stop performing landscape work until they have an owner that is licensed, or employ an individual landscape contractor licensed, at the level that the business desires to perform.

(5) When license limitations change, the agency will issue new licenses at no cost to licensee. The landscape business shall not offer or perform services for which it does not have a corresponding landscape contractor licensed to perform those phases of landscape contracting.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03

808-003-0050

Employment

(1) An individual landscape contractor may be employed by more than one landscaping business.

(2) Upon application for and renewal of a license, a landscaping business will submit a verification form (supplied by the agency) that identifies each individual licensed landscape contractor employed by the landscaping business. Upon application and renewal of a license, the landscape business will also submit copies of all W-4 forms identifying licensed landscape contractors employed by the business.

(3) When an individual landscape contractor renews the landscape contractor's license, if the individual landscape contractor is employed by a business other than a business owned by the landscape contractor and the landscape contractor's phase of license is the basis for the landscape business' phase of license:

(a) The individual landscape contractor must sign and have notarized a statement on a form provided by the agency that verifies the individual landscape contractor:

(A) Is a paid employee of the landscape business;

(B) Knows and understands all of the current obligations for supervising the work based on the individual landscape contractor's phase of their license; and

(C) Understands that the individual licensed contractor shall attend all on-site investigations and appear at any hearings that are a consequence of any claims filed against the landscape business.

(b) The individual landscape contractor must notify the agency within ten (10) days of termination of employment with any landscaping business.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.660

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0023; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03

808-003-0055

Examination Requirements

(1) The agency shall provide written or computerized examinations for those licenses issued.

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

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

(4) The examinations shall be “closed book”. Applicants may use only a hand-held calculator, scale ruler, and pencil or pen in addition to examination materials.

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

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.570

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0024; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0060

Examinations

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

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

(b) General which includes the following sections:

(A) Plants and turf,

(B) General construction,

(C) Grading and drainage, and

(D) General safety, estimating, soil science, chemicals.

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

(d) LIBDI, which includes, but is not limited to irrigation and ornamental water feature backflow prevention devices, piping, valves, and related plumbing code provisions.

(2) All applicants must take and successfully pass the Laws & Rules exam.

(3) If an applicant desires to be able to perform all landscaping including irrigation and backflow work, the applicant must take and successfully pass the Laws & Rules, General, Irrigation and LIBDI exams.

(4) If an applicant desires to be able to perform all landscaping except irrigation and backflow work, the applicant must take and successfully pass the Laws and Rules and General exams.

(5) If an applicant desires to be able to perform only irrigation and backflow work, the applicant must take and successfully pass the Laws and Rules, Irrigation and LIBDI exams.

Stat. Auth.: ORS 183.325 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0025; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0065

Scoring

(1) Each exam and each section of the General exam shall be scored separately.

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

(3) A passing score shall be valid for one year from the date the examination was taken. An applicant who fails to pass all the exams required for a particular license within one year of passing an exam shall retake that exam.

Stat. Auth.: ORS 183.325 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0026; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0070

Exam Failure

(1) Applicants who attempt and fail an examination or section of the exam must wait two weeks before retaking the exam or section of the exam.

(2) After three unsuccessful attempts to pass any section of a written or computerized exam, an applicant may petition the agency for an oral exam.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.570

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0027; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

808-003-0075

Notice of Score

(1) If the applicant takes a written exam, the agency will notify the applicant by mail of their examination scores.

(2) If the applicant takes the computerized exam, the applicant will receive scores in person immediately after taking the exam.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.570

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0028; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0080

Review of Examinations

(1) Applicants failing to pass an examination may schedule an appointment with agency staff to review the exam at the Board office in Salem.

(2) Requests to review failed exams will be scheduled within 30 days from notification of scores.

(3) Applicants will show picture identification before exam review.

(4) Applicants reviewing failed examinations may not:

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

(b) Retain notes taken during the review; or

(c) Challenge their examination results.

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

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.570

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0029; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-2002, f. & cert. ef. 5-24-02

808-003-0081

Appeal of Examination Scores

An applicant who fails an examination or section of an exam may not appeal the examination scores.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.570

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0085

Cheating on the Exam

(1) Any person sitting for the examination who is caught cheating during the examination:

(a) Will not receive a score for any of the exam sections for the current sitting;

(b) Will forfeit the exam fee;

(c) May not retake any sections of the exam for 30 days;

(d) Must submit a new exam fee; and

(e) Must take all future exam sections in the Board office.

(2) The Landscape Contractors Board will not grade examinations of applicants who are caught cheating.

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

(a) Copying answers from another applicant during the examination;

(b) Helping another applicant during the examination;

(c) Unauthorized communication with another individual, in or out of the examination room, during the examination;

(d) Using unauthorized written materials, notes or equipment during the examination; or

(e) Removing examination materials, such as a question booklet page, in whole or in part, from the exam.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.570

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0090

Employer Status

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

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

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

(b) 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, 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;

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

(c) Two corporate officers in a corporation.

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

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

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

(5) Non-exempt entities shall supply employer account numbers for workers' compensation, unemployment, state Department of Revenue, and IRS identification.

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

(7) Partnerships without employees other than the partners may be classed as "nonexempt-no construction work" when the entity certifies that all partners or members 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 and limited liability companies qualifying as exempt as provided by ORS 656.027(10) shall supply Employment Division and Department of Revenue account numbers unless the corporation or limited liability company certifies that corporate officers or members receive no compensation (salary or profit) from the corporation or limited liability company. Exempt corporations shall supply IRS account numbers.

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

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.525

Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 5-2003, f. & cert. ef. 8-1-03

808-003-0095

Liability Insurance

(1) An applicant for the landscape business license or renewal shall submit a "Certificate of Insurance" from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and will continue to meet those insurance requirements for as long as the applicant is licensed. The certificate shall include the name of the insurance company, policy number, and coverage amount, and may also include the agent's name, and agent's telephone number and state that the Oregon Landscape Contractors Board is the certificate holder.

(2) This certificate constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.

(3) If the requirements of subsection (1) of this rule have been met, and the agency receives a notice of cancellation, the agency may send a notice to the licensee, by regular mail, reminding the licensee of the obligation imposed by the licensee's insurance certification.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.565

Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0100

Licenses

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

(2) The Board adopts the form "Independent Contractor Certification Statement", as required by ORS 671.565.

(3) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another type of entity and a new Employer Identification Number is required, the former landscaping business license will be terminated. The new entity must license anew.

(4) Landscape contractor licenses shall be issued in the name of the individual.

(5) Landscaping business licenses shall be issued as follows:

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

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

(C) A partnership shall be issued in the name(s) of the partners;

(D) A partnership using an assumed business name shall be issued in the name of the partners and the assumed business name;

(E) A corporation shall be issued in the corporate name;

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

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0030; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03

808-003-0105

License Cards

(1)(a) A license card issued to a landscaping business is valid for the term for which it is issued only if the following conditions are met throughout the license period:

(A) The business has a licensed landscape contractor as an owner or as an employee at all times; and

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

(C) The insurance required by ORS 671.565 remains in effect; and

(D) If the licensee is a sole proprietorship, survival of the sole proprietorship; or

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

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

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

(d) A period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse. This includes but is not limited to a new bond or a notice of reinstatement for the existing bond or on the effective date of a backdated bond or backdated reinstatement for the existing bond.

