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<b>812-010-0110</b>	Declaration of Damages and Amendment to Declaration of Damages
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<b>812-010-0140</b>	Qualifications of Arbitrator
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<b>812-010-0440</b>	Payments from Licensee's Bond
<b>812-010-0460</b>	Filing with Court, Exceptions
<b>812-010-0480</b>	Interpretation and Application of Rules
<b>812-010-0500</b>	Immunity of Arbitrator
<b>812-010-0510</b>	Competency of Arbitrator to Testify
<b>812-010-0520</b>	Attorney Fees and Costs

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<b>812-011-0010</b>	Definitions
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<b>812-011-0070</b>	Advertising

## DIVISION 1

### ADMINISTRATION

#### 812-001-0000

##### Notice of Proposed Rule

Except as provided in OAR 812-001-0001, before adopting, amending, or repealing any permanent rule, the Construction Contractors Board shall give notice of the intended action:

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

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

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

- (a) Associated Press;
- (b) Oregon Labor Press;
- (c) Capitol Press Room, State Capitol;
- (d) Oregon Consumer League; and
- (e) Oregon Department of Health.

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

Stat. Auth.: ORS 670.310, 701.235 & 701.280

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

Hist.: 1BB 4, f. & ef. 12-29-75; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

#### 812-001-0001

##### Temporary Rule

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

Stat. Auth.: ORS 183.325 & ORS 701.235

Stats. Implemented: ORS 183.325 & ORS 701.235

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

#### 812-001-0003

##### Uniform and Model Rules

The Construction Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 to 137-005-0070, revised January 15, 2004, with the following exceptions: OAR 137-003-0015, 137-005-0060, and 137-005-0070.

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

Stat. Auth.: ORS 701

Stats. Implemented: ORS 183.341 & ORS 279

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 1-1986, f. & ef. 5-30-86; BB 3-1988, f. 11-23-88, cert. ef. 12-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 3-1992(Temp), f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1995, f. 6-6-95 cert. ef. 6-15-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-001-0007

##### Disposal of Large Objects Submitted as Exhibits

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

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

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

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

#### 812-001-0010

##### Response Time to Notices

(1) Time for response to a notice delivered pursuant to ORS 701.080 shall run from the date of mailing.

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

Stat. Auth.: ORS 183.415 & 701.080

Stats. Implemented: ORS 183.415 & 701.080

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1991, f. & cert. ef. 2-4-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-001-0015

##### Information Requests

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

(a) Whether or not the entity is or has ever been licensed.

(b) The license number(s).

(c) The business names used by the entity of record with the agency.

(d) Type of business organization (sole proprietorship, partnership, limited liability partnership, limited liability company, or corporation).

(e) Personal names of owners, partners, members or corporate officers.

(f) Last known address.

(g) Category of license (General Contractor — All-Structures, Specialty Contractor--All-Structures, General Contractor — Residential-Only, Specialty Contractor — Residential-Only, Limited Contractor, Inspector, and Licensed Developer).

(h) Employer status (exempt or nonexempt).

(i) Expiration date or date upon which the license became inactive or lapsed and the reason it became inactive or lapsed.

(j) The date the entity first became licensed.

(k) The number and type of inquiries and pending claims and claims closed during the past three years where the agency issued Final Orders requiring the contractor to pay the claimant.

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

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

(a) License number(s).

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

(c) Type of business (sole proprietorship, partnership, limited liability partnership, limited liability company, or corporation).



(d) Category of license (General Contractor — All-Structures, Specialty Contractor — All-Structures, General Contractor — Residential-Only, Specialty Contractor — Residential-Only, Limited Contractor, Inspector, and Licensed Developer).

(e) Employer status (exempt or nonexempt).

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

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

(4) In response to telephone requests from consumers for claims information relating to a specific licensee, the agency will provide by mail a brief explanation of the claims process and the following information for each claim filed in the previous seven years:

(a) Type of each claim.

(b) Date on which the claim was filed.

(c) The status of the claim filed.

(d) Alleged amount of the claim, if known, or amount awarded.

(5) If more information is required than that listed in section (4) of this rule, the request for information should be specified in writing.

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

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

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

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

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

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

(f) Charge as determined by preparation time and production cost for mailing labels of licensees.

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

(7) Refunds:

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

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

(c) When an applicant withdraws their application for a new license prior to issuance or fails to complete the licensing process, the agency may refund the licensing fee, but will retain a processing fee of \$40. When an applicant withdraws their application for renewal prior to issuance or fails to complete a renewal, the agency may refund the licensing fee, but will retain a processing fee of \$40.

(d) If a licensee paid for a four-year license at their own discretion as authorized by ORS 701.115(1) and voluntarily terminates their license within the first two-year license period, the agency may refund the unused two-year renewal fee only if the following conditions are met:

(A) The licensee will submit a written request for a voluntary termination of the license and a refund of the unused two-year fee;

(B) The licensee will return the original license card(s) to the agency; and

(C) The agency will retain a \$40 processing fee.

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

Stat. Auth.: ORS 293.445

Stats. Implemented: ORS 183.310, 183.500, 192.430, 701.235, 701.250, 701.252

Hist.: 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 1-1996, f. 4-26-96, cert. ef. 5-1-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1998, f. & cert. ef. 4-30-98; Administrative correction 7-28-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-

1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04

## 812-001-0020

### Information Notice to Owners

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised June 1, 2004. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised June 1, 2004.

(3) The Construction Contractors Board adopts the form "Notice of Compliance with Homebuyer Protection Act (HPA) as revised December 16, 2003.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 87.093, 670.310, 701.055 & 701.235

Stats. Implemented: ORS 87.093, 701.055 & 701.235

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04

## 812-001-0022

### Requirements for Notice of Compliance with Homebuyer Protection Act

(1) Under ORS 87.007(3), a seller of residential property must deliver a Notice of Compliance with Homebuyer Protection Act on or before the date the sale of the property closes to the purchaser of:

(a) A new single family residence, condominium or residential building; or

(b) An existing single-family residence, condominium or residential building where:

(A) The price for original construction, including but not limited to an addition to the single family residence, condominium or residential building, that is completed within three months prior to the date of the sale of the property is \$50,000 or more; or

(B) The contract price for improvements to the single-family residence, condominium or residential building that are completed within three months prior to the date of the sale of the property is \$50,000 or more.

(2) The seller must deliver the notice required under ORS 87.007(3) on or before the close of the sale of the property.

(3) The notice required under ORS 87.007(3) shall be on the form adopted under OAR 812-001-0020.

(4) Under ORS 87.007(3), a seller of residential property may specify on the Notice of Compliance with Homebuyer Protection Act that ORS 87.007(2) does not apply to the sale of the property if the seller knows that no person may enforce a valid lien against the property because:

(a) The last day to perfect any lien on the property under ORS 87.035 was prior to the date of sale of the property; and

(b) No lien was perfected.

Stat. Auth.: ORS 87.007, 670.310, & 701.235

Stats. Implemented: ORS 87, 87.007, & 701

Hist.: CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-001-0023

### Surety Bond Issued to Protect Purchasers of Residential Property from Lien Claims

A seller of residential property may provide a surety bond to satisfy the requirements of ORS 87.007(2)(c), provided that the bond complies with the following requirements.

(1) The bond must be issued by an insurer authorized or approved to do business in this state.

(2) The bond must be issued on or after the date of completion of the residential property. For purposes of this rule, the "date of completion" shall be determined in accordance with ORS 87.045.

(3) The bond must be issued in an amount of not less than 25 percent of the sales price of the residential property.

(4) The bond shall remain in effect:

(a) Not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the residential property; or

(b) If one or more liens are perfected against the residential property within 75 days from the date of completion, until:

(A) All liens are released and the releases recorded;

(B) The seller files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081;

(C) The surety files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081; or

(D) The surety pays the buyer the amount of the lien or the penal sum of the bond, whichever is less.

(5) The bond shall include the following terms and conditions: "NOW, THEREFORE, the conditions of the foregoing obligation are that if the principal shall not permit any construction lien to be placed upon the subject property; shall obtain the release of all construction liens upon the subject property and have the releases recorded; or shall file a bond or deposit in accordance with ORS 87.076 to 87.081; then this obligation shall be void; otherwise to remain in full force and effect." This bond is for the exclusive purpose of paying construction lien obligations encumbering (legal description or address of property) arising out of the sale by principal to (name(s) of purchaser(s)), in compliance with ORS 87.007(2)(c) and OAR 812-001-0023. The bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the penalty on this bond. The bond shall remain in effect for not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the property; or, if one or more liens are perfected against the property within 75 days from the date of completion, until (1) all liens are released and the releases recorded; (2) the principal files a bond or makes a deposit and the principal files the required affidavit under ORS 87.076 to 87.081; (3) the surety files a bond or makes a deposit and the surety files the required affidavit under ORS 87.076 to 87.081; or (4) the surety pays the liens."

Stat. Auth.: ORS 87.007, 670.310 & 701.235

Stats. Implemented: ORS 87.007

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-001-0024

##### Letter of Credit Issued to Protect Purchasers of Residential Property from Lien Claims

(1) As used in this rule, "letter of credit" means an irrevocable standby letter of credit.

(2) A seller of residential property may provide a letter of credit to satisfy the requirements of ORS 87.007(2)(c), provided that the letter of credit complies with the following requirements.

(a) The letter of credit must be issued by or confirmed by an Oregon state-chartered bank or a federally chartered bank that has an Oregon branch.

(b) The letter of credit must be issued on or after the date of completion of the residential property. For purposes of this rule, the "date of completion" shall be determined in accordance with ORS 87.045.

(c) The letter of credit must be issued in an amount of not less than 25 percent of the sales price of the residential property.

(d) The beneficiary of the letter of credit must be the purchaser of the property.

(e) The letter of credit shall remain in effect:

(A) Not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the residential property; or

(B) If one or more liens are perfected against the residential property within 75 days from the date of completion, until:

(i) All liens are released and the releases recorded;

(ii) The seller files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081; or

(iii) The issuing or confirming bank pays the purchaser of the property the amount of the lien or the amount of the letter of credit, whichever is less in accordance with the terms of the letter of credit.

(f) The letter of credit can be called by the purchaser of the property immediately if:

(A) The seller of the property permits any construction lien to be placed upon the property;

(B) The seller of the property fails to obtain the release of all construction liens upon the property and have the releases recorded; or

(C) The seller of the property fails to file a bond or deposit and record the required affidavit under ORS 87.076 to 87.081.

(g) The credit shall be available by presentation of the purchaser of the residential property at sight on the issuing, or confirming, bank when accompanied by a notice of lien filing together with the claim of lien, as provided by ORS 87.039. The credit shall be available within three business days of presentation.

Stat. Auth.: ORS 87.007, 670.310 & 701.235

Stats. Implemented: ORS 87.007

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-001-0025

##### Rules of Procedure for Board Meetings

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

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

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

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

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

(a) Call to order.

(b) Approval of agenda and order of business.

(c) Approval of minutes of previous meetings and previous Appeal Committee meetings.

(d) Consideration of cases on appeal and oral argument, if any.

(e) Report of Administrator and staff.

(f) Unfinished business.

(g) New business.

(h) Public comment.

(i) Announcements.

(j) Adjournment.

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

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

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

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

(9) No motion shall require a second.

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

(11) No member of the Board shall speak or act on behalf of the Board without specific authorization by law or by the Board. The Board shall not delegate its statutory rulemaking authority, except

to an officer or employee within the agency who shall be authorized in writing by the Board to adopt temporary rules.

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

Stats. Implemented: ORS 192.630

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

### 812-001-0030

#### Ethics Policy

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

Stat. Auth.: ORS 244.040

Stats. Implemented: ORS 244.040

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

### 812-001-0040

#### Confidentiality and Inadmissibility of Mediation Communications

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

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

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

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

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

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

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

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

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

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

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a claim or arbitration filed under ORS 701.139 to 701.145, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential mediation.

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

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

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

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to

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

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondisclosable 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 the agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

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

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

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

[ED. NOTE: Forms referenced are available from the agency.]

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

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

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

## 812-001-0050

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Exceptions to Confidentiality and Inadmissibility.

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

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

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

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the

substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 36.230(4)

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

## DIVISION 2

### DEFINITIONS

#### 812-002-0002

##### Application of Definitions

Unless otherwise provided, definitions in this division apply to the rules in this chapter and statutes in ORS Chapter 701.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

#### 812-002-0011

##### Administrative Law Judge

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145 & ORS 701.147

Hist.: CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-002-0020

##### Agency

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.515

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

#### 812-002-0035

##### Appeal Committee

"Appeal Committee" means the appeal committee appointed under ORS 701.260.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.260

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01

#### 812-002-0040

##### Appurtenance

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 656.027, ORS 701.005, ORS 701.055 & ORS 701.140

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

#### 812-002-0060

##### Bid

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 279.073 & ORS 701

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

#### 812-002-0080

##### Board

"Board" means the nine-member appointed Construction Contractors Board.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 87.058, ORS 87.093 & ORS 701

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

#### 812-002-0100

##### Building Trades or Crafts

"Building trades or crafts", as used in ORS 701.005(3) and these rules, means the following special trade contractors as defined by the four-digit codes in the 1987 Standard Industrial Classification Manual:

(1) Building trade contractors including:

(a) 1711 — Plumbing, Heating and Air Conditioning.

(b) 1721 — Painting and Paper Hanging.

(c) 1731 — Electrical Work.

(d) 1741 — Masonry, Stone Setting and Other Stone Work.

(e) 1742 — Plastering, Drywall, Acoustical and Insulation Work.

(f) 1743 — Terrazzo, Tile, Marble, and Mosaic Work.

(g) 1751 — Carpentry Work.

(h) 1752 — Floor Laying and Other Floor Work.

(i) 1761 — Roofing, Siding and Sheet Metal Work.

(j) 1771 — Concrete Work.

(k) 1791 — Structural Steel Erection.

(l) 1793 — Glass and Glazing Work.

(m) 1794 — Excavation Work.

(n) 1795 — Wrecking and Demolition Work.

(o) 1796 — Installation or Erection of Building Equipment Not Elsewhere Classified.

(p) 1799 — Special Trade Contractors, Not Elsewhere Classified.

(2) Heavy construction (other than building construction) contractors, when the contractor is performing as a subcontractor, including:

(a) 1611 — Highway and Street Construction.

(b) 1622 — Bridge, Tunnel and Elevated Highways.

(c) 1623 — Water, Sewer, Pipeline and Communication and Power Line Construction.

(d) 1629 — Heavy Construction, Not Elsewhere Classified.

(3) Other:

(a) 0783 — Tree Service.



- (b) 7342 — Pest Control.
  - (c) 7363 — Chimney and other structural cleaning.
  - (d) 7389 — Inspection Services.
- Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701.005 & ORS 701.013  
 Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 4-2003, f. & cert. ef. 6-3-03

#### 812-002-0120

##### Casual, Minor or Inconsequential

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 656.027 & ORS 701.010  
 Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-002-0130

##### Claimant

“Claimant” means a person who files a claim against a contractor under ORS 701.139 to 701.180.

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701.139 - 701.180  
 Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-002-0140

##### Claims

“Claims” as used in ORS Chapter 701 are:

(1) “Construction lien claim” is a claim filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien.

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

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

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

(5) “Owner claim” is a claim filed by an owner for breach of contract, or for negligent or improper work subject to ORS Chapter 701, or a construction lien claim.

(6) “Primary contractor” claim is a claim by a primary contractor against a licensed subcontractor.

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 87.058, 87.093 & 701  
 Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-002-0160

##### Construction Management

“Construction management” is the coordinating of a construction project, including, but not limited to, selecting contractors to perform work on the project, obtaining permits, scheduling specialty contractors’ work, and purchasing materials. “Construction management” does not include consulting work performed by a registered engineer or a licensed architect when operating as provided by ORS 701.010(7).

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

#### 812-002-0180

##### Contractor Became Aware of the Requirement

“Contractor became aware of the requirement” (to license) as used in ORS 701.065 includes but is not limited to the date a letter or a proposed order is mailed to the address of record from the agency indicating that the contractor was performing the work of a contractor and must be licensed with the Construction Contractors Board.

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701.065  
 Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-002-0190

##### Court, Arbitrator or Other Entity

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

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235  
 Stats. Implemented: ORS 183.415, ORS 813.460 & ORS 701.145  
 Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-002-0200

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

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701.065 & ORS 701.115  
 Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-002-0220

##### Date Contractor Incurred Indebtedness

“Date the contractor incurred the indebtedness” as used in ORS 701.143, regarding material claims, is the date of delivery or the date the purchaser takes possession of the materials. If the delivery date is unknown, the date of the invoice applies except that in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness.

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701.143 & ORS 701.145  
 Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-002-0230

##### Days

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701  
 Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

#### 812-002-0250

##### Direct Contractual Relationship

“Direct Contractual Relationship” as used in OAR 812-004-0320 has the following meanings:

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

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

Stat. Auth.: ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 701.235  
 Hist.: CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-002-0260

##### Dishonest or Fraudulent Conduct

“Dishonest or fraudulent conduct”, as used in ORS 701.135(1)(L) includes, but is not limited to, the following:

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

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

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

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

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

(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in section 812-003-0025(4); or

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

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

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

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

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

(12) Presenting for payment to the Board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.135

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03

### 812-002-0280

#### For Compensation or With the Intent to Sell

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005, ORS 701.010, ORS 701.055 & ORS 701.065

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 4-2003, f. & cert. ef. 6-3-03

### 812-002-0300

#### Gardener

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

### 812-002-0320

#### General Contractor

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701

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

### 812-002-0325

#### Good Cause

"Good cause" as used in ORS 279.322 exists if the prime contractor that substituted an undisclosed first-tier subcontractor can show that a reasonable person with the knowledge possessed by the prime contractor when the substitution was made would have concluded that:

(1) The substitution was consistent with, and did not violate, public policy expressed in ORS 279.023, that public agencies shall make every effort to construct public improvements at the least cost to the public; and

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

(a) The subcontractor was financially unstable;

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

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

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

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

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

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

(h) The subcontractor failed or refused to meet requirements of ORS 279.312(2);

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 279.322

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2002, f. & cert. ef. 3-1-02

### 812-002-0340

#### Help Hired

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.075

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 4-2003, f. & cert. ef. 6-3-03

### 812-002-0360

#### Inspect

"Inspect," as used in ORS 701.005(2), means the examination of a structure or its appurtenances for the purposes of determining the condition of the structure, identifying construction faults, exposing potential maintenance problems, assessing life expectancy, and/or estimating repair costs, and does not include pest control examinations for non-wood-destroying organisms and does not include pest control examinations for wood destroying organisms except when conducted as part of an inspection for the transfer of real estate.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005

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

### 812-002-0380

#### Insurance

"Insurance" required under ORS 701.105 means public liability, personal injury and property damage insurance.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 670.600, 701.055, 701.105 & 701.135

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-2004, f. & cert. ef. 2-2-04

### 812-002-0400

#### Labor

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.140 & ORS 701.150

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

**812-002-0420**

**Lapse in License**

“Lapse in license” as used in ORS 701.065(2)(b)(A), 701.075(6) and 701.115(4) commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed or reinstated by the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.065, ORS 701.115 & ORS 701.225

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2003(Temp), f. & cert. ef. 7-9-03 thru 1-3-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

**812-002-0430**

**Large Commercial Structure**

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

**812-002-0440**

**Last-Known Address of Record**

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

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

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

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.080

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

**812-002-0443**

**Legal Capacity to Contract**

“Legal Capacity to Contract” as used in ORS 701.075(5), means the attaining of the age of 18 for any sole proprietor, partner of any general partnership, limited liability partnership, limited partnership or joint venture, corporate officer, member, or any other persons similarly situated who holds or could hold the authority to enter into a contract on behalf of the licensed entity.

Stat. Auth.: ORS 670.310, ORS 701.235

Stats. Implemented: ORS 701.075

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

**812-002-0450**

**Licensee or Applicant**

“Licensee or applicant” shall include the owner, individual partners (including joint ventures), individual members, or individual corporate officers who make application to license or subsequently operate the sole proprietorship, partnership (joint venture), limited liability partnership, limited liability company, or corporation as well as the sole proprietorship, partnership (joint venture), limited liability partnership, limited liability company, and corporation. As of July 1, 2000, the term “registered” has the same meaning as “licensed” as used in OAR chapter 812.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 701

Hist.: CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

**812-002-0460**

**Monetary Damages**

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

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

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.085 & ORS 701.140

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

**812-002-0480**

**Nature or Complexity**

“Nature or complexity” includes, but is not limited to the following meaning:

(1) Involves issues requiring legal interpretation of statutes and case law that are not normally part of a construction claim;

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

(3) Involves issues and fact determinations that are outside the expertise of the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2003, f. & cert. ef. 3-4-03

**812-002-0500**

**Nurseryman**

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 571.005 & ORS 701.005

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

**812-002-0520**

**Occupancy**

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.010 & ORS 701.145

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

**812-002-0530**

**Office of Administrative Hearings**

“Office of Administrative Hearings” means the Office of Administrative Hearings established under ORS 183.605.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

Hist.: CCB 7-2003, f. & cert. ef. 8-8-03; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

**812-002-0540**

**Owner of a Structure**

(1) “Owner of a structure” means a person not required to be licensed under ORS Chapter 701 who:

(a) Has a structure built by contractor;

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

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

(2) “Owner of a structure” may also include:

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

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

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

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.010 & ORS 701.225

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

**812-002-0555**

**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 701.102, 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 70.005;

(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) A responsible managing individual of the person under OAR 812-006-0010;

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

(h) 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 701.102, does not include the interest of an investor who has no right to manage a business as defined under ORS 701.102(3).

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: 2001 OL, Ch. 924 (HB 3007)

Hist.: CCB 5-2001(Temp), f. & cert. ef. 8-15-01 thru 2-10-02; CCB 6-2001, f. & cert. ef. 9-27-01

#### 812-002-0580

##### Person

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

Stat. Auth.: ORS 670.310 & ORS 701.235

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

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98

#### 812-002-0600

##### Primary Contractor

"Primary contractor" is an entity who has a contract, either oral or written, with the owner of a structure to perform work subject to ORS Chapter 701, or who is building a structure speculatively, or who is holding itself out to be a licensed contractor in connection with a structure it owns; who may engage one or more subcontractors to perform all or part of the work; and who may have responsibility for the entire project which is the subject of the contract. Responsibility for the entire project includes coordinating work, seeing that prompt and proper payment is made to all subcontractors and suppliers, thereby preventing the filing of construction liens against the property.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-002-0620

##### Registrant or Applicant

"Registrant or applicant" shall include the owner, individual partners (including joint ventures), individual members, or individual corporate officers who make application to license or subsequently operate the sole proprietorship, partnership (joint venture), limited liability partnership, limited liability company, or corporation as well as the sole proprietorship, partnership (joint venture), limited liability partnership, limited liability company, and corporation. As of July 1, 2000, the term "registered" has the same meaning as "licensed" as used in OAR chapter 812.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-002-0640

##### Renewal

"Renewal" (of license) as used in ORS 701.065, 701.085 and 701.115 includes but is not limited to the act of submitting a replacement

bond, a bond rider, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 670.410, 701.055, 701.065, 701.075, 701.105, 701.115, 701.125 & 701.130

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03

#### 812-002-0660

##### Residential Structure

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

(1) A structure or work associated with placing a manufactured dwelling on support blocking or permanent foundations, connecting modular elements of the dwelling together and constructing appurtenances to the dwelling at the location where the dwelling will be occupied as a residence.

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-002-0670

##### Respondent

"Respondent" means a contractor that a claim is filed against under ORS 701.139 to 701.180 or that the board proposes to impose a civil penalty against under ORS Chapter 701, including but not limited to ORS 701.992.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.139 & ORS 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-002-0675

##### Small Commercial Structure

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-002-0680

##### Speculative

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.005

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

#### 812-002-0700

##### Structure

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, or an improvement attached to real estate or any part thereof as described in ORS 701.005(2).

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 87.058, ORS 279.073, ORS 646.605 & ORS 701

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

#### 812-002-0720

##### Subcontractor

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 279.400, 701.055, 701.061, 701.140, 701.145, 701.410, 701.420, 701.430, 701.435, 701.742 & 742.061

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

**812-002-0740**

**Substantial Completion**

"Substantial completion" may occur at the time of but not be limited to the first occurring of any of the following events: final inspection is completed, certificate of occupancy is issued, the structure or portion of structure is in a habitable or usable condition, most or all of payment is made. Work under a warranty provision of a contract or repair to already completed work does not extend the date of substantial completion, except that removal and replacement of completed work may extend the date of substantial completion to the date the replacement work was substantially complete.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2001, f. & cert. ef. 4-6-01

**812-002-0760**

**Work as a Contractor Includes**

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

(1) Except as modified by section (9) of this rule, construction, alteration, repair, improvement, inspection, set-up, erection, moving, or demolition of a structure or any other improvement to real estate, including activities performed on-site in the normal course of construction, or receiving and accepting any payments for the above.

(2) Chimney or flue cleaning.

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

(4) Construction management.

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

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

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

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

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

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

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

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

(13) Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & ORS 701.235

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

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

**812-002-0780**

**Work as a Contractor Does Not Include**

"Work as a contractor", as used in ORS 701.055, does not include:

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

(2) Work performed by persons engaged in creating objects, which exist exclusively for aesthetic reasons and have no other func-

tion, for example, murals, sculptures, etc., if said work by such person does not incorporate electrical or plumbing.

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

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

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

(6) Concrete pumping.

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

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

(9) Inspections done under contract with government agencies.

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

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

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

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

Stat. Auth.: ORS 670.310 & ORS 701.235

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

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 1-2001, f. & cert. ef. 4-6-01

**812-002-0800**

**Work Period**

"Work Period" as used in, OAR 812-003-0020, 812-004-0320 and 812-004-0600 means the time period from the date a contractor accepts a payment, offers a written proposal, enters into a contract or begins construction, whichever occurs first, until the date the contractual work is substantially completed by the contractor, or if not substantially completed, the date the work by the contractor ceased.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 8-24-00

**812-002-0840**

**Written Contract**

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

(1) Contractor's name, address, and license number;

(2) Customer's name and address;

(3) Address where work is to be performed;

(4) General description of work to be performed;

(5) Estimated start and completion dates;

(6) Price; and

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.055

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

**DIVISION 3**

**LICENSING**

**812-003-0000**

**Licensing Generally**

(1) A license and its identifying license number will be issued to one entity only. Other entities shall not be included in that license, but each shall be separately licensed and shall separately meet the

licensing requirements. No entity may perform work subject to ORS Chapter 701 through the use of another entity's license.

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

(3) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another entity, the former license may be terminated. The new entity must license anew.

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

(5) Each entity shall:

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

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

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

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

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

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

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

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

(E) 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 contractor.

(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.

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

(7) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid 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.

(8) License number in advertising and contracts:

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

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

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

(d) Except as set forth in sub paragraph (e) all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's license number. This rule is effective

upon filing for all contractors filing for new license, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.

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

(9) The initial two-year license fee for all license applications received on or after July 1, 2004 is \$295 for all categories

(10) The two-year renewal fee for all license renewals with a renewal date of July 1, 2004, and after and all other license renewal applications received by the agency on or after July 1, 2004 is \$295 for all categories.

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

(12) A Limited Contractor may perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, so long as all of the following conditions are met:

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

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

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

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

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

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

(14) The following surety bond amounts are required:

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

(A) General Contractor — All Structures — \$10,000;

(B) General Contractor — Residential — \$10,000;

(C) Specialty Contractor — All Structures — \$5,000;

(D) Specialty Contractor — Residential — \$5,000;

(E) Limited Contractor — \$2,000.

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

(A) General Contractor — All Structures — \$15,000;

(B) General Contractor — Residential — \$15,000;

(C) Specialty Contractor — All Structures — \$10,000;

(D) Specialty Contractor — Residential — \$10,000;

(E) Limited Contractor — \$5,000;

(F) Inspector — \$10,000;

(G) Licensed Developer — \$15,000.

(c) A contractor may obtain or maintain a bond in an amount that exceeds the amount required under subsection (b) of this section if the bond obtained or maintained is in an amount that is equal to an amount required under subsection (b) of this section.

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

(a) For those applicants applying for a new license or reissue prior to July 1, 1999, and for those applicants applying for renewal



prior to August 1, 1999, the following general liability insurance amount is required as follows:

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

(b) As required by ORS 701.105, for those applicants applying for a new license or reissue on or after July 1, 1999, and for those applicants applying for renewal on or after August 1, 1999, or with an expiration date of August 1, 1999, or later the following general liability insurance amount is required as follows:

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

(16) A fee of \$20 shall be charged for any changed license category.

(17) On all construction projects regulated under the state Prevailing Wage Law, ORS 279.348 to 279.365 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.055(11) to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland, OR 97232.

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

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

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

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

[ED. NOTE: Forms & Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 670.310, 701.235, 701.280, 701.992 & 183.310 - 183.500  
 Stats. Implemented: ORS 701.055, 701.075, 701.102, 701.125 & 701.280  
 Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 2-1982, f. 4-1-82, ef. 7-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0010; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 1-1987, f. & ef. 3-5-87; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 8-1992(Temp), f. & cert. ef. 12-4-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 4-1996, f. 11-7-96, cert. ef. 11-8-96; CCB 5-1996, f. 11-25-96, cert. ef. 11-27-96; CCB 7-1996, f. & cert. ef. 12-11-96; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 5-2003, f. 6-3-03, cert. ef. 10-1-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 8-2003, f. 8-8-03 cert. ef. 1-1-04; CCB 9-2003, f. 9-29-03, cert. ef. 1-1-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 3-2004, f. 2-27-04, cert. ef. 7-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

## 812-003-0002

### Employer Status

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

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

(a) Sole 3 proprietors, partnerships, limited liability partnerships, corporations, limited liability companies with one or more employees; and

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

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

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

- (a) Two partners in a partnership, limited liability partnerships;
- (b) Two members in a limited liability company; and
- (c) Two corporate officers in a corporation.

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 670.310, 701.235, 701.280, 701.992 & 183.310 - 183.500  
 Stats. Implemented: ORS 701.035 & ORS 701.135  
 Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03

## 812-003-0005

### Record Changes

(1) Except as set forth in OAR 812-003-0005(3), requests for record changes necessitating a new license card shall be accompanied by a \$20 fee.

(2) Except as set forth in OAR 812-003-0020(6), requests for business name amendments of a partnership, joint venture, corporation, limited liability company or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

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

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

Stat. Auth.: ORS 701.130

Stats. Implemented: ORS 701.130

Hist.: IBB 5, f. 6-15-76, ef. 7-1-76; IBB 7, f. & ef. 11-14-77; IBB 1-1978, f. & ef. 5-23-78; IBB 5-1980, f. & ef. 10-7-80; IBB 6-1980, f. & ef. 11-4-80; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0015; IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 10-2000, f. & cert. ef. 8-24-00

### 812-003-0012

#### Independent Contractor

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

(2) As used in the various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 and this rule are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 670.605

Hist.: CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

### 812-003-0015

#### Applications for License

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

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

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

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

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

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

(3)(a) A complete license application includes:

(A) A completed application form;

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

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

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

(E) A properly executed bond; and

(F) The application fee.

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

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

(b) If an applicant has not been issued a social security number by the United States Social Security Administration, the agency will accept a written statement from the applicant to fulfill the requirements of section (4)(a). The applicant may submit the written statement on a specified agency form with the requisite information. Any written statement must:

(A) Be signed by the applicant;

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

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

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

[ED. NOTE: Forms referenced are available from the agency.]

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

Stats. Implemented: ORS 701.075, 25.278, Ch. 610 OL 2003

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 2-1979, f. & ef. 12-29-79; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0025; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90, CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 1-2004, f. & cert. ef. 2-2-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-003-0020

### Bonds

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

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

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

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

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

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

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

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

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

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

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

(6) If an entity licenses as a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability company, and seeks to change the licensed entity to one of the other types, the application must be accompanied by a new bond. Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

(7) Bond documents received at the agency office via electronic facsimile shall be accepted as original documents. The surety shall provide the original bond document to the agency upon request.

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

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

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

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

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

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

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

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond.

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

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

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

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

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

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



This rider converts all existing bond forms to continuous until canceled bond forms as required by OAR 812-003-0020. All bonds shall remain in force continuously unless the surety gives written notice to the Construction Contractors Board of its intent to cancel the bond. The bonds shall cover final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

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

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

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

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

Stat. Auth.: ORS 701.105, ORS 701.235

Stats. Implemented: ORS 701.085, ORS 701.105

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0030; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 5-1997(Temp), f. & cert. ef. 11-7-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 3-2001(Temp), f. & cert. ef. 4-19-01 thru 10-15-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-003-0025

### Renewal and Reissue of License

(1) A license may be renewed or reissued upon:

- (a) The applicant's completion of the renewal form or application form prescribed by the agency; and
- (b) Payment of the fee or fees, and
- (c) Receipt of the required certification of insurance coverage, and

(d) A non-cancelled bond on file. If it appears to the agency that the required surety bond has been cancelled, the applicant shall submit a reinstatement from the surety on the cancelled bond or a new, original, continuous until cancelled surety bond.