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

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

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.560 & ORS 671.565

Hist.: LCB 2-2002, f. & cert. ef. 5-24-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03

808-003-0110

Bonds

(1) Bonds or deposits shall be filed as follows:

(a) If the business is a sole proprietorship, only the name of the individual shall appear on the bond/deposit;

(b) If the business is a partnership, all partners shall be listed on the bond/deposit;

(c) If the business is a partnership using an assumed business name, the names of all the partners and the assumed business name shall appear on the bond/deposit;

(d) If the business is a corporation, only the corporate name shall appear on the bond/deposit;

(e) If the business is a limited liability company, only the company name shall appear on the bond/deposit.

(2) If the bond/deposit is reduced to less than \$3,000, the business shall file a replacement so the total bond or deposit on file is \$3,000.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.690

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0031; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95

808-003-0125

Notification

Within ten days following a change of ownership, address, or bond/deposit information, the landscape contractor or landscaping business shall submit written notification to the agency as provided in section 14, chapter 409, Oregon Laws 2001.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.600 & ORS 671.605

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0034; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02

808-003-0130

Fees

(1) Landscaping business, initial license or renewal: \$225.

(2) Landscape contractor, initial license or renewal: \$75.

(3) Landscaping business, late penalty fee: \$25.

(4) Landscape contractor, late penalty fee: \$25.

(5) Effective January 1, 2004, Individual Landscape Contractor License Application fee: \$60.

(6) Effective January 1, 2004, initial examination fee for any phase of license is:

(a) \$15 for first section of any exam; and

(b) \$10 for each additional section.

(7) Effective January 1, 2004, retake fees for any section of any exam is:

(a) \$15 for first section of any exam; and

(b) \$10 for each additional section.

(8) Effective January 1, 2004, exams sent to the DMV, additional processing and mailing fee: \$12.

(9) Examination, failure to show for a scheduled appointment:

(a) In Board office, \$20 without a 24 hour advance cancellation notice to the Board office.

(b) At Proctor Exam Site, forfeits full payment for that exam sitting.

(10) If a landscape contractor license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(11) If a landscaping business license expires the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(12) If a landscaping business license expires, and no bond has been in effect during the interim, and a new bond is issued, the amount to be paid for reinstatement equals the required fee for one year plus a late penalty fee.

(13) The agency may waive the late fee if:

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

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

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

Stat. Auth.: ORS 183.310 - ORS 183.545, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.650 & ORS 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-003-0135

Date of Issue/Expiration

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

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

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

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.560 & ORS 671.565

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0036; LSCB 2-1997, f. & cert. ef. 11-3-97

808-003-0200

Bidding Exceptions

(1) A contractor registered under ORS Chapter 701 may bid on, advertise for, or perform a construction project that includes landscape contracting as a portion of the project if the landscape contracting is subcontracted to a licensed landscaping business.

(2) A landscaping business may bid on a job or perform a contract that includes the phase of landscape contracting for which it is not licensed if it employs a landscape contractor, or subcontracts with another licensed landscaping business, licensed for that phase.

Stat. Auth.: ORS 183.325 - ORS 183.500, ORS 671.310 & ORS 671.670

Stats. Implemented: ORS 671.530

Hist.: LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0039; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 1-1993, f. & cert. ef. 1-19-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94

808-003-0210

General contractor licensed under ORS 701 who performs landscaping work

A general contractor licensed under ORS 701 who performs landscaping work is exempt from ORS 671.510 to 671.710 per ORS 671.540(9) if:

(1) The landscaping work is performed on residential property as defined in OAR 808-002-0840; and

(2) The general contractor is under contract for the construction of a new dwelling; and

(3) The landscaping work was completed on or before September 1, 2003 and is less than \$2,500 per residential dwelling as defined in OAR 808-002-0820; or

(4) The landscaping work was completed after September 1, 2003 and is less than \$3,000 per residential dwelling as defined in OAR 808-002-0820.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: ORS 671.540

Hist.: LCB 5-2003, f. & cert. ef. 8-1-03

DIVISION 4

CLAIMS

808-004-0060**Payment from Bond or Security**

- (1) The Agency may notify the surety of claims pending.
- (2) The Agency shall order the claim paid out of the surety bond or deposit:
 - (a) If 20 days have elapsed after appeals permitted under ORS 183.310 to 183.550, if any, have been resolved; and
 - (b) The Agency has received no evidence that the licensee has complied with the final order; and
 - (c) All prior claims filed against the licensee under ORS Chapter 671 have been resolved, closed, or determined.

Stat. Auth.: ORS 183 & ORS 671

Stats. Implemented: ORS 671.590

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88

808-004-0120**Liability of Landscaping Business**

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

Stat. Auth.: ORS 183.310 – ORS 183.500, ORS 670.310 & ORS 671

Stats. Implemented: ORS 671.

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0160**Establishment of Co-Claimant**

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.455 & ORS 671.703

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00

808-004-0180**Claimants' 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 under OAR 808-004-0260 if:

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

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0200 [Renumbered to 808-004-0510]**808-004-0240****Exhaustion of Surety Bond**

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, 183.460, 671.690, 671.703 & 671.710

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030

808-004-0250**Exclusion of Certain Damages from Award**

(1) Except as provided in section (2) of this rule, an order of the board awarding monetary damages in a claim, including but not limited to an order of the Board arising from a court judgment or arbitration award, may not include an award for:

- (a) Attorney fees;
- (b) Court costs;
- (c) Interest;
- (d) Costs to pursue litigation or the claim;
- (e) Service charges or fees; or
- (f) Other administrative damages.

(2) An order of the board may include attorney fees, court costs, other costs and interest included in a court order or arbitration award that are related to the portion of the court judgment or award that is within the jurisdiction of the board if the court order or arbitration award arises from litigation:

- (a) That was initiated by the respondent; or
- (b) That the agency required the claimant to initiate under ORS 671.703(12) due to the nature or complexity of the claim.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 183.460

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0260**Order Closing a Claim**

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

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

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

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

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

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

- (a) In response to a motion for reconsideration; or
- (b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the claim.

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

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

Stat. Auth.: ORS 670.310, 671.703

Stats. Implemented: ORS 183.480, 671.703

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

Filing of Claims**808-004-0300****Filing Date of Claims**

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

- (1) Is in substantial compliance with OAR 808-004-0340; and
- (2) Contains information that is sufficient to identify the claimant and respondent.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.700 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88

88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 5-2003, f. & cert. ef. 8-1-03

808-004-0310

Notice Required by ORS 671.700

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.700

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00

808-004-0320

Jurisdictional Requirements

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

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

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

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

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

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(3)(a) A claim will be processed only against a licensed landscaping business.

(b) For a State tax and contribution claim, the landscaping business against which the claim is filed will be considered licensed if the tax and contribution liability arose while the business was licensed.

(c) For a material claim, the landscaping business against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the landscaping business was licensed.

(d) For any other claim, the landscaping business against which the claim is filed will be considered licensed if the landscaping business was licensed during all or part of the work period.