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

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

refuse to authorize a reduced amount until any pending claim(s) against the licensee are resolved.

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

(5) The effective date of renewal shall be the previous license expiration date when:

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

(b) All requirements for renewal, including submission of either a valid continuous until canceled bond or back-dated new bond, certification of insurance coverage, and payment of renewal fee are met, providing the contractor applies for renewal not more than one year after the license lapses.

(6) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing, including, but not limited to, submission of a newly issued continuous until canceled bond or reinstatement of an existing continuous until canceled bond, certification of insurance coverage and payment of new license fee.

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

(a) The time period under ORS 701.065(2)(a)(A) and ORS 701.065(2)(c)(B) (2003 Laws) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

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

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

Stats. Implemented: ORS 701.065, 701.102 & 701.115

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0035; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 4-1995, f. & cert. ef. 10-5-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

## 812-003-0030

### Revocation or Suspension of License

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

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

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

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

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

Stats. Implemented: ORS 701.100 & ORS 701.135

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 5-1981(Temp), f. 12-30-81, ef. 1-1-82; 1BB 1-1982, f. 3-

31-82, ef. 4-1-82; IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0040; IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

#### 812-003-0040

##### Restoration of Bond after Payment on Claim

If a surety company pays all or part of a claim against a licensed contractor from the contractor's surety bond, the agency shall suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond in the amount required under ORS 701.085(2) to (5) unless the agency requires a higher amount under ORS 701.085(7) or (8); or

(2) A certificate from the contractor's surety company that the surety company remains liable for the full original penal sum of the bond notwithstanding the payment from the surety bond.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

#### 812-003-0050

##### Inactive Status

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

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

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

(4) To convert to an inactive status:

(a) A licensee must have a current active license or a license that lapsed no more than two years prior to the application for inactive status;

(b) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

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

(d) The licensee must comply with section (5), (7) or (9) as applicable.

(5) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 812-003-0000(10).

(6) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license. The renewed license shall expire two or four years after its effective date, at the discretion of the licensee.

(7) A request to convert a license to inactive status made prior to the expiration date of the license but at a time other than the time of renewal of the license will be accepted only if the licensee making the request has paid all applicable fees required under OAR 812-003-0000(10) and OAR 812-001-0015(7)(d).

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

(9) A request to renew a license and convert it to inactive status made after a lapse due to the expiration of the license must be accompanied by:

(a) Fees required under OAR 812-003-0000(10), if the lapse is less than or equal to one year in duration; or

(b) Fees required under OAR 812-003-0000(9) if the lapse is more than one year in duration.

(10) If a license is renewed and converted to inactive status after a lapse due to expiration of the license, the agency will establish the effective date of the license. The renewed license shall expire two or four years after its effective date, at the discretion of the licensee.

(11) To renew an inactive license in an inactive status:

(a) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(b) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and

(c) The licensee must submit the fees required under OAR 812-003-0000(10).

(12) To convert from an inactive status back to an active status, the licensee must:

(a) Submit a request to convert to an active status on forms provided by the agency; and

(b) Comply with section (13), (14) or (15) as applicable.

(13) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:

(a) Submit the fees required under OAR 812-003-0000(10);

(b) Submit the required surety bond and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(14) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:

(a) Submit all fees to date as required by OAR 812-003-0000(10) and 812-001-0015(7)(d);

(b) Submit the required surety bond and general liability insurance for the category requested; and

(d) Comply with all other licensing requirements prescribed by the Board.

(15) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:

(a) Request the conversion within two years from the date of lapse;

(b) Comply with all licensing requirements prescribed by the Board;

(c) Submit the required surety bond and general liability insurance for the category requested; and

(d) Submit all fees required under:

(A) OAR 812-003-0000(10) if the lapse is one year or less; or

(B) OAR 812-003-0000(9) if the lapse is more than one year.

(16) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 9-2001, f. 12-13-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

## DIVISION 4

### CLAIMS

#### 812-004-0001

##### Application of Rules

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

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

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

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

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

(c) OAR 812-004-0420;

(d) OAR 812-004-0520; and

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

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

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

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

- (a) The claim is filed by the owner of the structure;
- (b) The total contract for the work is \$25,000 or less; and
- (c) The claimant files the claim under ORS 701.145.

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

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

Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-27-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03

#### 812-004-0110

##### Claim Processing Fee; Waiver of Fee

(1) The claim processing fee authorized under ORS 701.147 is \$50 for a claim filed under ORS 701.145. There is no claim processing fee for a claim filed under ORS 701.146.

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

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

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

- (a) The claimant is an individual;

(b) Claimant has no significant assets except the home that is the subject of the claim and one automobile; and

(c) Claimant's gross income does not exceed the 2003 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 68, No. 26, February 7, 2003, pp. 6456-6458.

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

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.146 & 701.147

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

#### 812-004-0120

##### Liability of Licensee

A licensee, as defined in OAR 812-002-0620, participating in a corporation wholly-owned by the licensee, or a limited liability partnership, limited liability company, joint venture or partnership, may be held individually liable for claim actions brought under ORS 701.139 to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture or partnership was licensed as required by ORS Chapter 701.

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

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

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-004-0140

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

(1) If an employee claim, material claim or subcontractor claim arises from property owned by a licensed contractor, the licensed contractor is a contractor subject to ORS Chapter 701 unless the con-

tractor supplies pre-contract written notice to suppliers, subcontractors, and other potential claimants that the property is for the contractor's personal use and that the contractor is not subject to ORS Chapter 701, as provided in ORS 701.010(6).

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-004-0160

##### 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 claim form if the person would otherwise qualify as a claimant.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.455, ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-004-0180

##### Claimant's Responsibility to Pursue Claim

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

(2) The agency may close a claim under OAR 812-004-0260 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 812-004-0260.

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

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

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01

#### 812-004-0195

##### Exhibits

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

(2) The disposal of large exhibits is subject to OAR 812-001-0007.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.450 & 183.460

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-004-0210

##### Address of Claimant and Respondent

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

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

(3) A party must notify the agency in writing within 10 days of any change in the party's address, withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.080

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-004-0240

##### Exhaustion of Surety Bond

At any time during the processing of a claim, if the agency becomes aware of partial or full exhaustion of the surety bond by pri-



or claims, it may notify the claimant and close the claim file, or it may process the claim to a final order and close the claim file.

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

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

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

#### 812-004-0250

##### Award of Claim-Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a claim that are payable from respondent's bond required under ORS 701.085, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

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

(f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the claim.

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

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

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

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

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

- (A) That was initiated by the respondent; or
- (B) That the agency required the claimant to initiate under ORS 701.145 because of the nature or complexity of the claim.

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

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 813.415, 183.460 & 701.145, 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-004-0260

##### 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, ORS 701.145 & ORS 701.235

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

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03

#### Filing of Claims

#### 812-004-0300

##### Filing Date of Claims

(1) Except as provided under section (3) of this rule, a claim submitted to the agency for processing under ORS 701.145 shall be deemed to have been filed when a Statement of Claim is received by the agency that:

- (a) Meets the requirements of OAR 812-004-0340(1) and (2)(m); and
- (b) Contains information sufficient to identify the claimant and respondent.

(2) The agency shall return a Statement of Claim that fails to meet the requirements of section (1) of this rule to the person who submitted the claim.

(3) If the agency returns a Statement of Claim to a person under section (2) of this rule because the person failed to provide evidence of a pre-claim notice under OAR 812-004-0340(2)(m), that person may resubmit the Statement of Claim with the required evidence. If the resubmitted Statement of Claim satisfies the agency that the person mailed the pre-claim notice at least 30 days before the agency received the original Statement of Claim, the claim shall be deemed to have been filed on the date the Statement of Claim was first received by the agency.

(4) A Statement of Claim that does not fully comply with the requirements of OAR 812-004-0340 is subject to 812-004-0350.

(5) The date of filing of a claim submitted to the agency for processing under ORS 701.146 is the date when claimant complies with ORS 701.146(3) and 701.147(9).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-004-0320

##### Jurisdictional Requirements

(1) A claim must be of a type described under ORS 701.140.

(2) A claim must be filed with the agency within the time allowed under ORS 701.143.

(3) A claim will be processed only against a licensed entity. Whether a contractor is licensed for purposes of this section shall be determined as follows:

(a) For an owner claim, employee claim, primary contractor claim or subcontractor claim, the entity against which the claim is filed will be considered licensed if that entity was licensed during all or part of the work period.

(b) For a material claim, the entity against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the entity was licensed. Damages will be awarded only for material delivered within the period of time that contractor was licensed.

(4)(a) Claimant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the claim requires that claimant be licensed under ORS 701.055 in order to perform the work; and

(B) Claimant files a claim arising out of a contract to construct the work at issue and the claim is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, "properly licensed" means the claimant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the claim;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0002 as they applied to claimant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on claimant's license.

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

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

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

(c) A contract between claimant and respondent providing that claimant is a trustee authorized to receive employee benefit payments from respondent for employees of respondent; or

(d) A real estate purchase conditioned upon an inspection report or repairs made by the respondent.

(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 fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7)(a) A claim will be dismissed if the claimant fails to establish that the claimant gave a pre-claim notice to the respondent as required under ORS 701.147.

(b) Except as provided in subsection (7)(c) of this rule, proof of this notice must be in the form required under OAR 812-004-0340.

(c) A claim may not be dismissed under section (7) of this rule if claimant submits written evidence that respondent actually received written notice of claimant's intent to file a claim at least 30 days before claimant filed the claim. Written evidence that respondent received the notice under section (7) of this rule includes a return receipt signed by respondent or a letter admitting receipt signed by respondent. Written evidence under section (7) of this rule does not include a statement signed by claimant.

(d) Nothing in section (7) of this rule prevents closing a claim under OAR 812-004-0350 if the claimant fails to provide documentation required under OAR 812-004-0340(2)(m).

(8)(a) Except as provided in subsection (8)(b) of this rule, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a claim previously filed by the same claimant against the same respondent.

(b) The agency may process a claim that would otherwise be dismissed under subsection (8)(a) of this rule if the previously filed claim was:

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

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

(c) Nothing in section (8) of this rule extends the time limitation for filing a claim under ORS 701.143.

(9) A claim by a person furnishing material, or renting or supplying equipment to a contractor may not include a claim for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Claims by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount.

(11) The agency may process a claim against a licensed contractor whose license was inactive under OAR 812-003-0050 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.065, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-004-0325

##### Filing Statement of Claim for Claim Filed Under ORS 701.146

(1) The agency shall suspend processing a claim involving work on a large commercial structure or an appurtenance to the structure filed under ORS 701.146 or any other claim filed under ORS 701.146, until the claimant submits to the agency a Statement of Claim in substantial compliance with OAR 812-004-0340, except that the claimant need not comply with OAR 812-004-0340(2)(c), (2)(i) and (8).

(2) The agency may close a claim filed under ORS 701.146 if the claimant fails to respond to a written request by the agency that the claimant file a Statement of Claim that meets the requirements of section (1) of this rule. A request by the agency and closure of a claim under this section must comply with OAR 812-004-0260.

(3) Notwithstanding section (1) of this rule, if a person attempts to file a claim under ORS 701.146 and the complaint or other documents filed with the agency show on their face that the claim is not a type of claim that can be filed under ORS 701.146, the agency shall not accept the claim. The agency shall return the documents to the person with an explanation of why the claim cannot be accepted for filing under ORS 701.146.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.139, ORS 701.140, ORS 701.143, ORS 701.146

Hist.: CCB 2-2003, f. & cert. ef. 3-4-03

#### 812-004-0340

##### Form of Claims

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

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

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

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

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

(d) Identification of the type of claim;

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

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the claim, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

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

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

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

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

(l) If a court judgment or arbitration award is the basis for the claim, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the claim filed in the court action or arbitration;

(m) A copy of the pre-claim notice required under ORS 701.147(9) and of the certified or registered mail receipt for the pre-claim notice.

(3) A subcontractor claim shall include copies 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) An employee trust claim shall include the name of each employee that is the subject of the claim, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

- (a) The hours worked without payment of employee benefits;
- (b) The amount of the unpaid benefits;
- (c) The address of the job site where the employee worked; and
- (d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien claim shall include evidence that the claimant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lien claimant, if applicable, and any foreclosure documents.

(7) A material claim shall include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the claim.

(8) A claim involving negligent or improper work shall include a list of the alleged negligent or improper work. A claim involving a breach of contract shall describe the nature of the breach of contract.

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

(10) A Statement of Claim that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-004-0350

##### Procedure if Information on Statement of Claim is Incomplete

If the agency receives a Statement of Claim that does not meet the requirements of OAR 812-004-0340, the agency may close the claim if the claimant fails to provide the missing information in response to a written request for the information from the agency. The written request and closure must comply with OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & ORS 701.146

Hist.: CCB 2-2003, f. & cert. ef. 3-4-03

#### 812-004-0360

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

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

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

Stats. Implemented: ORS 701.140 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 10-2002, f. & cert. ef. 11-20-02

#### Administrative Processing of Claims

#### 812-004-0400

##### Initial Administrative Processing of Claims; Collection of Fee

(1) Upon receipt of a claim, the agency shall:

(a) Send a copy of the claim to the respondent;

(b) Verify that claimant has provided information required under OAR 812-004-0340 and request additional information from claimant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the claim based on the information provided by the claimant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the claim and the agency does not waive the claims processing fee required under OAR 812-004-0110, the agency shall request payment of the claims processing fee. Except as provided in section (2) of this rule, the agency may suspend processing of the claim until claimant pays this fee.

(e) If the agency determines that the claim should be dismissed based on the information submitted by claimant, the agency shall issue a proposed order to dismiss under OAR 812-004-0550. If the claimant requests a hearing on the dismissal and the agency does not

waive the claims processing fee required under OAR 812-004-0110, the agency shall request payment of the claims processing fee and may not transmit the claim to the Office of Administrative Hearings for a hearing until the fee is paid.

(f) If the claimant fails to pay the fee required under OAR 812-004-0110 within 60 days of written notification that the fee is due, the agency may close the claim. The request for payment and closure must comply with OAR 812-004-0260.

(2) The agency may initiate an investigation to determine the validity of the claim. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a claim even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the claim.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145, 701.146 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-004-0420

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

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

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

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

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

#### 812-004-0440

##### Contracts with Arbitration Agreements

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

(a) The agency shall inform the claimant by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the claim unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the claimant; 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 (1)(a) of this rule from the claimant within 30 days of the date of the written notice described in subsection (1)(a) of this rule, the agency may close the claim under OAR 812-004-0260. The agency may not close the claim under section (1) of this rule if the respondent initiates mediation or arbitration under the contract prior to the expiration of the 30-day period for providing the waiver or evidence of initiation of mediation or arbitration.

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

(A) Respondent must initiate mediation or arbitration under the contract within the time allowed under ORS 701.180 and that failure to initiate mediation or arbitration within this time period is a waiver of respondent's right to mediation or arbitration under the contract;

(B) The agency will continue to process the claim if respondent fails to initiate mediation or arbitration under the contract within the time allowed under ORS 701.180 or if respondent signs a written waiver of mediation or arbitration; and

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

(d) If respondent fails to submit evidence to the agency that respondent initiated mediation or arbitration under the contract within the time allowed under ORS 701.180 and if claimant waives mediation or arbitration within the time allowed under subsection (1)(a) of this rule, the agency will continue to process the claim.



(e) If mediation or arbitration under the contract is properly commenced under section (1) of this rule, the agency shall 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 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 arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the claim is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the claim mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a claim under ORS 701.147 or any prior communication from the agency referencing a claim, for purposes of ORS 701.180, a respondent receives notice of a claim when the agency sends the respondent the notice described under subsection (1)(c) of this rule.

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

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0053; 1BB 3-1984, f. & ef. 5-11-84; 1BB 2-1985(Temp), f. & ef. 3-5-85; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0015; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0042; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-004-0450

##### 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 701.145. 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 812-004-0260.

(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 by ORS 701.145.

(3) If the claimant fails to comply with the requirements of section (2) of this rule, the agency may close the claim under OAR 812-004-0260.

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

Stats. Implemented: ORS 701.140 & ORS 701.145

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-004-0460

##### Agency Recommendation of Resolution

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

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

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 701.140 & ORS 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-004-0470

##### Challenge to Investigation Report

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

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

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

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0580; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

#### 812-004-0480

##### 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 812-004-0450.

(2) If 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 contract.

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

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 701.140 & ORS 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-004-0500

##### 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 812-004-0260.

(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 812-004-0260.

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

Stats. Implemented: ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01

#### 812-004-0510

##### Court Judgments, Arbitration Awards and Other Entity Determinations

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

(2) A court judgment, arbitration award or other entity determination may constitute the basis for a claim if a statement of claim is filed under OAR 812-004-0300 and 812-004-0340 within the time limitation in ORS 701.143 and all or a portion of the judgment is within the jurisdiction of the board.

(3) Facts and issues within the jurisdiction of the Board previously determined by a court, arbitrator or other entity will not be relitigated unless a party shows there was not a full and fair opportunity to be heard in the prior proceeding. A party asserting a prior

determination must specify the facts and issues involved and provide a copy of appropriate parts of the record of the prior proceeding.

(4) A claim based on a court judgment, arbitration award or other entity determination shall be processed under OAR 812-004-0520. An award of damages on the claim based on a court judgment, arbitration award or other entity determination may be limited under OAR 812-004-0250.

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

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 183.415, 183.470, 701.143, 701.145, & 701.146  
Hist.: 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0054; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0020; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0044; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. & cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0200; CCB 8-2004, f. & cert. ef. 10-1-04

## 812-004-0520

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

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

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

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

(b) Claimant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the 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 section (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 (3)(b) and (d) of this rule and shall comply with the requirements of OAR 812-004-0260.

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

(c) The agency may, at any time, demand from the claimant a written report describing the current status of the action before the court, arbitrator or other entity. The demand shall be in writing and shall comply with the requirements of OAR 812-004-0260. The claimant shall deliver a written response to the agency within 30 days of the date the demand letter is mailed by the agency.

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

(e) If claimant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the claim. If the claimant fails to comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the claim under OAR 812-004-0260.

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

(a) The agency shall notify the claimant that the claimant must file the claim as a counter-suit, complaint or counter-claim in the

court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the claimant has done so within 30 days of notification. The notice shall comply with the requirements of OAR 812-004-0260.

(b) If the claimant fails to submit the evidence as required under subsection (4)(a) of this rule, the agency may close the claim under OAR 812-004-0260.

(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 812-004-0260, 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 (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the claimant fails to submit the evidence as required under subsection (5)(a) of this rule, the agency may close the claim under OAR 812-004-0260.

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

(a) The agency shall accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the claim.

(b) Based on the judgment, award or decision, the agency shall issue a proposed default order to pay damages or to dismiss or refer the claim to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(a) of this rule:

(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under section (6) of this rule must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the claim to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge shall determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.

Stat. Auth.: ORS 670.310, 701.145 & 701.235  
Stats. Implemented: ORS 183.415, 183.460 & 701.145  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04

## 812-004-0530

### Construction Lien Claims

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

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

(a) The claimant must have paid the respondent for work performed or materials supplied or equipment rented subject to ORS Chapter 701 and the primary contractor must have failed to pay the subcontractor or material or equipment supplier, thereby causing the subcontractor or material or equipment supplier to file a lien against the claimant's property;

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

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

(3) If the respondent contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the respondent's account, the respondent may subpoena the lienor and pertinent records to an arbitration or contested case hearing on a claim processed under this rule.

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

(5)(a) A construction lien claim may include attorney fees, court costs, interest and service charges if these items are included as part of the construction lien or incurred as costs to discharge the lien. An award to claimant for attorney fees incurred to discharge the lien shall not exceed the amount of the lien.

(b) A construction lien claim may not include excess interest paid as a result of the inability of the claimant to refinance at a lower interest rate due to the existence of the lien.

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

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

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

(7) If a claimant files two or more claims against the respondent relating to work performed under the same contract and if the claimant has not paid the respondent the full amount of the contract, the amount awarded on each claim will be reduced on a pro rata basis. A proposed or final order may not be issued on a claim until all claims involving the claimant and the respondent filed within the same 90-day period are ready for an order.

(8) If an action is filed to enforce a lien that is the subject of a claim, the agency shall send notice to the claimant that:

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

(b) The agency will hold the claim open for 60 days from the date of the notice to allow the claimant to obtain a stay or to file a counter-suit or complaint in the foreclosure action; and

(c) The agency may close the claim under section (11) of this rule if the agency does not receive evidence within 60 days from the date of the notice:

(A) That claimant obtained a stay; or

(B) That claimant filed the claim as a counter-suit or complaint in the court.

(9)(a) Upon timely receipt of evidence that claimant obtained a stay, the agency will resume processing the claim.

(b) Upon timely receipt of evidence that claimant filed a counter-suit or complaint in the court under section (8)(c)(B) of this rule, the agency shall suspend process the claim and send notice to the claimant of the requirements of OAR 812-004-0520(3). Further processing of the claim shall be under OAR 812-004-0520.

(10) Time limitations in this rule supersede conflicting time limitations in OAR 812-004-0520.

(11) The agency may close a construction lien claim under OAR 812-004-0260 if the agency does not receive evidence that claimant obtained a stay or filed a counter-suit or complaint required under section (8)(c) of this rule within the time limitation in the notice required under section (8) of this rule.

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

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

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1981, f. & ef. 3-11-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0069; 1BB 1-1985(Temp), f. & ef. 2-7-85; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0046; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0220; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02

## 812-004-0535

### Elements of Claim that Must Be Proved

The following provisions apply to OAR 812-004-0540(5), 812-004-0550(2), 812-009-0100 and 812-009-0120:

(1) Except as provided in section (3) of this rule, in order for the agency to award damages to claimant the record of the claim

must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) Claimant suffered damages;

(b) Respondent caused those damages by acts or omissions within the scope of ORS 701.140; and

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

(2) The agency shall dismiss the claim if the evidence in the record of the claim does not persuade the agency, arbitrator or administrative law judge of the existence of the facts described in section (1) of this rule.

(3) Notwithstanding the presence of evidence described in section (1) of this rule, a claim for damages must be dismissed if the record of the claim contains evidence that persuades the agency, arbitrator or administrative law judge that the claimant is not entitled to recover the damages. Evidence that the claimant may not be entitled to recover all or part of the damages claimed includes, but is not limited to a valid release of liability or a valid limitation of damages.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145, 701.146 & 701.147

Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

## 812-004-0540

### Establishing Monetary Damages and Issuing Proposed Default Order or Referral 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 recommended by the agency;

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

(c) The parties signed the settlement agreement proposed by the agency but, through no fault of the claimant, the terms of the settlement agreement have not been fulfilled by the respondent, 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 and those claim items added up to and through any initial on-site meeting. The agency may require the claimant to submit, in support of the amount alleged:

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

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for an arbitration or contested case 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, except that the declaration of damages shall be limited to claim items listed in the Statement of Claim.

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

(a) Issue a proposed default order proposing dismissal of the claim under OAR 812-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Office of Administrative Hearings for an arbitration or contested case 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 only if the record of the claim supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsection (a) of this section only 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 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

#### 812-004-0550

##### 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 701.140.

(b) The claim was not filed within the time limit specified under ORS 701.143.

(c) The claimant did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(b).

(d) The claim must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

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

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

(2) The agency may issue a proposed default order proposing dismissal of a claim if the agency investigates the claim and after the investigation finds that the record of the claim supports dismissal under OAR 812-004-0535.

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

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

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

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

#### 812-004-0560

##### General 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 arbitration or a contested case hearing must:

(a) Comply with 812-004-0590, 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 shall identify by date the declaration of damages or 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 812-009-0160 and 812-010-0420.

(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 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new declaration of damages under OAR 812-009-0020 and 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date 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 shall 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 812-009-0140.

(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 shall 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 812-009-0140.

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

Stats. Implemented: ORS 183.415, 183.460, 183.470 & 701.145, 701.147

Hist.: 1BB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-004-0590

##### Referral of Claim to Arbitration 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 10 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 (7) 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 other 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 812-010-0085, 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 137-0030-520 or 812-010-0085, 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) Except as provided in sections (1)(b)(B) and (7) of this rule, if the claimant in a claim does not seek \$1,000 or more, a hearing on the claim may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, 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 701.139 to 701.180 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.

(8) The amendments to this rule that became effective on or after July 1, 2002 apply to a claim that is referred to the Office of Administrative Hearings after July 1, 2002.

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

Stats. Implemented: ORS 701.145, ORS 701.147

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03

## 812-004-0600

### Payment from Surety Bonds

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

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

(a) An arbitration award has been issued and is ready for payment under OAR 812-010-0440 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 award or final order;

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

(d) All other claims filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Except as provided in section (5) of this rule, claims related to a job that are satisfied from a surety bond shall be paid as follows:

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

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

(c) A surety bond that is liable for a claim under subsection (3)(a) or (b) of this rule is liable for all claims related to the job and subsequent surety bonds have no liability for any claim related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond is changed and a claim is filed relating to work performed during that work period, the claimant may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) If respondent maintains multiple surety bonds, the following apply:

(a) If multiple surety bonds were in effect when the work period began, payment shall be made from all surety bonds in effect.

(b) If no surety bond was in effect when the work period began, but multiple surety bonds subsequently became effective during the work period of the contract and the effective dates of the surety bonds are substantially the same, payment shall be made from multiple surety bonds.

(c) Payment to satisfy a claim made under section (5) of this rule from a surety bond shall be in the same proportion that the penal sum of the surety bond bears to the total of the penal sums of the multiple surety bonds.

(6) If more than one claim must be paid from a surety bond under section (3) of this rule or multiple surety bonds under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, payment on a claim shall be made in the same proportion that the amount due on that claim bears to the total due on all claims that must be paid.

(7) The full penal sum of a bond shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0000(14).

(8) 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 of the respondents, payment shall be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment shall be made from the remaining bond or in equal amounts from the remaining bonds. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond under this section by an amount equal to the payment made by the respondent.

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

(10) Inactive status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

## DIVISION 5

### CIVIL PENALTIES

## 812-005-0000

## Civil Penalties

(1)(a) Except as provided under authority of ORS 701.135(2), if the agency intends to revoke or suspend a license, or assess a civil penalty, it shall issue and serve on the respondent a notice of intent to take an action, giving the opportunity for hearing. The notice may include the statement that an answer to the assertions or charges will be required.

(b) A hearing request, and answer when required, shall be made in writing to the agency by the respondent or the respondent's attorney. An answer shall include:

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

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

(c) If the agency issues a notice of intent to take an action and no answer or written request for hearing is received by the agency within 21 days of the date of mailing the notice, the agency may issue a default order.

(d) If the agency issues a notice of intent to take an action and an answer or a written request for hearing is timely received, the agency will set an administrative hearing to determine whether the respondent has violated any provision of ORS Chapter 701 or of these rules, and if so, the duration of any suspension and the amount of any civil penalty to be assessed.

(2) The Administrator of the Board may immediately suspend or refuse to renew a license without a prior hearing, in accordance with ORS 701.135(2), in cases where the Administrator of the Board has in its possession a prima facie case of a wrongful act as described in ORS 701.135(2)(a)(A)(D) having been committed by a contractor and upon a finding by the Administrator that the contractor is a serious danger to the public welfare. The respondent shall be entitled to a hearing on the Administrator's action if the respondent requests such a hearing within 90 days after the date of the notice to the respondent, as provided in ORS 701.135(2).

(3) The agency may initiate its own collection proceedings, assign the matter to another public or private agency for collection, or commence an action as set forth in ORS 701.992(2).

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

(5) Notwithstanding any back-dating of a renewal, a person shall be in violation of ORS 701.055(1) if, at the time a person undertakes, offers to undertake, or submits a bid to do work as a contractor, the person is not actively licensed with the Board.

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

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

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

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

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

Stats. Implemented: ORS 701.102

Hist.: 1BB 7-1980(Temp), f. & ef. 11-4-80; 1BB 8-1980, f. & ef. 12-9-80; 1BB 2-1981, f. & ef. 6-4-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-11-080; 1BB 4-1985, f. & ef. 12-8-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

## 812-005-0003

### Form of Complaint Regarding Public Contracts

(1) A person providing information to the agency must submit the information on a form provided by the agency if the information is submitted for purposes of:

(a) ORS 701.227 alleging that a contractor failed to pay a person who supplied labor or materials within 60 days after the date when the contractor received payment; or

(b) ORS 279.323, in accordance with the subcontractor disclosure requirements pursuant to ORS 279.027(3).

(2) The agency may require the use of the most recent version of a form submitted under section (1) of this rule.

Stat. Auth.: ORS 670.310, ORS 701.135, ORS 701.235 & ORS 701.227

Stats. Implemented: ORS 701.135 & ORS 701.227

Hist.: CCB 5-2000(Temp), f. & cert. ef. 5-9-00 thru 11-4-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2002, f. & cert. ef. 3-1-02

## 812-005-0005

### Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and section 812-003-0000(7), which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and section 812-003-0000(7), when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

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

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

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

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0000(8): First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0000(5): First offense \$50, second offense \$100, subsequent offenses \$200.

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

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

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

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0000(12), the



licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(7), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035 or 701.075, as authorized by ORS 701.100, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

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

(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

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

(19) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

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

(d) Failing to comply with the payroll certification requirements of ORS 279.354; or

(e) Failing to comply with the posting requirements of ORS 279.350:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

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

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

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

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

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

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

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279.323:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a claim with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235, 701.280 & 701.992  
Stats. Implemented: ORS 701.135, 701.175, 701.227, 701.992, & 279.323  
Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

## DIVISION 6

### PREREQUISITE EDUCATION

#### 812-006-0010

##### General

(1) The following rules apply to the implementation of prerequisite education under ORS 701.280 and implementation of testing requirements under ORS 701.075 and are not applicable to those licensees exempt under those statutes.

(2) The purpose of ORS 701.280 and 701.075 and these rules is to improve the professional business competency of construction contractors by providing reasonable standards for prerequisite education and testing required under ORS 701.280 and 701.075.

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

(4) Evidence of course completion and test passage shall consist of information supplied to the agency by the education provider and test administrator.

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

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 3-1997, f. & cert. ef. 10-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 3-1998, f. & cert. ef. 2-26-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

#### 812-006-0011

##### Responsible Managing Individual

(1) Upon initial license application, a license applicant shall:

(a) Designate one individual as the applicant's responsible managing individual. Unless otherwise exempt, the responsible managing individual shall be responsible for completing any education

required by ORS 701.280 and passing any test required by ORS 701.075. The responsible managing individual must be:

- (A) The owner, if the applicant is a sole proprietorship;
- (B) A partner, if the applicant is a partnership or limited liability partnership;
- (C) A member, if the applicant is a limited liability company;
- (D) A corporate officer, if the applicant is a corporation;
- (E) A trustee if the applicant is a business trust; or
- (F) A designated full-time permanent employee, if, by petition, an applicant has documented that no owner, partner, member, corporate officer, or trustee of the applicant is directly involved in construction in Oregon, and that the employee is the supervisor of the Oregon construction operations of the applicant.

(b) Provide evidence that the licensee's responsible managing individual has completed the prescribed 16 hours of education, as provided by these rules.

(c) Provide evidence that the licensee's responsible managing individual has passed the prescribed test on the 16 hours of education, as provided by these rules.

(2) An individual who is not an owner, partner, member, corporate officer, or trustee may not be designated as the responsible managing individual of more than one licensee.

(3) When a responsible managing individual leaves a business, the business shall:

- (a) Immediately appoint another responsible managing individual; and
- (b) Immediately notify the agency in writing of the name of the individual and the date the individual joined the business.

(4) A responsible managing individual appointed under section (3) of this rule must:

- (a) Document completion of the education and testing requirements under ORS 701.075 and section (1) of this rule; or
- (b) Document an exemption to the education and testing requirements to the Agency's satisfaction under OAR 812-006-0020.

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

Stats. Implemented: ORS 701.075 & 701.280

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

## 812-006-0012

### Testing Requirements

(1) The agency shall arrange for the development and administration of a test covering the topics listed in OAR 812-006-0060.

(2) No business may be licensed unless the business' responsible managing individual has:

(a) Passed a test approved by the agency with a passing score approved by the agency; or

(b) Documented an exemption to the testing requirements to the agency's satisfaction under OAR 812-006-0020.

(3) A person seeking to take the test shall:

- (a) Pay any fees required by the test administrator;
- (b) Provide approved government-issued picture identification to the test administrator;

(c) Pay for any state-certified interpreter needed to take the test; and

(d) Complete the test within a time limit approved by the agency.

(4) A person taking the test shall be allowed to use an Oregon Contractor's Reference Manual during the test.

(5) A person taking the test shall not:

- (a) Retake the same version of the test on consecutive attempts;
- (b) Have with them or use any notes or other materials except the Oregon Contractor's Reference Manual during the test;

(c) Copy test questions for removal from the testing area;

(d) Write notes or questions in their Oregon Contractor's Reference Manual;

(e) Be accompanied by anyone while taking the test, except a state-certified interpreter; and

(f) Leave the room during the test; and

(6) After the test is completed, a person shall not review the test questions or answers.

(7) There are no reciprocal agreements with other states or organizations that test contractors.