(4) A labor, material and equipment claim, negligent or improper work claim or breach of contract claim will be accepted only when one or more of the following relationships exists between the claimant and the licensed landscaping business:

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

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

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

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

(7) The agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscaping business.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0020; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0340

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 to the claim, on or enclosed with the claim form:

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

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

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

(d) A brief statement of the nature of the claim, setting forth whether the claim is for labor, material or equipment, taxes or contributions due the State of Oregon, negligent or improper work or breach of contract related to a contract with the claimant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0040; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0010; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03

808-004-0350

Procedure if Information on Statement of Claim is Incomplete

(1) The agency may close a claim if:

(a) The Statement of Claim does not meet the requirements of OAR 808-004-0340; and

(b) The claimant fails to provide the missing information in response to a written request from the agency for the information.

(2) The agency's written request for information and closure of the claim must comply with OAR 808-004-0260.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 5-2003, f. & cert. ef. 8-1-03

Administrative Processing of Claims

808-004-0400

Initial Administrative Processing of Claims

(1) Upon receipt of a claim, the agency shall notify the landscaping business, furnishing the landscaping business with a copy of the claim.

(2) After receipt of the claim, the agency shall investigate the claim to determine its validity. The investigation may include an on-site meeting.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88

88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 5-2003, f. & cert. ef. 8-1-03

808-004-0420

Processing Owner and Primary Contractor Claim Together

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

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 5-2003, f. & cert. ef. 8-1-03

808-004-0440

Contracts With Mediation or Arbitration Agreements

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

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

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

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

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

(c) The agency will request that the respondent sign and submit to the agency a written waiver of mediation or arbitration under the contract. If the respondent does not waive mediation or arbitration under the contract, the agency will allow the respondent the time allowed under section 1 of this rule to commence mediation or arbitration. If the respondent fails to submit evidence to the agency that mediation or arbitration under the contract commenced within the time allowed under section 1 of this rule and if the claimant waived mediation or arbitration within the time allowed under section 1 of this rule, the agency will continue to process the claim.

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

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

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

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

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-004-0450

On-site Meeting and Attendance of Claimant

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

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

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

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

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

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

Stat. Auth.: ORS 670.310, ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0600

Agency Recommendation of Resolution

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0470

Challenge to Investigation Report

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

Stat. Auth.: 183, 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02; Renumbered from 808-004-0580

808-004-0480

Resolution by Settlement and Construction of Settlement Agreement

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

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

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

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0500**Closure of Claim After Settlement**

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

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

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

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

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0510**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 may constitute the basis for a claim if a statement of claim is filed under OAR 808-004-0300 and 808-004-0340 within the time limitation in OAR 808-004-0320(2) and all or a portion of the judgment is within the jurisdiction of the board.

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

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

Stat. Auth.: ORS 183.325 – 183.410, 670.310, ORS 671.703

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991 (Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0040; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; Renumbered from 808-004-0200

808-004-0520**Processing of Claim Submitted to Court or Other Entity**

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

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

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

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

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

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

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

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

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

(d) Within 30 days of the date of final action by the court or other entity, the claimant shall deliver to the agency a copy of the judgment or decision together with a copy of the complaint or other pleadings on which the judgment or decision is based.

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

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

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

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

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

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

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

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

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

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

(a) The agency shall accept a judgment of a court of competent jurisdiction or a decision of another entity as the final determination of the merits of the claim.

(b) Based on the judgment or decision, the agency shall issue a proposed default order to pay damages or to dismiss or refer the claim to the Office of Administrative Hearings a hearing. The following apply to proceedings under this subsection:

(A) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral for the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under this section must include a statement of the portion of the judgment that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the claim to the Office of Administrative Hearings for a hearing, the administrative law judge shall determine the portion of the judgment, if any, that is within the jurisdiction of the agency.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 671.703 & ORS 671.575

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from

808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

808-004-0540

Establishing Monetary Damages, Issuing Proposed Default Order or Referring Claim for Hearing

(1) A claimant may seek monetary damages if the agency has not closed the claim and:

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

(b) The respondent cannot or will not comply with the resolution proposed by the agency;

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

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount the claimant alleges the respondent owes the claimant, limited to claim items listed in the Statement of Claim. The agency may require the claimant to submit, in support of the amount alleged:

(a) One or more estimates from licensed landscape businesses for the cost of correction of each of the claim items; or

(b) Other basis for monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for a hearing under section (4) of this rule after each party to the claim has had an opportunity to provide evidence supporting its position with regard to the claim. The agency may require that the claimant file a declaration of damages and supporting evidence described under section (2) of this rule.

(4) After documentation required under sections (2) or (3) of this rule is received, the agency may:

(a) Issue a proposed default order proposing dismissal of the claim under OAR 808-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Office of Administrative Hearings for a hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount, is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to claimant if the record of the claim contains evidence that persuades the agency that:

(A) Claimant suffered damages;

(B) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(C) The monetary value of those damages is substantiated on the record.

(b) The agency may issue a proposed default order that is not described in subsection (a) of this section if the record of the claim contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

808-004-0550

Proposed Default Order to Dismiss, Other Resolution of Claim by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a claim if the evidence in the claim record persuades the agency that one of the following grounds for dismissal exists:

(a) The claim is not the type of claim that the agency has jurisdiction to determine under ORS 671.690, 671.703 or OAR 808-004-0320.

(b) The claim was not filed within the time limit specified under ORS 671.710 and OAR 808-004-0320.

(c) The claimant did not permit the respondent to comply with agency recommendations under ORS 671.703.

(d) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the claimant is less than an amount due to the respondent from the claimant under the terms of the contract.

(e) The claimant contends that the respondent failed to fulfill the terms of a settlement that resolved the claim but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a claim if, after the agency investigates the claim, the record of the claim does not contain evidence that persuades the agency that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(3) If the claimant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the claim for a hearing solely to determine whether the dismissal was proper; or

(b) Require that the claimant file a declaration of damages stating an amount the claimant alleges the respondent owes the claimant and refer the claim for a hearing to determine if the claim should be dismissed and if not, the validity of the claim and whether the amount claimed, or some lesser amount is proper.

(4) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-004-0560

Requirements for Proposed Default Order or Referral to Hearing Officer Panel, Hearing Request

(1) A proposed default order on a claim issued by the agency shall include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for an arbitration or a contested case hearing must:

(a) Comply with OAR 808-004-0590, which regulates whether the claim will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 prior to the agency's referral of the claim to the Office of Administrative Hearings

(3) If the agency refers a claim to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the claimant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the declaration of damages on the Statement of Claim that limits the amount that the respondent may be ordered to pay the claimant and state the amount that the order is limited to under OAR 808-009-0160 and 808-008-0420.

(b) The agency shall serve on the parties an explanation of

(A) The limitation on the amount a respondent may be ordered to pay a claimant under OAR 808-009-0160 and 808-008-0420; and

(B) The procedure to file a new declaration of damages under OAR 808-009-0020 and 808-008-0110.

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

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6)(a) Except as provided in subsection (b) of this section, a contested case notice issued under this rule must include a statement that the agency's file on the claim is designated as the record only for purposes of a default order issued under this rule and not for purposes of an order by default issued after a hearing under OAR 808-009-0140.

(b) If a proposed default order issued under this rule is an order to dismiss a claim, a contested case notice issued under this rule may include a statement that the agency's file on the claim is designated as the record for purposes of a default order issued under this rule and of an order by default issued after a hearing under OAR 808-009-0140.

Stat. Auth.: ORS 183.415, ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415

Hist.: LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-001-0025; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-004-0580[Renumbered to 808-004-0470]

808-004-0590

Referral of Claim to Arbitrator or Contested Case Hearing or Removal to Court

(1) If a hearing on a claim is conducted by the Office of Administrative Hearings:

(a) The hearing shall be held as an arbitration under the rules in Division 8 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (b) of this section or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing shall be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the claim makes a timely written request under section (4) of this rule that the claim be heard as a contested case; or

(B) The agency requests under sections (4) and (6) of this rule that the claim be heard as a contested case.

(2) Subject to section (3) of this rule, a claim shall be decided in court if:

(a) The claimant files a complaint in court that alleges the elements of the claim in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment, or another complaint that arises from the contract or work that is the subject of the claim and that allows the claimant to file a response alleging the elements of the claim.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limitation in this rule constitutes waiver of the right to have the claim decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 808-010-0085, whichever is applicable.

(4) A request that a claim be heard as a contested case filed under section (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery shall be

either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 808-008-0085, whichever is applicable.

(b) A referral of a claim to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the claim be heard as a contested case under section (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the claim.

(5) Failure to deliver a timely written request for a contested case hearing under sections (1)(b) and (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the claim being held as binding arbitration under section (1)(a) of this rule.

(6) The agency may request under section (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the claim under ORS 671.690 to 671.710 is at issue; or

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the claim.

(7) The amendment to this rule that became effective on or after March 1, 2003 apply to a claim that is referred to the Office of Administrative Hearings after March 1, 2003.

Stat. Auth.: ORS 670.310, ORS 671.703

Stats. Implemented: ORS 671.703

Hist. LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-004-0600

Payment from Bond or Security

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

(2) The agency shall notify the surety company or deposit holder of claims ready for payment. Claims are ready for payment when all of the following have occurred:

(a) An arbitration award has been issued and is ready for payment under OAR 808-008-0440 after 30 days have elapsed to allow the respondent time to pay the award or file exceptions with the circuit court or a final order has been issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order;

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

(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 licensee under ORS 671.510 to 671.710 within the same or prior 90-day period under ORS 671.710 have either been resolved, been closed or have reached the same state of processing as the subject claim.

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

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

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

(c) A surety bond or deposit 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 bonds or deposits have no liability for any claim related to the job.

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

(5) The full penal sum of the bond shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under ORS 671.690.

(6) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds or deposits of the respondents, payment shall be made in equal amounts from each bond or deposit subject to payment. If one or more of the bonds or deposits is or becomes exhaust-

ed, payment shall be made from the remaining bond or deposit or in equal amounts from the remaining bonds or deposits. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond or deposit under this section by an amount equal to the payment made by the respondent.

(7) A surety company may not condition payment of a claim on the execution of a release by claimant.

(8) An expired or terminated status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.690 & ORS 671.710

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-004-0060; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03

DIVISION 5

CIVIL PENALTIES

808-005-0020

Schedule of Civil Penalties

The agency may assess civil penalties according to the following schedule:

(1) For operating as a landscaping business in violation of ORS 671.530(3) or (4), \$1,000; to be reduced to \$600 if the respondent obtains a landscaping business license within a specified time.

(2) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when a claim has been filed for damages arising out of that work, \$2,000; to be reduced to \$600 if the respondent obtains a landscaping business license within a specified time and settles or makes reasonable attempts to settle with the claimant.

(3) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when one or more previous violations have occurred, \$2,000.

(4) For advertising in violation of ORS 671.530(2) or (4), \$600; to be reduced to \$200 if the respondent obtains a landscaping business license within a specified time, or to \$50 if the advertisement is withdrawn immediately upon notification from the agency and no work was accepted as a result of the advertisement.

(5) For advertising in violation of ORS 671.530(2) or (4), when one or more previous violations have occurred, \$600.

(6) For operating as a landscaping business without employing at least one licensed landscape contractor licensed within the phase of work performed, in violation of OAR 808-003-0035, \$200.

(7) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and these rules, \$200.

(8) For failure to include the license number in advertising, in violation of OAR 808-003-0010:

- (a) First offense, \$100;
- (b) Second offense, \$400; and
- (c) Subsequent offenses, \$1000.

(9) For working in a specialty not licensed for, \$400.

(10) For installation of irrigation backflow prevention equipment or tapping into the potable water supply:

- (a) In violation of OAR 808-003-0040, per offense, \$500; or
- (b) In violation of a written agreement with the Board as provided in OAR 808-003-0035(3)(b) and 808-003-0040(3), \$1,000 and suspension of the license.

(11) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, \$200.

(12) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, \$2,000, in addition to such other action as may be authorized by statute.

(13) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(14) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(15) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(16) For failure to obtain a permit to tap into a potable water supply and install irrigation backflow prevention equipment or failure to comply with applicable plumbing code requirements, \$500 per offense.

(17) For failure to comply with an investigative order issued by the Board, \$500, and suspension of the license until the license-holder complies with the order.

(18) When as set forth in ORS 671.610(8), the number of licensed landscaping businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

- (a) \$1,000 for the first offense,
- (b) \$2,000 for the second offense,
- (c) Six month suspension of the license for the third offense, and
- (d) Three-year revocation of license for a fourth offense.

(19) Failure to notify the agency as required by OAR in 808-003-0045(4), \$500.00.

(20) Failure to provide a signed statement and notarized statement as required by OAR 808-003-0050(3)(a), \$500.00.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.720

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03

808-005-0030

Civil Penalty Collections

The agency may initiate its own collection proceedings, assign the matter to the Department of Revenue for collection, and/or commence an action as provided in ORS 671.955

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.670

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1991 (Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 4-2002, f. & cert. ef. 12-4-02

DIVISION 8

ARBITRATION BY THE AGENCY

808-008-0020

Applicability of Rules

(1) The rules in this division shall apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 808-004-0590;

(b) The parties to the arbitration agree that the Landscape Contractors Board may arbitrate a landscape dispute and the agency accepts the dispute for arbitration under ORS 671.703;

(c) A timely claim is filed relative to work performed under a contract which contains an arbitration clause specifying that the Landscape Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 671.703; or

(d) Arbitration by the Landscape Contractors Board is ordered by a court in accordance with ORS 36.310.

(2) The amendments to the rules in division 8 of this chapter that became effective on or after March 1, 2003 apply only to disputes referred to the Office of Administrative Hearings for arbitration:

(a) On or after March 1, 2003; and

(b) Before March 1, 2003, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB
6-2003, f. & cert. ef. 10-1-03

808-008-0030

Incorporation of Office of Administrative Hearings Rules

(1) The following rules related to the contested case hearings conducted by administrative law judges assigned to the Office of Administrative Hearings are incorporated into these rules by this reference and apply to arbitrations conducted under the rules in this division:

- (a) OAR 137-003-0580 (Summary judgment);
- (b) OAR 137-003-0590 (Qualified interpreters); and
- (c) OAR 137-003-0605 (Telephone testimony).