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

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03

## 812-006-0020

### Exemptions

(1) In lieu of the education courses required under ORS 701.280, an applicant may provide evidence satisfactory to the agency that the responsible managing individual:

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

(b) Is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, designated RMI, or trustee prior to July 1, 2000 and that the business has been lapsed with the agency for 24 months or less.

(2) In lieu of the test required under ORS 701.075, an applicant may provide evidence satisfactory to the agency that the responsible managing individual:

(a) Is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, or trustee prior to July 1, 2000, and that the business has been lapsed with the agency for 12 months or less; or

(b) Effective January 1, 2002, is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, designated RMI, or trustee prior to July 1, 2000 and that the business has been lapsed with the agency for 24 months or less.

(3) Education and testing that was completed prior to the 12-month lapse in OAR 812-006-0020(1)(b) shall not be used to fulfill this requirement.

(4) Effective January 1, 2002, education and testing that was completed prior to the 24-month lapse in OAR 812-006-0020(1)(c) shall not be used to fulfill this requirement.

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

Stats. Implemented: ORS 701.075 & ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-006-0030

### Education Provider Approval

(1) No education shall meet the requirements of ORS 701.280 unless it is offered by a provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the 16 hours of education.

(a) The provider application shall include, but will not be limited to, provisions for:

(A) Recording the name, address, and contact information, and name of responsible administrator of the provider.

(B) Demonstrating that all its instructors have at least two years total experience either teaching adults or working in the instructor's subject area or a combination of the two, including the submission of instructor resumes or work history summaries.

(b) No provider may instruct any part of the 16-hour course until there is a fully executed agreement.

(c) A provider must comply at all times with the following requirements:

(A) The provider will provide 16-hours of instruction which will exclude registration and breaks.

(B) The provider will verify that each student taking the 16-hour course has a current agency-approved manual.

(C) The provider will instruct using all the approved curriculum and the approved course manual.

(D) The provider will send electronic course completion records to the agency in a format approved by the agency and keep course completion records for a minimum of five years.

(E) The provider will communicate law changes and program procedural changes sent to them in writing from the agency to the provider's instructors and will implement these changes within 30 business days.

(F) The provider will only use approved instructors who have at least two years total experience either teaching adults or working in the instructor's subject area or a combination of the two.

(G) The provider will request and receive in writing agency approval of all instructors at least 10 business days before instructor is scheduled to teach.

(H) The provider will provide a mechanism for students to contact their instructor(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment in course.

(I) The provider will give all students information about how to contact instructors and hours of availability before the end of the 16-hour course.

(J) The provider will comply with all applicable federal and state laws.

(K) The agency may publicize a provider's test passage rate for its students.

(3) The agency may revoke a provider's right to offer classes and terminate the agreement of a provider at any time the provider fails to:

(a) Meet all requirements of the agreement, and

(b) Comply with administrative rules in OAR 812-006-0030.

(4) The agency may revoke a provider's right to offer classes and terminate the agreement of a provider

(a) Whose students do not pass the agency test at least 70 percent of the time after the provider has provided classes for three months, and

(b) That fails to maintain the 70 percent test passing rate during the remaining period of the agreement.

(5) The agency will publish passing rates for education providers based on the past year's statistical data, and place the information on the agency's web site and in the agency's license application. The statistics will also include the number of each provider's students who have taken the test.

Stat. Auth.: ORS 701.075 & ORS 701.280

Stats. Implemented: ORS 701.075 & ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03

## 812-006-0050

### Education Subjects

(1) The agency may evaluate and approve courses based on written evaluation criteria approved by the Training and Education Committee and made available to providers. The agency may revoke a provider's right to offer classes if a provider's courses do not meet the approved criteria.

(2) The 16 hours of education shall consist of the following topics:

(a) Construction Contractors Board: role and authority, licensing requirements, application procedures, major divisions and functions; dispute resolution processes; business entities; mandatory consumer notices; rights and responsibilities of consumers and contractors; address change notification; enforcement program, and statutes and rules that govern contractors;

(b) Employer requirements and employee's rights: state agencies that regulate workplace issues; information and resources on employer requirements, employee's rights, workers' compensation insurance, and required workplace postings; civil rights; Title VII, child labor, and important state and federal wage and hour laws; current minimum wage rate requirements; prevailing wage rate law; employees and independent contractors;

(c) Taxes, record keeping and business practices: required employment forms; identification numbers; cost of employees; importance of good record keeping; ways to organize records;

required tax forms and reporting times; professional help; profit and cash flow; requirements for business licenses;

(d) Building codes: applicable codes; building codes books; code revisions; specialty licenses and inspections; required and exempt permit work; permit applications permit violation penalties; required inspections; inspection procedures; final inspections and occupancy permits; red tag/stop work orders;

(e) Oregon Occupational Safety and Health Division: OR-OSHA regulations, job site inspections and resources; equipment basics and maintenance; job site record keeping; general safety practices, responsibilities and relationships among contractors and subcontractors on a job site;

(f) Sound environmental practices and laws: environmental friendly materials; good recycling, reduction and reuse methods; hazardous waste and special waste found in new and old construction; laws and regulations governing environmental hazards, proper handling and disposal methods of environmental hazards and job site debris; governmental agencies that regulate environmental conditions at a job site; environmental violation penalties; site preparation including construction activities that impact rivers; recycling methods; soil erosion; wetlands, water quality, sewage and underground storage/heating oil tanks;

(g) Contract law: clear and concise contracts; four elements of contract law; three elements of a construction contract; breach of contract; minor and major breach of contract; written and verbal contracts and change orders; contractor responsibilities for work of self and others; partnering, negotiation, mediation, arbitration and litigation; Buyer's Right to Cancel;

(h) Oregon construction lien law: purpose; required notices; lien law procedures; steps and timelines to perfect a lien and foreclose; important lien law differences of other states; and

(i) Project management, estimating and scheduling: importance of project management and consequences for failing to do so; simple written budgets that include cost, overhead and profit; simple project schedules and consequences of improper job scheduling.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 3-1997, f. & cert. ef. 10-3-97; CCB 3-1998, f. & cert. ef. 2-26-98; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04

## DIVISION 7

### LICENSING OF INDIVIDUALS AND FIRMS ENGAGED IN LEAD-BASED PAINT ACTIVITY

#### 812-007-0000

##### Authority, Purpose, Scope

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

(2) Purpose.

(a) The purpose of these rules is to address Oregon's need for a qualified and properly trained work force to perform inspection, risk assessment and abatement of hazards associated with lead-based paint. Establishing these rules will ensure that individuals and firms will conduct lead-based activities in a way that will safeguard the environment and protect human health, specifically, the health of building occupants (especially children under 6 years of age) and the workers themselves;

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

(c) These rules will also ensure through licensing, that inspections for identification of lead-based paint, risk assessments for the evaluation of lead-based paint hazards, and abatement for the per-



manent elimination of lead-based paint hazards are conducted safely, effectively and reliably.

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

(3) Scope.

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

(b) These rules prescribe the requirements for, and the manner of, licensing applicants for Inspector, Risk Assessor, Supervisor, Project Designer, Worker, and licensing of firms employing this personnel, to assure the protection of the public, especially buildings occupied by children 6 years old and under, as required by federal law;

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

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

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0005, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

## 812-007-0010

### Adoption by Reference

All standards, listings, and publications referred to in these rules are by those references made a part of these rules as though fully set forth.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

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

## 812-007-0020

### Definitions

The following definitions apply to division 7 of OAR chapter 812:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

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

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

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

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

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

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

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

(d) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to

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

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

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

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

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

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

(7) "Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week, (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

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

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

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

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

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

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

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

(15) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

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

(17) "Documented methodologies" are written methods or protocols used to sample for the presence of lead in paint, dust, and soil as recommended in U.S. Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", revised October, 1997; Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Based Contaminated Soil, September, 1995; and EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling, March 1995.

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

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

(20) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

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

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

(23) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

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

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

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

(27) "Paint in poor condition," means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated or interior or exterior components with small surface areas (windowsills, baseboards, soffits, trim).

(28) "Person" means an individual.

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

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

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

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

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

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

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

(36) "Supervisor" means an individual who is certified by the Health Division and licensed by the Construction Contractors Board

to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with OAR 333-069-0070 and 812-007-0070.

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

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

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

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0015, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

## 812-007-0030

### Certification and Licenses Required

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumbr from 812-007-0020, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-007-0040

##### Application Requirements and Eligibility Requirements

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

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

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

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

(3) A firm must do the following to qualify for a license.

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

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

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

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

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

(a) Inspector. To qualify, an individual shall complete all elements on the application form and meet the following eligibility requirements:

(A) Successfully complete Lead Inspectors Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint inspection training course must consist of at least 24 contact hours with at least 8 hours of hands-on training;

(B) Pass the certification examination administered by the Health Division for inspector.

(b) Risk Assessor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(A) Successfully complete Lead-Based Risk Assessment Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint inspection

and risk assessment training course must consist of at least 40 contact hours with at least 12 hours hand-on training (e.g., 24 contact hours inspector and 16 contact hours risk assessor training);

(B) Pass the certification exam administered by the Health Division for risk assessor;

(C) Have completed one of the following education and applicable experience criteria:

(i) Certification as an industrial hygienist, an engineer, a registered architect, or an environmentally related scientific field such as an environmental scientist; or

(ii) A bachelor's degree in biological, chemical or physical sciences, or a related field and at least one year experience in an occupation conducting inspections and assessing health, safety or environmental hazards (e.g. lead, asbestos, or environmental remediation work), or in the construction or building trades; or

(iii) A high school diploma or its equivalent, plus at least 3 years of experience in an occupation conducting inspections and assessing health, safety or environmental hazards (e.g. lead, asbestos, or environmental remediation work).

(c) Supervisor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(A) Successfully complete the Supervisor & Contractor Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint supervisor & contractor training course must consist of at least 32 contact hours with at least 8 hours hands-on training;

(B) Pass the certification exam administered by the Health Division for supervisor.

(C) Have completed one of the following experience requirements:

(i) One year of experience as a certified lead-based paint abatement worker; or

(ii) At least 2 years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.

(d) Abatement Worker. To qualify, an individual shall complete all elements on the application form and successfully complete the Abatement Worker Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint abatement worker training course must consist of at least 16 contact hours with at least 8 hours hands-on training.

(e) Project Designer. To qualify, an individual shall comply with all application requirements and the following minimum eligibility requirements:

(A) Successfully complete the Project Designer Training course and receive a course diploma from a training program accredited by the Health Division. The lead-based paint supervisor and project designer accredited training course must consist of at least 40 contact hours with at least 8 hours hands-on training (e.g., 32 contact hours supervisor and 8 contact hours project designer training);

(B) Have completed one of the following education and applicable experience criteria:

(i) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or

(ii) Four years of experience in building construction and design or a related field.

(5) Applicants for certification may offer a refresher course in the same discipline in satisfaction of the training requirement if the following conditions are met:

(a) The original, standard training course was successfully completed after July 1995; or

(b) If an inspector training course, it incorporates the changes made by the revision of chapter 7 of the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", revised October 1997.

(c) The training course was offered by a training provider that at the time was approved in writing by the Health Division to offer lead-based paint training courses; or

(d) The training course was accredited by the Health Division.

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



Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0025, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

### 812-007-0050

#### Renewal

(1) To maintain a license and a certification in a particular discipline, or as a firm, certified individuals and firms shall apply annually to the Health Division for renewal of certification within one year of the issue date of the original certification.

(a) Individuals and firms shall apply for renewal by submitting a certification renewal application available from the Health Division, and by paying the appropriate fee per OAR 333-069-0090.

(b) Firms shall apply for renewal by completing a firm certification renewal application, and by paying the appropriate fee per OAR 333-069-0090.

(2) Recertification is required for individuals three years after the issue date of certification. To obtain recertification, an individual shall fulfill the following:

(a) Submit to the Health Division an application for recertification that shall include two (2) passport photographs and the appropriate fee for OAR 333-069-0090.

(b) Submit to the Health Division a copy of the training course completion certificate from an accredited lead-based paint refresher-training course in the appropriate discipline.

(c) Pass a qualifying examination (if applicable) administered by the Health Division.

(d) Meet minimum qualification requirements for the discipline for which recertification is being applied.

(3) An individual, whose certification has been expired for more than six months, shall be required to successfully complete a refresher course in that discipline and pass a qualifying examination administered by the Health Division before the certification may be renewed.

(4) Applicants for license renewal shall submit required documentation and complete the Construction Contractors Board renewal form along with the appropriate fee.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0030, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

### 812-007-0060

#### License Issuance

(1) The Construction Contractors Board shall inform the applicant, in writing, when his/her application is granted, denied or incomplete and of the additional information or documentation that is requirement to complete the application.

(a) When granted, the license shall be mailed to the applicant and the effective date of the license will be the date applicant meets all Construction Contractors Board requirements unless otherwise agreed in writing between the parties.

(b) A unique certification number will be assigned to each license holder.

(c) An application may be withdrawn at any time by written request to the Construction Contractors Board.

(2) If denied, the Construction Contractors Board shall state, in writing, the reasons for denial.

(3) A license shall be non-transferable and shall be effective for one year from date of issue.

Stat. Auth.: ORS 701.500 - ORS 701.515

Stats. Implemented: ORS 701.500 - ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0035, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99

### 812-007-0070

#### Work Practice Standards

(1) When performing any lead-based paint activity described by a certified and licensed individual as an inspection, lead hazard screen, risk assessment or abatement, a certified and licensed person must perform that activity in compliance with these rules, docu-

mented methodologies, and according to procedures and work practice standards.

(2) Inspection. An inspection shall be conducted only by a person certified by the Health Division and licensed by Construction Contractors Board as an inspector or risk assessor. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing by the Construction Contractors Board.

(a) Locations shall be selected according to documented methodologies and tested for lead-based paint as follows:

(A) In target housing and child occupied facilities, each component with a distinct painting history shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint; and

(B) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint.

(b) Paint shall tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

(A) Inspection date;

(B) Building address;

(C) Date of construction;

(D) Apartment identification (numbers, letters, names if applicable);

(E) Name, address and telephone number of owner or owners of each unit;

(F) Name, signature, and certification number of each inspector and risk assessor conducting testing;

(G) Name, address and telephone number of the certified and licensed firm employing each inspector and/or risk assessor;

(H) Each testing method and device and/or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any x-ray fluorescence (XRF) device; and

(I) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(3) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the Health Division and licensed by Construction Contractors Board as a risk assessor, except if such a person, is exempt from Construction Contractors Board licensing requirements, and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children 6 years and under shall be collected.

(b) A visual inspection shall be conducted to determine presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined, using documented methodologies, to be in poor condition and to have a distinct painting history shall be tested for the presence of lead.

(d) In target housing, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age 6 or under are likely to come in contact with dust.

(e) In multi-family dwellings and child occupied facilities, in addition to floor and window composite dust sampling as required in target housing, also common areas composite dust samples shall be collected where one or more children age 6 or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(A) Information in a risk assessment report as specified in section (4) below including paragraphs (4)(i)(A) through (4)(i)(N) and excluding paragraphs (4)(i)(O) through (4)(i)(R). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(B) Any recommendations for follow-up risk assessment and other further actions.

(4) Risk assessment. A risk assessment of target housing or child-occupied facility shall be conducted only by a person certified by the Health Division and licensed by the Construction Contractors Board as a risk assessor. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing requirements of Construction Contractors Board. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under.

(c) Each surface with deteriorated paint determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using documented methodologies, to be a potential lead-based paint hazard and having a distinct painting history, shall also be tested for the presence of lead.

(d) In target housing, dust samples (either composite or single-surface samples) shall be collected from the floor and window in all living areas where one or more children, age 6 and under, are most likely to come in contact with dust.

(e) In multi-family dwellings and child-occupied facilities, the samples required in subsection (4)(d) of this section shall be taken. In addition, window and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

(A) Common areas adjacent to samples target house of child-occupied facility; and

(B) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come in contact with dust.

(f) For child-occupied facilities, window and floor dust samples (either composite or single-surface samples) shall be collected in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age 6 and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from exterior play areas and building dripline/foundation areas where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report, which shall include as a minimum the following information:

(A) Assessment date.

(B) Address of each building.

(C) Date of construction of buildings.

(D) Apartment identification (number, letters, names if applicable).

(E) Name, address, and telephone number of each owner of each building.

(F) Name, signature, and certification number of each risk assessor conducting the assessment.

(G) Name, address and telephone number of the certified firm employing each risk assessor.

(H) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(I) Results of the visual inspection.

(J) Testing method and sampling procedure employed for paint analysis.

(K) Specific locations of each painted component tested for the presence of lead.

(L) All data collected from on-site testing, including quality control data, and if used, the serial number of any x-ray fluorescence (XRF) device.