(2) In interpreting rules incorporated under section (1) of this rule:

(a) "Hearing" in the incorporated rule shall be given the same meaning as "arbitration" in these rules; and

(b) "Administrative law judges" in the incorporated rule shall be given the same meaning as "arbitrator" in these rules.

Stat. Auth.: ORS 670.310, & ORS 671.670

Stats. Implemented: ORS 183, ORS 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0040

Arbitration of Disputes Outside Jurisdictional Requirements

A dispute involving a landscaping contractor that does not meet timeliness filing or other jurisdictional requirements under this chapter or ORS 671.690 to 671.710 may be arbitrated by the agency only if both parties agree in writing to submit the dispute to the Landscape Contractors Board for binding arbitration. At the discretion of the agency, the agency may refuse to accept a dispute submitted for binding arbitration under this rule.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703(3)

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0060

Appointment of Arbitrator

Appointment of arbitrator shall be as provided in ORS 671.703 and shall be subject to a request for a different administrative law judge to act as arbitrator under section 11, chapter 849, Oregon Laws 1999 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0080

Delegation of Duties

If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the duties of the agency under these rules may be carried out through representatives as directed by the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge, except that the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may not perform the duties of the agency under OAR 808-008-0040, 808-008-0100 or 808-008-0440.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0085

Filing and Service of Pleadings and Other Documents

(1) Unless otherwise provided by these rules, documents, correspondence, motions, pleadings, rulings and orders filed in an arbitration under these rules shall be filed as follows:

(a) With the agency before the claim is referred by the agency to the Office of Administrative Hearings.

(b) With the Office of Administrative Hearings or assigned arbitrator after the agency refers the claim to the Office of Administrative Hearings and before the arbitrator issues an award.

(c) With the agency after the arbitrator issues an award.

(2) After the agency refers the claim to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document such as a correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration shall serve copies of the document filed on the parties to the claim or their counsel if the parties are represented.

(3) Service shall be by hand delivery, by facsimile or by mail.

(4) A party shall notify the Office of Administrative Hearings or arbitrator, the agency and other parties to the claim of any change in the party's address or withdrawal or change of the party's legal counsel.

Stat. Auth.: ORS 183.310 - 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183, 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0090

Request for Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings receives a request under OAR 808-004-0590 to conduct the hearing on a claim as a contested case, the Office of Administrative Hearings shall retain jurisdiction over the claim. The Office of Administrative Hearings shall hold the contested case hearing at the time scheduled for the arbitration unless good cause exists to reschedule the hearing date and time.

(2) If the Office of Administrative Hearings receives notice under OAR 808-004-0590 that a party to the claim filed a complaint under that rule that requires that the claim be decided in court, the Office of Administrative Hearings shall return the claim to the agency.

Stat. Auth.: ORS 183.310 - 183.500, ORS 670.310, & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0100

On-Site Investigation, Settlement Discussions

(1) At the discretion of the agency the arbitration hearing may be preceded by an on-site meeting or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site meeting prior to arbitration. The agency may grant or deny the request at its discretion.

Stat. Auth.: ORS 183.310 - 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703(3)

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 5-2003, f. & cert. ef. 8-1-03

808-008-0110

Declaration of Damages and Amendment to Declaration of Damages

(1) If the party asserting the claim has not previously filed a Statement of Claim or declaration under OAR 808-004-0340, 080-004-0540 or 808-004-0550, the party shall file with the agency on a form provided by the agency a declaration of damages stating the amount the party alleges any other party owes the party, together with any supporting documents required by the agency.

(2) If the parties to an arbitration have agreed in writing that the arbitration will bind all of them and if any other party to the proceeding asserts a counter claim, the counterclaiming party shall file with the agency on a form provided by the agency a declaration of damages stating the amount that the counterclaiming party alleges any other party owes to the counterclaiming party, together with any supporting documents required by the agency.

(3) Notwithstanding section (2) of this rule, a party is not required to file the declaration stating the amount that the party alleges any other party owes the party, if the party alleges only an offset.

(4) A party may amend the amount the party alleges another party owes the party by filing an amended declaration of damages. An amended declaration of damages must be delivered to the arbi-

trator as required by OAR 808-008-0085. An amended declaration of damages filed under this section must be received by the arbitrator no later than 14 days prior to the scheduled date of an arbitration on the matter.

(5) An amended declaration of damages filed under section (4) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended declaration of damages must state the amount alleged to be owed to the party filing the amended declaration by the other party. If the subject of the arbitration is a claim, the amount alleged to be owed must be limited to items of complaint in the Statement of Claim. The amended declaration of damages must be signed by the party filing the amended declaration.

(6) An amended declaration of damages making a significant change in the amount a party alleges that another party owes the party may be good cause to postpone the scheduled arbitration under OAR 808-008-0220 if the time left before the arbitration is insufficient to prepare for arbitration on the amended amount.

Stat. Auth.: ORS 183.310 - 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-2000, f. & cert. ef. 2-1-00
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0120

Time and Place of Arbitration Hearing; Notice

The Office of Administrative Hearings shall fix a time and place for the arbitration hearing. The Office of Administrative Hearings I will mail notice of the time and place of the arbitration at least 21 days prior to the arbitration, unless otherwise agreed to by the parties.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0140

Qualifications of Arbitrator

No person shall serve as arbitrator in any arbitration if that person has a 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 a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0160

Substitution of Arbitrator

(1) The agency administrator or a person designated by the agency administrator may substitute another arbitrator at any time before the arbitration hearing begins.

(2) If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the Chief Administrative Law Judge or a person designated by the Chief Law Judge may substitute another arbitrator at any time before the arbitration hearing begins.

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.703
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0180

Representation by Counsel

Any party may be represented at the hearing by an attorney. A corporation, partnership or other business entity may appear or be represented as provided by ORS 183.457.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0200

Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator may require the exclusion of any witness who is not a party during the testimony of other witnesses. The arbitrator shall determine whether any other person may attend the hearing.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100

808-008-0220

Postponement, Recess and Continuance

An arbitration may postpone or recess and later continued by the arbitrator. A party requesting a postponement or continuance must show good cause. The arbitrator will determine whether to grant a postponement or continuance. The arbitrator's determination shall be final.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0240

Oaths

An arbitrator shall take the oath provided by ORS 36.325.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100

808-008-0260

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 files timely exceptions to the award, the agency may not dispose of the tape recordings of the hearing until the court makes a final determination of the matter.

Stat. Auth.: ORS 183.310 - 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100

808-008-0280

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 671.670
Stats. Implemented: ORS 183 & 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100

808-008-0300

Arbitration in the Absence of a Party

(1) Except as provided in section (2) of this rule, an arbitration may proceed in the absence of a party who, after due notice, fails to appear. An award shall not be made solely on the default of a party. The arbitrator may require the attending party to submit such evidence as the arbitrator may require for the making of an award.