(M) All results of laboratory analysis on collected paint, soil, and dust samples.

(N) Any other sampling results.

(O) Any background information collected pursuant to subsection (4)(b) of this section.

(P) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint or other assessments of lead-based paint related hazards.

(Q) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(R) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement. An abatement shall be conducted only by a person certified by the Health Division and licensed by the Construction Contractors Board. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing by the Construction Contractors Board. Abatement shall be conducted as follows:

(a) Certified and licensed supervisor is required for each abatement project and shall be onsite during all work site preparation, abatement activities and during post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager, or answering service, and able to be present at the work site in no more than 2 hours.

(b) The certified and licensed supervisor and certified and licensed firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) Any firm or individual conducting lead-based paint abatement activities in target housing or child-occupied facilities shall notify the Health Division at least seven (7) business days before the start date of the project by completing and submitting a "Notice of Abatement" form available from the Health Division.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified and licensed supervisor or project manager, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(e) These work practices shall be restricted during abatement.

(A) Open-flame burning or torching of lead-based paint is prohibited;

(B) Uncontained hydroblasting or high-pressure washing of lead-based paint is prohibited;

(C) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(D) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(E) Operating a heat gun on lead-based paint is permitted only at temperatures below 750°F.

(f) When soil abatement is conducted, the lead contaminated soil shall be replaced with soil that is not lead-contaminated, if soil

is removed, or the lead contaminated soil shall be permanently covered, if soil is not removed.

(g) The following post-abatement clearance procedures shall be performed only by a certified and licensed risk assessor.

(A) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(B) Clearance sampling for lead-contaminated dust shall be conducted following the visual inspection and any post-abatement cleanup.

(C) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of 1 hour after completion of final post abatement cleanup activities.

(D) Post-abatement clearance activities shall be conducted based upon the extent or manner of abatement activities conducted in or to the target housing or child-occupied facility as follows:

(i) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one window and one dust sample shall be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(ii) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways or stairwells in the target housing or child-occupied facility. One dust sample shall be taken from one window and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(iii) Following an exterior paint abatement, a visual inspection shall be conducted of all horizontal surfaces in the outdoor living area closest to abated surfaces to determine cleaning of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is noted. Also, the inspection shall determine the presence of paint chips at the building dripline or next to the foundation below any abated exterior surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(E) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(F) The certified and licensed risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each dust sample with clearance levels for lead in dust on floors and windows. If residual lead levels in a dust sample exceed clearance levels, all components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(h) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(A) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(B) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (5)(g) of this section.

(i) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(A) Start and completion dates of abatement.

(B) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project.

(C) The occupant protection plan.

(D) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date of clearance testing.

(E) The results of clearance testing and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(F) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Sampling. Any paint chip, dust, or soil samples collected pursuant to these work practice standards shall be collected by a certified and licensed inspector or risk assessor. Persons exempt from Construction Contractors Board licensing requirements shall be certified by the Health Division. Employees of public agencies who conduct "in-house" lead-based paint activities are exempt from licensing by the Construction Contractors Board. Such sample shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(7) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or post abatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(8) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months. Also, the certified firm or individual shall provide copies of these reports to the building owner who contracted for the services.

(9) Certified individuals and firms shall, upon request, make available to the Health Division records and documents regarding regulated lead-based paint activities so that the Health Division may inspect said records and documents for the purpose of monitoring compliance with these rules. The Health Division shall respect the proprietary nature of business records.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

## 812-007-0080

### Denial, Suspension or Revocation of Certification

(1) The Construction Contractors Board may deny issuance of, suspend, or revoke a license for an individual or a firm for circumstances including but not limited to the following:

(a) Performing work requiring license at a job site without having a current valid original license identification card worn in view at the job site inspection;

(b) Permitting the duplication or use of the individual's own certificate or license by another;

(c) Performing work for which appropriate certification and license has not been received from the Health Division and the Construction Contractors Board;

(d) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under Construction Contractors Board rules;

(e) Failing to comply with local, state, or federal relevant statutes or regulations including execution of a consent agreement in settlement of an enforcement action;

(f) Failing to comply with work practices and standard of these rules and other generally accepted work practices;

(g) Obtaining certification or license through fraudulent representation of documentation satisfying eligibility requirements;

(h) Failing to renew certification and license in a timely manner.

(2) The Construction Contractors Board may deny issuance of, suspend, or revoke license for an individual for circumstances including but not limited to the following:

(a) Obtaining training documentation through fraudulent means;

(b) Gaining admission to and completed education through fraudulent representation of initial or previous education documentation.



(3) The Construction Contractors Board may deny issuance of, suspend, or revoke license of a firm for circumstances including but not limited to the following:

(a) Performing work requiring certification or license at a job site with individuals who are not certified or licensed.

(b) Failure to maintain required records.

(4) Hearings on the denial, suspension or revocation of a license shall be conducted as a contested case in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumbr from 812-007-0040, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-007-0090

##### Fees

The following fees are established:

(1) Contractor firms shall pay a non-refundable fee of \$50 in addition to the regular contractor license fee for an endorsement on their Construction Contractors Board license that will allow them to perform lead-based paint activity for one year.

(2) Inspectors, risk assessors, supervisors and project designers shall pay a non-refundable license fee of \$50 for a one-year license.

(3) Abatement workers shall pay a non-refundable license fee of \$25 for a one-year license.

Stat. Auth.: ORS 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumbr from 812-007-0045, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

### DIVISION 8

#### CERTIFICATION OF INDIVIDUALS AND LICENSING OF BUSINESSES ENGAGED IN HOME INSPECTIONS

#### 812-008-0000

##### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS Chapter 701.

(2) Purpose.

(a) The purpose of these rules is to create a program to certify home inspectors.

(b) These rules prescribe the requirements for certification and practices of individuals, and licensing of businesses engaged in home inspections.

(c) These rules cover businesses and all individuals who offer to undertake, submit a bid to undertake or undertake a home inspection.

(3) Scope.

(a) These rules are limited to the establishment of certification for individuals and licensing of businesses that offer to undertake, submit a bid to undertake or undertake certified home inspections.

(b) These rules prescribe the requirements for, and the manner of certifying applicants to be Oregon certified home inspectors and the licensing of businesses employing these individuals, to assure the protection of consumers.

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

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

#### 812-008-0020

##### Definitions

The following definitions apply to division 008 of OAR chapter 812:

(1) "Administrator" means the Administrator of the agency.

(2) "Agency" means the Oregon Construction Contractors Board.

(3) "Automatic safety controls" means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.

(4) "Central air conditioning" means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

(5) "Certified individual" means an individual who successfully passes a test accredited by the agency, completes the education required for renewal, and satisfies any other requirements established by OAR chapter 812.

(6) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.

(7) "Conspicuous" as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(8) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.

(9) "Dangerous or adverse situations" means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.

(10) "Describe" means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.

(11) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.

(12) "Enter" means to go into an area and observe all visible components.

(13) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time.

(14) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(15) "Home inspection" means an inspection of more than one inspection category as set forth in 812-008-0080(4) through (14). A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction.

(16) "Installed" means attached or connected such that the installed item requires tools for removal.

(17) "Normal operating controls" means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

(18) "Observe" means the act of making a visual examination.

(19) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(20) "On-site water supply quantity" means the water quantity based on the rate of flow of water.

(21) "Operate" means to cause systems or equipment to function.

(22) "Oregon certified home inspector" means a person certified pursuant to chapter 814, 1997 Oregon Laws and OAR chapter 812.

(23) "Readily accessible panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

(24) "Representative number" for multiple identical components such as windows and electrical outlets means one such com-

ponent per room; for multiple identical exterior components, one such component on each side of the building.

(25) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(26) "Shut down" means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

(27) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

(28) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(29) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

(30) "Technically exhaustive" means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

(31) "Test" means a test administered by the agency.

(32) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Stat. Auth.: Ch. 814, 1997 OL

Stats. Implemented: Ch. 814, 1997 OL

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98

## 812-008-0030

### Certification and License Required

(1) Except as provided in ORS 701.350(1) and section (3) of this rule, no individual shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first receiving certification to do same from the agency and without being an owner or employee of a business that is licensed with the agency.

(2) Except as provided in ORS 701.350(2) and section (3) of this rule, no business shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first becoming licensed with the agency as a General Contractor, Specialty Contractor or Inspector, and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) No person, including persons listed in section (3)(b) of chapter 814, 1997 Oregon Laws as being exempt from ORS 701.350(1) and (2), shall use the title Oregon certified home inspector without receiving such certification from the agency.

(4) Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

(5) All certificates to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

Stat. Auth.: ORS 701.350 & ORS 355

Stats. Implemented: ORS 701.350 & ORS 355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

## 812-008-0040

### Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

(a) An application on a form provided by the agency;

(b) The fee established in OAR 812-008-0110;

(c) If applicable, CCB number and name of employing licensee;

(d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and

(e) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a General Contractor, Specialty Contractor, or Inspector;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Each completed, with a passing grade, 3-hour minimum credit class in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university (1 point for each class, 10 points maximum).

(b) Each completed, with a passing grade, minimum 3-hour class certified by the agency (1 point for each class, 10 points maximum).

(c) Each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector (1 point each ride-along, 10 points maximum).

(d) Each completed, with a passing grade, 3-hour minimum class in approved subject areas (812-008-0074(1)) by approved continuing education providers (812-008-0074(3)) that are not community colleges or state universities (1 point for each class, 10 points maximum).

(e) Each completed, with a passing grade, 3-credit hour minimum class in home inspection at an accredited college or university (10 points for each class, 10 points maximum).

(4) Upon providing acceptable documentation, the applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Each completed 12 months working for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (2 points each completed 12 months, 16 points maximum).

(b) Each completed 12 months legally working as a home inspector in Oregon or another state or country (4 points each completed 12 months, 16 points maximum).

(c) Certified member of a professional home inspector association whose membership criteria have been certified by the agency in the last 12 months (4 points each certification, 8 points maximum).

(d) Each letter of recommendation from an Oregon-certified home inspector (1/2 point each recommendation, 4 points maximum).

(e) Each building codes certification issued by a government agency (1 point each, 5 points maximum).

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 2-1999, f. & cert. ef. 5-4-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 12-2000(Temp), f. & cert. ef. 10-16-00 thru 4-13-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2001(Temp), f. & cert. ef. 10-31-01 thru 4-29-02; CCB 3-2002, f. & cert. ef. 3-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

## 812-008-0050

### Testing Requirements

(1) The agency shall provide a written test for certification of individuals.

(2) The test shall be divided into five sections and weighted as follows:

(a) 20 percent: Structure, roofing, site, exterior, and interior.

(b) 20 percent: Heating, cooling, insulation, ventilation, fireplaces and wood stoves.

(c) 20 percent: Electrical.

(d) 20 percent: Plumbing.

(e) 20 percent: Agreements, reports and standards.

(3) To be certified, applicants must successfully pass the test.

(4) Applicants shall schedule an appointment with the agency, or designated proctors throughout the state, to take the test after receipt of a letter of authorization from the agency and payment of the fee prescribed in division 8.

(5) The passing score shall be 75 percent or higher based on 100 percent possible.

(6) Applicants shall score 75 percent or higher on each of five sections of the test.

(7) Applicants shall not take the same test version on consecutive attempts.

(8) The agency will notify applicants by mail of their test scores on each section of the test.

(9) Applicants who fail one or more sections of the test need not retake test sections already passed except as provided in (10) below.

(10) Applicants shall pass all sections of the test within one year of the date the person first took the test or retake all sections of the test.

(11) Applicants shall complete the certification process within one year from the date the person passed all sections of the test or retake the entire test.

(12) Applicants shall show picture identification before taking the test.

(13) Applicants shall not be accompanied by another individual while taking the test unless it is a translator.

(14) Applicants needing a translator shall pay for translator.

(15) Applicants taking the test shall not leave the testing room.

(16) Applicants shall not retain notes or other materials during the test.

(17) Applicants who attempt and fail the first test may take all subsequent tests in no less than 30 days.

(18) Applicants shall not review test questions or answer sheets.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 5-1998(Temp), f. & cert. ef. 5-28-98 thru 7-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

#### 812-008-0060

##### Certification Issuance

(1) When granted, the certificate shall be mailed to the applicant.

(2) The effective date of the certificate will be the date applicant meets all agency requirements.

(3) A unique certification number will be assigned to each certificate.

(4) All certificates shall be issued in the name of the individual who passed the test.

(5) An application may be withdrawn at any time by written request to the agency.

(6) If denied, the agency shall state, in writing, the reasons for denial.

(7) A certificate shall be non-transferable and shall be effective for two years from date of issue.

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.350

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2003, f. & cert. ef. 6-3-03

#### 812-008-0070

##### Requirements for Renewal of Certification

(1) The Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(a) A properly completed renewal application on an agency form; and

(b) The renewal fee of \$150 (listed in OAR 812-008-0110); and

(c) A statement of completed continuing education on an agency form.

(2) The statement of completed continuing education referred to in subsection (1)(c) of this rule shall contain the following:

(a) A listing of no less than 30 approved continuing education units (CEUs) completed by Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought on an agency form; and

(c) A signed declaration by the Oregon certified home inspector that the statement of completed continuing education units is true.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 2-2003, f. & cert. ef. 3-4-03

#### 812-008-0072

##### Approved Continuing Education Units

(1) The following continuing education units (CEUs) are approved. At least 20 CEUs for each renewal period must be instructor-led courses:

(a) One CEU for each completed clock hour of instruction of approved courses. All required CEU's per renewal may be from this category.

(b) Courses in approved subject areas in OAR 812-008-0074(1) that provide for college credit given by institutions of higher learning (community colleges or state universities) are approved for hours in home inspector continuing education.

(c) Courses in approved subject areas in OAR 812-008-0074(1) given by federal, state or local government agencies.

(d) One CEU for accompanying a plumbing, electrical, or heating and air conditioning contractor who is licensed with the Building Codes Division, on a repair or maintenance job that lasts a minimum of four hours. No more than one CEU shall be granted in each of the three areas per two-year renewal period for a total of three CEUs.

(e) One CEU for each year completed for serving as an officer of an Oregon or national home inspector professional trade association.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 4-2003, f. & cert. ef. 6-3-03

#### 812-008-0074

##### Approved Course Subjects and Education Providers

(1) The following subject areas are approved for continuing education: Report writing, communication skills, business practices, legal issues, ethics, agency study guide items, building codes, and agency standards of practice.

(2) Education provider applicants shall submit application form, instructor qualifications, course content outlines, course materials and other materials as required by the agency.

(3) The agency shall approve education providers' courses based on written evaluation criteria approved by the agency and made available to providers. Criteria include:

(a) Instructor has experience in subject matter.

(b) Instructor has licenses, certificates, and/or degrees in subject matter.

(c) Instructor has background in training or adult education.

(d) Instructor has knowledge of home inspection industry.

(e) Criteria used to approve and evaluate instructors are stringent and ongoing.

(f) Goals and objectives are clear and are appropriate for Oregon home inspectors.

(g) Course is in approved subject area stated in OAR 812-008-0074(1).

(h) Course content is relevant and appropriate for Oregon home inspectors.

(i) Course content is thorough.

(j) Course can be evaluated against CCB standards of practice and study guide.

(k) Course materials are accurate and current.

(l) Input is received from home inspection industry.

(4) The agency shall approve education providers' programs based on written evaluation criteria approved by the agency and made available to providers. Criteria include:

(a) Instructors are qualified.

(b) Criteria used to approve and evaluate instructors are stringent and ongoing.

(c) Goals and objectives are clear and appropriate for Oregon home inspectors.



(d) Course is in approved subject area stated in OAR 812-008-0074(1).

(e) Course content is relevant and appropriate for Oregon home inspectors.

(f) Course can be evaluated against CCB standards of practice and study guide.

(g) Course materials are accurate and current.

(h) Input is received from home inspection industry.

(5) Education providers' courses and programs approved by the agency shall be granted retroactive credit for certified home inspectors for two years.

(6) The agency may terminate a provider's right to offer a course or their program if the course(s) do not meet the agency's approved criteria.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 4-2003, f. & cert. ef. 6-3-03

## 812-008-0076

### Certification Renewal Term, Effective Date

(1) Certification renewal shall be effective on the day following the expiration date of the certification for which renewal is sought if an Oregon certified home inspector fulfills all requirements of OAR 812-008-0070 on or before the expiration date.

(2) If an Oregon certified home inspector fails to fulfill all requirements of OAR 812-008-0070 on or before the expiration date of the certification for which renewal is sought, but fulfills all such requirements at a future date, certification renewal shall be effective on the day all requirements for renewal are completed. However, during the period from the expiration date of the certification for which renewal is sought and the date upon which all requirements of OAR 812-008-0070 are fulfilled, the certification of the individual formerly an Oregon certified home inspector is not in effect, and the prohibition of OAR 812-008-0030(1) applies.