(2) Notwithstanding section (1) of this rule, an arbitrator may dismiss a claim without an evidentiary hearing if the party making the claim fails to appear after due notice and without good cause.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0320

Discovery

(1) Parties to an arbitration are encouraged to exchange information informally, prior to the hearing. After making reasonable attempts to obtain any of the following, a party may make written request of the arbitrator for an order directing the other party to comply:

- (a) Production of documents, objects or other information relevant to the dispute;
- (b) Permission to enter upon private property to inspect improvements relevant to the dispute; or
- (c) Other forms of discovery.

(2) The arbitrator may, at the arbitrator's discretion, order compliance. This rule does not require discovery. If the arbitrator does order discovery, the arbitrator shall control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
 Stats. Implemented: ORS 183 & ORS 671.703(3)
 Hist.: LCB 1-2000, f. & cert. ef. 2-1-00

808-008-0340

Subpoenas; Evidence

(1) The arbitrator or an attorney for a party to the arbitration may issue subpoenas for witnesses and documents for the arbitration hearing.

(2) The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not required.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed with the agency prior to or at the hearing.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
 Stats. Implemented: ORS 183 & ORS 671.703(3)
 Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
 Renumbered from 808-004-0100

808-008-0360

Close of Hearings

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 671.670
 Stats. Implemented: ORS 183 & ORS 671.703(3)
 Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
 Renumbered from 808-004-0100

808-008-0380

Waiver of Right to Object to Noncompliance with These Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections prior to the close of the hearing shall be deemed to have waived the right to object.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
 Stats. Implemented: ORS 183 & ORS 671.703(3)
 Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
 Renumbered from 808-004-0100

808-008-0400

Service of Notices and Other

(1) Initial notice of an arbitration hearing by the agency shall be considered delivered or served on a party when deposited in the United States mail and sent registered certified or post office receipt secured addressed to the last known address of record of the party.

(2) Any communication other than hearing notices, including the arbitrator's award, sent by the agency or the Office of Administrative Hearings shall be considered delivered or served on a party when deposited in regular mail addressed to the last known address of record of the party.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
 Stats. Implemented: ORS 183 & ORS 671.703(3)
 Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
 Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0420

Time, Form, and Scope of Award; Limitation on Award

(1) The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award shall be in writing and shall be signed by the arbitrator. The award shall fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award shall contain sufficient rulings on issues and explanations of the reasoning of the arbitrator so that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition for reconsideration would be appropriate.

(4) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 808-004-0540, 808-004-0550 or 808-008-0110; or

(b) The Statement of Claim filed by the party under OAR 808-004-0340, if no declaration of damages was filed.

(5) When a claimant makes a claim against a respondent's surety bond required under ORS 671.690 and the parties to an arbitration have not agreed that the arbitrator may award damages against the claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

(6) An arbitrator shall consider any amounts owed by a party claiming damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party claiming the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a declaration of damages. If the party asserting the offset did not file a declaration of damages, the amount of the offset may not exceed the amount of the award.

(7) Except as provided in OAR 808-008-0440 and 808-008-0460, an arbitration award is effective as an order to pay under OAR 808-004-0600 or may be delivered to the clerk of a circuit court under ORS 36.350;

(a) Only after the 21st day after service on the parties; and

(b) Only if no party files a timely petition for reconsideration under OAR 808-008-0425.

(8) Except as provided in section (4) of this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(9) If a limitation on damages under section (4) is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
 Stats. Implemented: ORS 183 & ORS 671.703(3)
 Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
 Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0425

Petition for Reconsideration

(1) A party to an arbitration may petition the arbitrator to reconsider an award. A party may file only one petition for reconsideration of an award.

(2) The petition for reconsideration must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition for reconsideration must be received by the arbitrator within 21 days of mailing the proposed award.

(4) If the arbitrator receives a timely petition for reconsideration, the arbitrator shall mail copies of the petition to the other parties to the arbitration and the agency. A party may respond to the petition for reconsideration. To be considered, a response to the petition must be received by the arbitrator within 14 days of the date that the arbitrator mailed a copy of the petition for reconsideration to the party.

(5) The arbitrator may waive or extend the time limitations in sections (3) and (4) of this rule on a showing of good cause by the person requesting the waiver or extension.

(6) Within 30 days after the date allowed for receiving a response to the petition, the arbitrator shall issue and serve on the parties and the agency a written decision to grant the petition and reconsider the award or deny the petition and refuse reconsideration. The following apply to a decision under this section:

(a) The decision may include an award on reconsideration under section (8) of this rule.

(b) The arbitrator may deny a petition for reconsideration if the petition is untimely, defective in form or raises no substantial grounds for reconsideration.

(7) The agency may extend the time to issue a decision on a petition for reconsideration under section (6) of this rule.

(8) If the arbitrator grants reconsideration, the arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration. The arbitrator shall issue an award on reconsideration that addresses each substantial issue raised in the petition. The award on reconsideration may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the award on reconsideration by reference;

(b) Issue a new award on reconsideration; or

(c) Conduct additional arbitration and issue an award under subsection (a) or (b) of this section as the arbitrator deems appropriate.

(9) If an arbitrator issues denial of a request for reconsideration under section (6) of this rule or an award on reconsideration under section (8) of this rule, a party to the arbitration may not file a further petition for reconsideration on the denial or the award on reconsideration.

(10) If the arbitrator who prepared the award is not available to consider a petition for reconsideration on the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

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

Stats. Implemented: ORS 183

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-008-0430

Form of Petition for Reconsideration

(1) A petition for reconsideration filed by a party to an arbitration under OAR 808-008-0425 shall conform to the following requirements:

(a) The petition shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition shall be titled "Petition for Reconsideration of Arbitration Award" and shall show the names of the parties to the arbitration and the party submitting the petition at the top of the page. If the petition is filed in a claim, the first page shall show the claim number.

(c) Each page of the petition shall be numbered at the bottom of the page.

(d) For each finding of fact in the award that the party alleges is not supported by the evidence introduced at the arbitration, the following information shall be included in the petition:

(A) The pages on which the finding of fact appear and the number, if any of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the finding of fact was not supported by the evidence.

(e) For each conclusion or explanation in the award that the party alleges is not supported by the findings of fact, is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information shall be included in the petition:

(A) The pages on which the conclusion or explanation and the opinion that supports it appear;

(B) The text of the conclusion or explanation; and

(C) An explanation or argument supporting the party's contention that the conclusion or explanation is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the arbitrator that the party contends directly affected the decision in the award in a manner prejudicial to the party, the following information shall be included in the petition:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the motion.

(g) The party submitting the petition shall sign and date the petition. The date shall be the date the petition is served on the arbitrator and on the other parties to the arbitration.

(2) The arbitrator may refuse to consider a petition that does not substantially meet the requirements of section (1) of this rule.

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

Stats. Implemented: ORS 183

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0440

Payments from Licensee's Bond

(1) As used in this rule, award means an award that becomes effective;

(a) Under OAR 808-008-0420(7);

(b) After a denial of a request for reconsideration is issued under OAR 808-008-0425(6); or

(c) After an award on reconsideration is issued under OAR 808-008-0425(8).

(2) If an award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond or deposit of the business to the extent payment is authorized under ORS 671.710. Payments from the bond or deposit shall be limited to sums for arbitrated claims and shall be subject to the laws in ORS chapter 671 and rules in division 4 of this chapter.

(3) An award may be submitted to a surety company for payment under OAR 808-004-0600 if no party delivers a copy of exceptions to the award filed with the circuit court under ORS 36.350 within 30 days of the date the award becomes effective.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703(3)

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0460

Filing with Court; Exceptions

(1) If a timely petition for reconsideration is filed, a party may not file the award with the court under ORS 36.350 until:

(a) The arbitrator denies the petition under OAR 808-008-0425(6); or

(b) The arbitrator issues an award on reconsideration under OAR 808-008-0425(8).

(2) After an award becomes effective under OAR 808-008-0420(7), a denial of a request for reconsideration is issued under OAR 808-008-0425(6) or an award on reconsideration is issued under OAR 808-008-0425(8), a 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. If a timely petition for reconsideration was filed, the decision on the petition shall be filed with the award under this section.

(3) By proceeding with arbitration under these rules, parties shall be deemed to have consented that a judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(4) A party against whom an award is made may file written exceptions to the award with the circuit court under ORS 36.355, for any of the causes listed in ORS 36.355(1). The party filing the exceptions must deliver a copy of the exceptions to the agency within 30 calendar days from the date of the award.

(5) If an award is made on a claim and the claimant does not file the award with the circuit court, the respondent must file the award with circuit court prior to respondent filing exceptions to the award under ORS 36.355.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703(3)

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0480

Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules shall be interpreted and applied by the agency administrator or a person designated by the agency administrator.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-008-0500

Exclusion of Liability

Neither the agency, any agency employee nor any arbitrator shall be liable to a party for an act or omission in connection with an arbitration conducted under these rules.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00;
Renumbered from 808-004-0100

DIVISION 9

CONTESTED CASE HEARINGS AND APPEAL COMMITTEE

808-009-0010

Application of Rules

Contested case hearings on claims arising under ORS 671.690-671.710 shall be governed by OAR 808-009-0020 through 808-009-0220 and OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.415 & ORS 671.703
Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00

808-009-0020

Amendment to Declaration of Damages

(1) If the agency refers a claim to the Office of Administrative Hearings for a hearing on the amount that the respondent owes the claimant, the claimant may amend the amount the claimant alleges the respondent owes the claimant by filing a new declaration of damages form. An amended declaration of damages must be filed under OAR 137-003-0520 and 808-009-0085 with the administrative law judge or the Office of Administrative Hearings if no administrative law judge has been assigned to hear the claim. An amended declaration of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings no later than 14 days prior to the scheduled date of a hearing on the matter.

(2) An amended declaration of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially conforms to the form provided by the agency. The amended declaration of damage must state the amount alleged to be owed by the respondent, limited to items of complaint in the Statement of Claim. The new declaration of damages must be signed by the claimant.

(3) An amended declaration of damages making a significant change in the amount the claimant alleges that the respondent owes the claimant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.415 & ORS 671
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0050

Providing Required Information to Parties

The agency delegates to the Office of Administrative Hearings or the law judge assigned to hear a claim the responsibility to pro-

vide the information required to be given to each party under ORS 183.413(2) and 137-003-0510(1).

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.415 & ORS 671.703
Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0060

Hearing Postponement

If a party requests postponement of a hearing, the request may be granted:

(1) The request is promptly made after the party receives the notice of hearing or is promptly made after emergency or unforeseen circumstances arise; and

(2) The party establishes circumstances that prevent attendance by the party at the scheduled hearing; and

(3) The circumstances preventing attendance at the hearing are beyond the reasonable control of the requesting party.

Stat. Auth.: ORS 183.415, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671
Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00

808-009-0070

Suspending Processing

(1) An administrative law judge may suspend or cancel a hearing at any time if the administrative law judge finds that the nature or complexity of the issues is such that a court is a more appropriate forum for adjudication. If a administrative law judge suspends or cancels a hearing under this rule, the administrative law judge shall refer the claim to the agency with a memorandum recommending that processing of the claim be suspended under ORS 671.703 and OAR 808-004-0520 and stating the basis of the recommendation. A copy of this memorandum shall be served on the parties.

(2) If a claim is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the claim; or

(b) Refer the claim back to the administrative law judge with instructions to resume the hearing.

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.415 & ORS 671.703
Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0080

Administrative Law Judge

A contested case hearing may be held before an administrative law judge of the agency.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 3-2000, f. & cert. ef. 7-26-00

808-009-0085

Filing of Documents

Unless otherwise provided in these rules, the agency waives the right to receive copies of documents served under OAR 137-003-0520(2).

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.415 & ORS 671.703
Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00

808-009-0090

Authorized Representation of a Party

A party or limited party participating in a claim contested case hearing before the agency may be represented by an authorized representative, as provided in OAR 137-003-0555.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.455
Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1990(Temp), f. & cert. ef. 3-28-90; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-001-0035; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00

808-009-0095**Discovery and Subpoenas**

(1) The agency delegates to the hearing officer assigned to hear a claim the authority to:

(a) Order and control discovery under OAR 137-003-0570 related to the hearing on the claim, except an hearing officer may not authorize a party to take a deposition that must be paid for by the agency.

(b) Issue subpoenas under OAR 137-003-0585 that are related to the hearing on the claim.

(2) The agency waives receipt of notice that a party seeks to take the testimony of a witness by deposition under OAR 137-003-0570.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 671.703

Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00

808-009-0100**Burden of Proof and Failure to Meet Burden**

(1) A claimant must prove that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(2) If the claimant fails to carry the burden of proof described in section (1) of this rule, the law judge shall dismiss the claim.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; Administrative correction 6-21-01; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0120**Determination of Validity of Claim**

In determining the validity of the claim, the administrative law judge shall determine:

(1) Whether the claim arose out of a transaction within the scope of ORS 671.510 to 671.710;

(2) Whether the agency has jurisdiction over the matters at issue;

(3) Whether:

(a) Claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0140**Failure to Appear**

(1) "Order" as used in this rule means a proposed and final order a law judge is authorized to issue under OAR 808-009-00160.

(2) If the administrative law judge notified the parties to a claim of the time and place of a hearing on the claim, and a party failed to appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that:

(a) Is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3); or

(b) Dismisses the claim based on a lack of evidence in the record supporting claimant's claim, but only if:

(A) The agency did not designate the agency file as the record for purposes of an order by default in the contested case notice issued under OAR 808-004-0560; and

(B) The claimant failed to appear at the hearing.

Authorized for use by Attorney General order dated December 13, 2002.

(Section (1) based on former OAR 808-004-0030(13) (1999); section (2) based on former OAR 808-004-0030(14) (1999))

Stat. Auth.: ORS 183, 670, 670.310 & 671

Stats. Implemented: ORS 183, 670 & 671

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 6-2002, f. & cert. ef. 12-18-02; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0160**Order Based on Hearing, Limitation on Order**

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order a administrative law judge is authorized to issue under section (6) of this rule.