(3) An applicant for renewal shall fulfill all requirements of OAR 812-008-0070 when applicant's previous certification has expired for two years or less.

(4) An applicant for renewal shall fulfill all requirements of OAR 812-008-0040 when applicant's previous certification has expired for more than two years. Each time an applicant completes the requirements of OAR 812-008-0040, applicant will be issued a new certification number.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 3-2002, f. & cert. ef. 3-1-02

## 812-008-0080

### Standards of Practice and Standards of Behavior

Sections (1) through (14) of this rule set forth the minimum standards of practice required by Oregon certified home inspector. Section (15) of this rule sets forth the standards of behavior of Oregon certified home inspectors.

#### (1) Purpose and Scope.

(a) Home inspections undertaken according to Division 8 shall be based solely on the property conditions, as observed at the time of the home inspection.

(b) Oregon certified home inspectors shall:

(A) Provide a written inspection contract, signed by both the Oregon certified home inspector and client, prior to completing a home inspection that shall:

(i) State that the home inspection is in accordance with standards and practices set forth in division 8 of OAR chapter 812;

(ii) Describe the services provided and their cost;

(iii) State where the planned inspection differs from the standard home inspection categories as set forth in 812-008-0080(4) through (14); and

(iv) Conspicuously state whether the home inspection includes a pest and dry rot inspection to discover wood destroying organisms and that such inspections are available for a fee.

(v) For the purpose of this rule, a home inspection shall be deemed completed when the initial written inspection report is delivered.

(B) Observe readily visible and accessible installed systems and components listed as part of a home inspection as defined by these rules unless excluded pursuant to these rules in 812-008-0080; and

(C) Submit a written report to the client that shall:

(i) Describe those systems and components as set forth in 812-008-0080(4) through (14);

(ii) Record in the report each item listed in OAR 812-008-0080(4) through (14) and indicate whether or not the property inspected was satisfactory with regard to each item of inspection; it will not be sufficient to satisfy this subsection that the certified home inspector prepare a report listing only deficiencies;

(iii) State whether any inspected system or components do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling; and

(iv) State the Construction Contractors Board license number of the business and the name, certification number and signature of the person undertaking the inspection.

(D) Submit to each customer at the time the contract is signed a copy of Summary of Oregon Home Inspector Certification Law (ORS 701) or Summary of Oregon Home Inspector Certification Law (ORS 701) and Standards of Practice for Home Inspectors.

(c) Division 8 does not limit Oregon certified home inspectors from reporting observations and conditions or rendering opinions of items in addition to those required in Division 8.

(d) All written reports, bids, contracts, and an individual's business cards shall include the Oregon certified home inspector's certification number.

#### (2) General Limitations.

(a) Inspections undertaken in accordance with Division 8 are visual and are not technically exhaustive.

(b) "Residential structures" and "appurtenances" thereto are defined in ORS Chapter 701.005 and OAR chapter 812-008-0020.

#### (3) General Exclusions.

(a) Oregon certified home inspectors are not required to report on:

(A) Life expectancy of any component or system;

(B) The causes of the need for a repair;

(C) The methods, materials, and costs of corrections;

(D) The suitability of the property for any specialized use;

(E) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;

(F) The advisability or inadvisability of purchase of the property;

(G) The presence or absence of pests such as wood damaging organisms, rodents, or insects;

(H) Cosmetic items, underground items, or items not permanently installed; or

(I) Detached structures.

(b) Oregon certified home inspectors are not required to:

(A) Offer or undertake any act or service contrary to law;

(B) Offer warranties or guarantees of any kind;

(C) Offer to undertake engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the Oregon certified home inspector holds a valid occupational license, in which case the Oregon certified home inspector may inform the client that the home inspector is so certified, and is therefore qualified to go beyond Division 8 and undertake additional inspections beyond those within the scope of the basic inspection;

(D) Calculate the strength, adequacy, or efficiency of any system or component;

(E) Enter any area, undertake any procedure that may damage the property or its components, or be dangerous to the Oregon certified home inspector or other persons;

(F) Operate any system or component that is shut down or otherwise inoperable;

(G) Operate any system or component that does not respond to normal operating controls;

(H) Disturb insulation, move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;

(I) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not

limited to toxins, carcinogens, noise or contaminants in the building or soil, water, and air;

(J) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;

(K) Predict future condition, including but not limited to failure of components;

(L) Project operating costs of components;

(M) Evaluate acoustical characteristics of any system or component;

(N) Observe special equipment or accessories that are not listed as components to be observed in division 8; or

(O) Identify presence of odors or their source;

(4) Structural Components.

(a) The Oregon certified home inspector shall observe visible structural components including:

(A) Foundation;

(B) Floors;

(C) Walls;

(D) Columns or piers;

(E) Ceilings; and

(F) Roofs.

(b) The Oregon certified home inspector shall describe the type of:

(A) Foundation;

(B) Floor structure;

(C) Wall structure;

(D) Columns or piers;

(E) Ceiling structure; and

(F) Roof structure.

(c) The Oregon certified home inspector shall:

(A) Probe or sound structural components where deterioration is suspected, except where probing would damage any finished surface;

(B) Enter underfloor crawl spaces, basements, and attic spaces except when access is obstructed or restricted, when entry could damage any property, or when dangerous or adverse situations are suspected;

(C) Report the methods used to observed underfloor crawl spaces and attics; report inaccessible areas; and

(D) Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

(5) Exterior.

(a) The Oregon certified home inspector shall observe:

(A) Wall cladding, flashings, and trim;

(B) Entryway doors and all windows;

(C) Garage door operators;

(D) Attached decks, balconies, stoops, steps, areaways, porches, and applicable railings;

(E) Eaves, soffits, and fascias; and

(F) Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

(b) The Oregon certified home inspector shall:

(A) Describe wall cladding materials;

(B) Operate all entryway doors and a representative number of windows;

(C) Operate garage doors manually or by using permanently installed controls for any garage door operator; and

(D) Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing.

(c) The Oregon certified home inspector is not required to observe:

(A) Storm windows, storm doors, screening, shutters, and awnings;

(B) Garage door operator remote control transmitters;

(C) Geological conditions;

(D) Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); or

(E) Detached buildings or structures.

(6) Roofing.

(a) The Oregon certified home inspector shall observe:

(A) Roof coverings;

(B) Roof drainage systems;

(C) Flashings;

(D) Skylights, chimneys, and roof penetrations; and

(E) Signs of leaks or abnormal condensation on building components.

(b) The Oregon certified home inspector shall:

(A) Describe the type of roof covering materials; and

(B) Report the method used to observe the roofing and components.

(7) Plumbing.

(a) The Oregon certified home inspector shall observe:

(A) Interior water supply and distribution system, including piping materials, supports, and insulation, fixtures and faucets, functional flow, leaks, and cross connections;

(B) Interior drain, waste, and vent system, including traps, drain, waste, and vent piping, piping supports and pipe insulation, leaks, and functional drainage;

(C) Hot water systems including water heating equipment, normal operating controls, automatic safety controls, and chimneys, flues, and vents;

(D) Above ground oil storage and distribution systems including interior oil storage equipment, supply piping, venting, and supports; leaks; and

(E) Sump pumps and sewage ejection pumps.

(b) The Oregon certified home inspector shall describe:

(A) Water supply and distribution piping materials;

(B) Drain, waste, and vent piping materials; and

(C) Water heating equipment.

(c) The Oregon certified home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house except where the flow end of the faucet is connected to an appliance or interior faucets not serviced by a drain.

(d) The Oregon certified home inspector is not required to:

(A) State the effectiveness of anti-siphon devices and anti-back-flow valves;

(B) Determine whether water supply and waste disposal systems are public or private;

(C) Operate automatic safety controls;

(D) Operate any valve except toilet flush valves, fixture faucets, and hose faucets;

(E) Observe:

(i) Water conditioning systems;

(ii) Fire and lawn sprinkler systems;

(iii) On-site water supply quantity and quality;

(iv) On-site waste disposal systems;

(v) Foundation irrigation systems;

(vi) Whirlpool tubs, except as to functional flow and functional drainage;

(vii) Swimming pools and spas; or

(viii) Solar water heating equipment.

(8) Electrical.

(a) The Oregon certified home inspector shall observe:

(A) Service entrance conductors;

(B) Service equipment, grounding equipment, main overcurrent device, and distribution panels;

(C) Amperage and voltage ratings of the service;

(D) Branch circuit conductors, their overcurrent devices, and the compatibility of their amperages and voltages;

(E) The operation of a representative number of installed ceiling fans, lighting fixtures, switches, and receptacles located inside the house, garage, and on the dwelling's exterior walls;

(F) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;

(G) The operation of ground fault circuit interrupters; and

(H) Smoke detectors.

(b) The Oregon certified home inspector shall describe:

(A) Service amperage and voltage;

(B) Service entry conductor materials; and

(C) Service type as being overhead or underground;

(c) The Oregon certified home inspector shall report:

(A) Any observed 110 volt aluminum branch circuit wiring; and  
(B) The presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central security system.

(d) The Oregon certified home inspector is not required to:

(A) Insert any tool, probe, or testing device inside the panels;

(B) Test or operate any overcurrent device except ground fault circuit interrupters;

(C) Dismantle any electrical device or control other than to remove the covers of the main or auxiliary distribution panels;

(D) Observe:

(i) Low-voltage systems except to report the presence of solenoid-type lighting systems;

(ii) Security system devices, heat detectors, or carbon monoxide detectors;

(iii) Telephone, security, TV, intercoms, lightening arrestors or other ancillary wiring that is not a part of the primary electrical distribution system; or

(iv) Built-in vacuum equipment.

**(9) Heating.**

(a) The Oregon certified home inspector shall observe permanently installed heating systems including:

(A) Heating equipment;

(B) Normal operating controls;

(C) Automatic safety controls;

(D) Chimneys, flues, and vents, where readily visible;

(E) Solid fuel heating devices;

(F) Heat distribution systems including fans, pumps, ducts, and piping, with supports, insulation, air filters, registers, radiators, fan coil units, convectors; and

(G) The presence of installed heat source in each room.

(b) The Oregon certified home inspector shall describe:

(A) Energy source; and

(B) Heating equipment and distribution type.

(c) The Oregon certified home inspector shall operate the systems using normal operating controls.

(d) The Oregon certified home inspector shall open readily accessible panels provided by the manufacturer or installer for routine homeowner maintenance.

(e) The Oregon certified home inspector is not required to:

(A) Operate automatic safety controls;

(B) Ignite or extinguish solid fuel fires;

(C) Observe:

(i) The interior of flues;

(ii) Fireplace insert flue connections;

(iii) Humidifiers; or

(iv) The uniformity or adequacy of heat supply to the various rooms.

**(10) Central Air Conditioning.**

(a) The Oregon certified home inspector shall observe:

(A) Central air conditioning systems including cooling and air handling equipment and normal operating controls.

(B) Distribution systems including fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, and fan-coil units.

(b) The Oregon certified home inspector shall describe:

(A) Energy sources; and

(B) Cooling equipment type.

(c) The Oregon certified home inspector shall operate the systems using normal operating controls.

(d) The Oregon certified home inspector shall open readily openable panels provided by the manufacturer or installer for routine homeowner maintenance.

(e) The Oregon certified home inspector is not required to:

(A) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;

(B) Observe non-central air conditioners; or

(C) Observe the uniformity or adequacy of cool-air supply to the various rooms.

**(11) Interiors.**

(a) The Oregon certified home inspector shall observe:

(A) Walls, ceiling, and floors;

(B) Steps, stairways, balconies, and railings;

(C) Counters and cabinets; and

(D) Doors and windows.

(b) The Oregon certified home inspector shall:

(A) Operate a representative number of windows and interior doors; and

(B) Report signs of abnormal or harmful water penetration or damage in the building or components or signs of abnormal or harmful condensation on building components.

(c) The Oregon certified home inspector is not required to:

(A) Operate a representative number of cabinets and drawers;

(B) Observe paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; or

(C) Observe draperies, blinds, or other window treatments.

**(12) Insulation and Ventilation.**

(a) The Oregon certified home inspector shall observe:

(A) Insulation and vapor retarders/barriers in unfinished spaces;

(B) Ventilation of attics and foundation areas;

(C) Kitchen, bathroom, and laundry venting systems; and

(D) The operation of any readily accessible attic ventilation fan, and when the temperature permits, the operation of any readily accessible thermostatic control.

(b) The Oregon certified home inspector shall describe:

(A) Insulation in unfinished spaces; and

(B) Absence of insulation in unfinished space adjacent to heated living areas.

(c) The Oregon certified home inspector is not required to report on:

(A) Concealed insulation and vapor retarders;

(B) Venting equipment that is integral with household appliances; or

(C) Thermal efficiency ratings.

**(13) Built-in Kitchen Appliances.**

(a) The Oregon certified home inspector shall observe and operate the basic functions of the following kitchen appliances:

(A) Installed dishwasher, through its normal cycle;

(B) Range, cook top, and installed oven;

(C) Trash compactor;

(D) Garbage disposal;

(E) Ventilation equipment or range hood;

(F) Installed microwave oven; and

(G) Built-in refrigerators.

(b) The Oregon certified home inspector is not required to observe:

(A) Clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation;

(B) Non built-in appliances;

(C) Refrigeration units that are not installed; or

(D) Microwave leakage.

(c) The Oregon certified home inspector is not required to operate:

(A) Appliances in use; or

(B) Any appliance that is shut down or otherwise inoperable.

**(14) Site.**

(a) The Oregon certified home inspector shall observe:

(A) Walks, driveways, and patios;

(B) Visible site drainage systems;

(C) Site grade and water drainage at the foundation; and

(D) Visibly accessible retaining walls and rockeries.

(b) The Oregon certified home inspector shall describe:

(A) Tripping hazards and other adverse conditions in walks and drives;

(B) Site grade and drainage;

(C) Site retaining walls;

(D) Earth to wood proximity.

(c) The Oregon certified home inspector is not required to report on:

(A) Fences or privacy walls;

(B) Ownership of fencing, privacy walls, retaining walls;

(C) Condition of trees, shrubs, or vegetation; or

(D) Soil or geological conditions, site engineering, property boundaries, encroachments, or easements.

**(15) Standards of Behavior.**



(a) An Oregon certified home inspector shall not engage in dishonest or fraudulent conduct or undertake activities that are injurious to the welfare of the public, which result in injury or damage to another person.

(b) Opinions expressed by Oregon certified home inspectors shall only be based on their education, experience, and physical evidence observed by the inspector.

(c) An Oregon certified home inspector shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was undertaken.

(d) No Oregon certified home inspector shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.

(e) No Oregon certified home inspector shall give any gift, rebate, kickback, or any thing of value, including but not limited to any payment of money, to any person for the purposes of obtaining an engagement, referral or preference selection to perform a home inspection. However, this section shall not apply to items of nominal value given as part of an advertising promotion of general distribution.

(f) No Oregon certified home inspector shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

(g) Before the execution of a contract to undertake a home inspection, an Oregon certified home inspector shall disclose to the client any interest in a business that may affect the client. No Oregon certified home inspector shall allow his or her interest in any business to affect the quality or results of inspection work that the Oregon certified home inspector may be called upon to undertake.

(h) An Oregon certified home inspector shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

Stat. Auth.: ORS 701.350 & ORS 355

Stats. Implemented: ORS 701.350 & ORS 355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02

## 812-008-0090

### Revocation of Certification

The Construction Contractors Board may revoke the certificate of an Oregon certified home inspector or the license of a business that performs work as a home inspector for failure of the Oregon certified home inspector to:

(1) Comply with one or more of the "Standards of Practice" set forth in OAR 812-008-0080(1) through (14).

(2) Comply with one or more of the "Standards of Behavior" set forth in OAR 812-008-0080(15).

(3) Comply with OAR 812-008-0078(1).

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

## 812-008-0110

### Prescribed Fees

The following prescribed fees are established:

(1) Application to become certified; \$50.

(2) Test, first attempt; \$50.

(3) Test, each sitting to retake one or more sections; \$25.

(4) Certification; \$75 per year.

(5) Certification renewal (two years); \$150.

(6) Reinstatement fee; \$15.

(7) Refunds:

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

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

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process,

the agency may refund the certification fee but shall retain a processing fee of \$40.

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

Stat. Auth.: ORS 293.445, ORS 670.310, ORS 701.235 & ORS 701.350

Stats. Implemented: ORS 293.445, ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-13-03; CCB 4-2003, f. & cert. ef. 6-3-03

## DIVISION 9

### CONTESTED CASE HEARINGS AND APPEAL COMMITTEE

#### Contested Case Hearings, Claims

## 812-009-0010

### Application of Rules

Subject to OAR 812-004-0590, contested case hearings on claims arising under ORS 701.139–701.180 shall be governed by OAR 812-009-0020–812-009-0220 and 137-003-0501–137-003-0700.