(2) If a claim is referred for a hearing to determine the amount, if any, that a respondent owes a claimant, the administrative law judge may not issue an order in an amount greater than the total amount claimant alleges respondent owes claimant in:

(a) The most recent declaration of damages or amended declaration of damages filed under OAR 808-004-0540, 808-004-0550 or 808-009-0020; or

(b) The Statement of Claim filed under OAR 808-004-0340, if no declaration of damages was filed.

(3) If a claim is referred for a hearing to determine whether any portion of a judgment is within the jurisdiction of the agency, the administrative law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the claimant or dismiss the claim.

(5) An administrative law judge shall consider any amounts due to the respondent from the claimant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in OAR 808-009-0200, an administrative law judge shall issue a proposed and final order under OAR 137-003-0645(4) that shall automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 808-009-0400;

(b) The agency requests that the administrative law judge hold a further hearing or revise or amend the proposed order under OAR 137-003-0655(1);

(c) The agency issues an amended proposed order under OAR 137-003-0655(3); or

(d) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) is based on a declaration of damages or Statement of claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0180**Recording of Hearing**

The record of agency hearings will include a tape recording of the proceeding. The agency may dispose of tape recordings of agency hearings when ninety days have passed after issuance of a final order in the matter. However, if a petition for judicial review is timely filed, the agency may not dispose of tape recordings of agency hearings until the Court of Appeals has completed its judicial review.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995,

f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; Suspended by LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00

808-009-0200

Final Order without a Proposed Order

If the parties voluntarily agree to a settlement of a claim in accordance with ORS 183.415(5) and the settlement agreement includes an agreement for future performance, the administrative law judge shall issue an intermediate order containing any necessary findings of fact and return the claim to the agency for further processing and issuance of the final order.

Stat. Auth.: ORS 670.310, & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0220

Petition for Reconsideration or Rehearing; Request for Stay

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a claim issued by an administrative law judge under this division must be filed with the agency.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 671.703

Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

Contested Case Hearings, Enforcement

808-009-0300

Hearing Notice and Limitation on Final Civil Penalty Order

A notice of hearing shall contain the amount of the civil penalty sought by the agency. The administrative law judge shall not issue a final civil penalty order in an amount greater than that shown in the notice of hearing.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-005-0010

808-009-0320

Administrative Law Judge; Entry of Agency Evidence

Contested case enforcement hearings may be held before an administrative law judge of the agency. The agency's evidence may be entered into the record by the administrative law judge or by another representative of the agency.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-005-0010

808-009-0335

Authorized Representation of a Party

A party or limited party participating in an enforcement contested case hearing before the agency may be represented by an authorized representative, as provided in OAR 137-003-0008.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.455

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1990(Temp), f. & cert. ef. 3-28-90; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-001-0035

808-009-0340

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;
- (b) Refusal to reissue a license or a license suspension; or
- (c) In other compliance 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.

(3) When an agency officer or employee represents the agency in a hearing, the presiding officer shall advise the representative

of the manner in which objections may be made and matters preserved for appeal. This advice is of a procedural nature and does not change applicable law on waiver on the duty to make timely objection. Where an objection may involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit the legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.450

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1990(Temp), f. & cert. ef. 3-28-90; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-001-0035

808-009-0360

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 violation or a final order dismissing the matter.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-005-0010

Exceptions

808-009-0400

Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or licensee may file written exceptions if they believe that the administrative law judge has made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2) To be considered:

(a) The first exceptions must be received by the agency within 21 days of the date of mailing the proposed order.

(b) If one party files timely exceptions, exceptions by the opposing party, if that party chooses to file them, must be received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 808-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board at a regularly scheduled Board meeting for which agenda space is available.

(4) The exceptions must substantially conform to the requirements set forth in OAR 808-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days prior to the Board meeting date if the original exceptions were timely received.

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party must include in the exceptions:

- (A) A notice of the intention to rely on oral testimony, and
- (B) A request for a copy of the tape of the hearing with the fee required under OAR 808-001-0020.

(b) After the agency receives a party's exceptions containing a notice of an intention to rely on oral testimony under subsection (a) of this section, the agency must send a copy of the tape of the hearing to the other party to the claim at no charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony must prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions filed. The party must deliver the transcript to the agency 21 days after the date of mailing of the tape of the hearing by the agency to the party.

(d) The agency must mail a copy of the transcript to the other party to the claim.

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency 21 days after the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency must mail a copy of the transcript prepared under this section to the party that filed the exceptions.

(8) The Board may refuse to consider evidence of oral testimony submitted by a party if the party fails to comply with the requirements of sections (6) and (7) of this rule.

(9) Claimant and respondent may appear before the members of the Board to argue for or against the proposed order.

(10) The agency may waive or extend the time limitations in sections (5) through (7) of this rule on its own motion or on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.413 - ORS 183.470

Hist.: LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-001-0025; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0420

Exceptions to Agency Orders, Enforcement

(1) After a contested case enforcement hearing, the respondent may file written exceptions if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the agency within 21 days of the date of mailing of the proposed order. If written exceptions are not timely received, the agency may issue a final order as proposed.

(2) Exceptions must substantially conform to the requirements of OAR 808-009-0430.

(3) If exceptions are timely received, the matter will be set for consideration by the Board at a regular meeting of the Board. Written argument in opposition to the proposed order will be accepted up to 15 days before the Board meeting date if the original exceptions were timely received. The Board may waive the 15-day requirement.

(4) The respondent may appear before the Board to argue against the proposed order, if the agency receives written notice of intent to do so before the Board meeting date. Oral argument will be permitted only if the original exceptions were timely received.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.413 - ORS 183.470

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-005-0010; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03

808-009-0430

Form of Exceptions to Agency Order

(1) Exceptions to an agency order filed by a party to a claim under OAR 808-009-0400 or a respondent under 808-009-0420 shall conform to the following requirements:

(a) Exceptions shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a claim, the first page shall show the claim number, the names of the parties to the claim and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page shall show the name of the respondent at the top of the page.

(c) Each page of the exceptions shall be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information shall be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the evidence in the record does not support the finding of fact.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information shall be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony shall be included in the exceptions.

(h) The party submitting the exceptions shall sign and date the exceptions.

(2) The Board may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 670.310, ORS 671.670, ORS 671.703

Stats. Implemented: ORS 183 & ORS 671.703

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03

808-009-0440

Meeting of Board to Consider Appeals

(1) Claimant and respondent may appear before the members of the Board to argue for or against the proposed order.

(2) The Board may limit the time allowed for oral argument by a party before the Board to ten minutes.

(3) At the Board meeting, the Board will consider documentary evidence received at the hearing and exceptions and written or oral argument for or against the proposed order, but the Board will not consider new or additional evidence.

(4) After hearing oral argument, the Board may conduct its deliberations privately, under authority of ORS 192.690(1). If the Board conducts its deliberations privately, it will return to public meeting for any motions and voting.

(5) The Board may affirm the findings and proposed order, modify either or both, or send the case back to a new hearing to receive additional evidence. Unless the case is sent back to a new hearing, the agency shall issue a final order after the Board meeting.

(6) Final orders are subject to judicial review as provided under ORS chapter 183.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.413 - ORS 183.470

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0050; LCB 4-2002, f. & cert. ef. 12-4-02