Stat. Auth.: ORS 670.310, 701.145 & 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413 - ORS 183.470 & ORS 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02

## 812-009-0020

### Amendment to Declaration of Damages

(1) If the agency refers a claim to the Office of Administrative Hearings for a hearing on the amount the respondent owes the claimant, the claimant may amend the amount the claimant alleges the respondent owes the claimant by filing an amended declaration of damages. An amended declaration of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and 812-009-0085. An amended declaration of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings no later than 14 days prior to the scheduled date of a hearing on the matter.

(2) An amended declaration of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended declaration of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the Statement of Claim and claim items added up to and through the initial on-site meeting. The amended declaration of damages must be signed by the claimant.

(3) An amended declaration of damages making a significant change in the amount the claimant alleges that the respondent owes the claimant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

Stat. Auth.: ORS 670.310, ORS 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413, ORS 183.415 & ORS 701.145, ORS 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03

## 812-009-0050

### Providing Required Information to Parties

The agency delegates to the Office of Administrative Hearings or the administrative law judge assigned to hear a claim the responsibility to provide the information required to be given to each party under ORS 183.413(2) and OAR 137-003-0510(1).

Stat. Auth.: ORS 670.310, ORS 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413, ORS 183.415 & ORS 701.145, ORS 701.147

Hist.: CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00, CCB 7-2003, f. & cert. ef. 8-8-03

## 812-009-0060

### Hearing Postponement

If a party requests postponement of a hearing, the request may be granted if:

- (1) The request is promptly made after the party receives the notice of hearing or is promptly made after emergency or unforeseen circumstances arise;
- (2) The party establishes circumstances that prevent attendance by the party at the scheduled hearing; and
- (3) The circumstances preventing attendance at the hearing are beyond the reasonable control of the requesting party.

Stat. Auth.: ORS 670.310, ORS 701.235 & OL 1999, Ch. 849, Sec. 8  
 Stats. Implemented: ORS 183.413 - ORS 183.470 & ORS 701.145  
 Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1978, f. & ef. 12-4-78; 1BB 2-1979, f. & ef. 12-19-79; 1BB 1-1980, f. & ef. 2-29-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0005; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00

### 812-009-0070

#### Suspending Processing

(1) An administrative law judge may suspend or cancel a hearing at any time if the administrative law judge finds that the nature or complexity of the issues is such that a court is a more appropriate forum for adjudication. If an administrative law judge suspends or cancels a hearing under this rule, the administrative law judge shall refer the claim to the agency with a memorandum recommending that processing of the claim be suspended under ORS 701.145 and OAR 812-004-0520 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 701.145 & ORS 701.235  
 Stats. Implemented: ORS 701.145, ORS 701.147  
 Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03

### 812-009-0085

#### 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 701.235 & OL 1999, Ch. 849, Sec. 8  
 Stats. Implemented: ORS 183.413 - ORS 183.470 & ORS 701.145  
 Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00

### 812-009-0090

#### Discovery and Subpoenas

(1) The agency delegates to the administrative law judge 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 administrative law judge 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 701.235 & OL 1999, Ch. 849, Sec. 8  
 Stats. Implemented: ORS 183.425, 183.440, 183.445, 183.450 & 701.145, 701.147  
 Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03

### 812-009-0100

#### Burden of Proof and Failure to Meet Burden

Claimant must submit sufficient credible evidence into the record to support an award of damages under OAR 812-004-0535. If claimant fails to carry this burden of proof, the administrative law judge shall dismiss the claim.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183 & 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

### 812-009-0120

#### Determination of Validity of Claim

In determining the validity of the claim, the administrative law judge shall determine:

- (1) Whether the claim arose out of a transaction within the scope of ORS Chapter 701;
- (2) Whether the agency has jurisdiction over the matters at issue; and
- (3) Whether the record of the claim supports an award of damages under OAR 812-004-0535.

Stat. Auth.: ORS 670.310, 701.235  
 Stats. Implemented: ORS 183 & 701  
 Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04

### 812-009-0140

#### Failure to Appear

(1) "Order" as used in this rule means a proposed and final order an administrative law judge is authorized to issue under OAR 812-009-0160 or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) If the administrative law judge notified the parties to a 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's file as the record for purposes of an order by default issued in the contested case notice issued under OAR 812-004-0560; and

(B) The claimant failed to appear at the hearing.

Stat. Auth.: ORS 670.310, ORS 701.235 & OL 1999, Ch. 849, Sec. 8  
 Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470 & 701.145, 701.147  
 Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03

### 812-009-0160

#### Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a 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 812-004-0540, 812-004-0550 or 812-009-0020; or
- (b) The Statement of Claim filed under OAR 812-004-0340, 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 section (8) of this rule and OAR 812-009-0200, 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 812-009-0400;

(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-033-0655(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) of this rule is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a declaration of damages or Statement of Claim that does not include a request for an award of the claim-processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the claim-processing fee paid by the claimant under OAR 812-004-0110 and 812-004-0400.

(9) If a claim is referred for a hearing solely to determine if the Board has jurisdiction over the claim and the administrative law judge finds that the Board has jurisdiction over the claim, the administrative law judge shall issue an intermediate order that the Board resume processing the claim. The Board may accept the order to resume processing or issue a proposed and final order to dismiss the claim for lack of jurisdiction.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470 & 701.145, 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04

## 812-009-0200

### Final Order Without a Proposed Order

(1) Notwithstanding OAR 812-009-0160(6), an administrative law judge shall issue a final order under OAR 137-003-0665 in a contested case without issuing a proposed order if:

(a) The total amount claimed to be due to any claimant in a hearing does not exceed \$2,500;

(b) The parties voluntarily agree to a settlement of a claim in accordance with ORS 183.415(5), except as provided in section (2) of this rule; or

(c) The hearing was requested by respondent after the parties voluntarily agreed to a settlement of a claim and the following conditions exist:

(A) The settlement's essential terms are limited to the respondent's agreement to pay money to claimant in exchange for claimant's release of the claim; and

(B) The amount of the final order does not exceed the amount the respondent agreed to pay under the settlement agreement.

(2) 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, 701.145, 701.235; & 1999 OL, ch. 849, sect. 8

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, & 701.145, 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-

00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 7-2003, f. & cert. ef. 8-8-03

## 812-009-0220

### Petition for Reconsideration or Rehearing; Request for Stay

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a claim issued by an administrative law judge under this division shall be filed with the agency.

Stat. Auth.: ORS 670.310, ORS 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.482, ORS 701.145 & OL 1999, Ch. 849, Sec. 12  
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03

## Contested Case Hearings, Enforcement

## 812-009-0300

### Hearing Notice and Limitation on Final Civil Penalty Order

A notice of hearing shall contain the duration of any suspension and the amount of any civil penalty sought by the agency. The administrative law judge shall not issue a final civil penalty order in an amount greater than that shown in the notice of hearing.

Stat. Auth.: ORS 183.310, ORS 670.310, ORS 701.235 & ORS 701.992

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03

## 812-009-0320

### Entry of Agency Evidence

Contested case enforcement hearings may be held before an administrative law judge. The agency's evidence may be entered into the record by the administrative law judge, or by another representative of the agency.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03

## 812-009-0340

### Agency Representation by Officer or Employee

(1) As authorized by the Attorney General as provided in ORS 183.450(7)(a), agency officers and employees may appear, but not make legal argument, on behalf of the agency in compliance hearings involving:

(a) Imposition of civil penalties; and

(b) Refusals to reissue and suspensions in the following classes of hearings:

(A) Failure of a licensee to pay a final order of the Board;

(B) Violations of employer status regulations, including violations of ORS Chapters 656, 657, and 316, in accordance with ORS 701.100; and

(c) Other compliance and claims hearings as approved in writing by the Attorney General on an individual case basis.

(2) Legal argument as used in ORS 183.450(8) has the same meaning as in OAR 137-003-0008.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.450

Hist.: BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 812-001-0006, CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00

## Exceptions; Appeal Committee

## 812-009-0400

### Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or respondent 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)(a) To be considered, 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, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 812-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board's Appeal Committee at a regular meeting of the committee.

(4) The exceptions must substantially conform to the requirements of OAR 812-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days before the Committee 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 shall 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 812-001-0015.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (a) of this section, the agency shall send a copy of the tape of the hearing to the party that did not file the exceptions without charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony shall prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions. The party must deliver the transcript to the agency 21 days after the date the agency mails the tape of the hearing to the party.

(d) The agency shall 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 shall mail a copy of the transcript prepared under this section to the party that filed the exceptions.

(8) The Appeal Committee may refuse to consider evidence of oral testimony submitted by a party if the party 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 Committee 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 a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.460 & ORS 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03

### 812-009-0420

#### Exceptions to Agency Orders, Enforcement

(1) After a contested case enforcement hearing, the respondent may file written exceptions if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the agency within 21 days of the date of mailing of the proposed order. If written exceptions are not timely received, the agency may issue a final order as proposed.

(2) If exceptions are timely received, the matter will be set for consideration by the Appeal Committee at its next meeting for which agenda space is available. Written argument in opposition to the proposed order will be accepted up to 15 days before the Appeal Committee meeting date if the original exceptions were timely received. The agency may waive the 15 day requirement.

(3) The respondent may appear before the members of the Appeal Committee to argue against the proposed order, if the agency receives written notice of intent to do so before the Appeal Committee meeting date. Oral argument will be permitted only if the original exceptions were timely received.

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

Stats. Implemented: ORS 183.460 & ORS 701.260

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

### 812-009-0430

#### Form of Exceptions to Agency Order in a Claim

(1) Exceptions to an agency order filed by a party to a claim under OAR 812-009-0400 or a respondent under 812-009-0420 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 shall 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 finding of fact is not supported by the evidence in the record.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information shall be included in the exceptions:

(A) The pages on which the conclusion and the opinion that it 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 Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

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

Stats. Implemented: ORS 183 & ORS 701.145, ORS 701.147

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2003, f. & cert. ef. 8-8-03

### 812-009-0440

#### Appeal Committee Meeting

(1) At the meeting of the Board's Appeal Committee, the Committee will consider documentary evidence received at the hearing and exceptions and written or oral argument for or against the proposed order, but the Committee will not consider new or additional evidence.

(2) The Committee may limit the time allowed for oral argument by a party before the Committee to five minutes.

(3) After hearing oral argument, the Committee may conduct its deliberations privately, under authority of ORS 192.690(1). If the Committee conducts its deliberations privately, it will return to public meeting for any motions and voting.

(4) The Committee may affirm the proposed order and findings of fact, modify either or both, or send the case back to the Office of Administrative Hearings for a new hearing or to the agency for further processing. Unless the case is sent back to a new hearing, the agency will issue a final order after the Committee meeting.

(5) Final orders are subject to judicial review as set forth in ORS Chapter 183.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 183.460 & ORS 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03

## DIVISION 10

### CCB ARBITRATION BY THE BOARD

#### 812-010-0020

##### Applicability of Rules; Application of ORS 36.600-36.740

(1) The rules in division 10 of this chapter apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division shall be governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

(3) The amendments to the rules in division 10 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for an arbitration:

(a) On or after January 1, 2004; and

(b) Before January 1, 2004, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

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

Stats. Implemented: ORS 183, 701.139, 701.147 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0030

##### Incorporation of Office of Administrative Hearings Rules

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

(a) OAR 137-003-0590 (Qualified interpreters); and

(b) OAR 137-003-0605 (Telephone testimony).

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

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

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

Stat. Auth.: ORS 670.310, & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-010-0040

##### Arbitration of Disputes Outside Jurisdictional Requirements

Construction disputes which do not meet timeliness filing under ORS 701.143 or other jurisdictional requirements for claims may be arbitrated by the agency if both parties agree in writing to submit the dispute to the Construction Contractors Board for binding arbitration. At the discretion of the agency, the agency may refuse to accept a dispute submitted for arbitration under this rule.

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

Stats. Implemented: ORS 701.143, ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

#### 812-010-0050

##### Application for Judicial Relief

An application for to the court for judicial relief under the rules in division 10 of this chapter or under ORS 36.600 to 36.740 shall be subject to ORS 36.615.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 36.600 - 36.740

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

#### 812-010-0060

##### Appointment of Arbitrator

Assignment of arbitrator shall be as provided in ORS 701.147 and shall be subject to a request for a different administrative law judge to act as arbitrator under ORS 183.645 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 179.331, 183.645, 701.147 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0080

##### Delegation of Duties

If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the duties of the agency under these rules may be carried out through representatives as directed by the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge, except that the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may not perform the duties of the agency under OAR 812-010-0040, 812-010-0100 or 812-010-0440.

Stat. Auth.: ORS 670.310, ORS 701.148 & ORS 701.235

Stats. Implemented: ORS 701.147 & ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-010-0085

##### Filing and Service of Pleadings and Other Documents

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

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

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

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

(2) After the agency refers a claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document, correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration shall serve copies of the document filed on the parties to the claim or dispute or their counsel if the parties are represented. Service under this section shall be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 812-004-0210, after the agency refers the claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a party must

notify the Office of Administrative Hearings or arbitrator, and other parties to the claim or dispute of any change in the party's address, [or] withdrawal or change of party's attorney or change of address of the party's attorney.

Stat. Auth.: ORS 183.310-183.500, ORS 670.310 & ORS 701.235  
 Stats. Implemented: ORS 183, 701  
 Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-010-0090

##### Request for Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings receives a request under OAR 812-004-0590 to conduct the hearing on a 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 812-004-0590 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 701.235  
 Stats. Implemented: ORS 183, ORS 701.147 & ORS 701.148  
 Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-010-0100

##### On-Site Investigation, Settlement Discussions

(1) At the discretion of the agency, arbitration may be preceded by an on-site investigation or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site investigation prior to arbitration. The agency may grant or deny the request at its discretion.

(4) If the parties to an arbitration settle a claim referred to arbitration under OAR 812-004-0560, the parties may agree that the arbitrator may issue a final order under ORS 183.415(5).

Stat. Auth.: ORS 183.310 to 183.500, ORS 670.310, & ORS 701.235  
 Stats. Implemented: ORS 701.148  
 Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-010-0110

##### 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 of damages under OAR 812-004-0340, 812-004-0540 or 812-004-0550, the party shall file with the agency on a form provided by the agency a declaration of damages stating the amount that the party alleges any other party owes the party, together with any supporting documents required by the agency.

(2) If the parties to an arbitration have agreed in writing that the arbitration will bind all of them and if any other party to the proceeding asserts a counterclaim, the counterclaiming party 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 a declaration stating the amount the party alleges any other party owes the party, if the party alleges only an offset.

(4) A party may amend the amount the party alleges another party owes the party by filing an amended declaration of damages. An amended declaration of damages must be delivered to the arbitrator as required by OAR 812-010-0085. 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 and claim items added up to and through the initial on-site meeting. 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 812-010-0220 if the time left before the arbitration is insufficient to prepare for arbitration on the amended amount.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, & 701.235  
 Stats. Implemented: ORS 701.145 & 701.148  
 Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02

#### 812-010-0120

##### 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 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 701.235  
 Stats. Implemented: ORS 701.147), ORS 701.148  
 Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-010-0140

##### Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under ORS 36.705(1)(b) for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under ORS 36.705(1)(b) may vacate an award.

(6) An arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under ORS 36.705(1)(b).

(7) Substantial compliance with the procedures in this division 10 of this chapter for challenges to an arbitrator before an award is



made is a condition precedent to a petition to vacate an award on that ground under ORS 36.705(1)(b).

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. Such decision shall be final.

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

Stats. Implemented: ORS 36.705 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

#### 812-010-0160

##### Substitution of Arbitrator

(1) The agency administrator or a person designated by the agency administrator may substitute another arbitrator at any time before the arbitration hearing begins.

(2) If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may substitute another arbitrator at any time before the arbitration hearing begins.

Stat. Auth.: ORS 670.310, ORS 701.148 & ORS 701.235

Stats. Implemented: ORS 701.147 & ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03

#### 812-010-0180

##### Representation by Counsel

Any party may be represented at an arbitration by an attorney. A corporation, partnership or other business entity may appear or be represented at an arbitration as provided under ORS 701.160.

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

Stats. Implemented: ORS 701.160

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0200

##### Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator may require the exclusion of any witness who is not a party during the testimony of other witnesses. The arbitrator shall determine whether any other person may attend the hearing.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0220

##### Postponement, Recess and Continuance

An arbitrator may postpone or recess and later continue an arbitration. A party requesting a postponement or continuance must show good cause. The arbitrator will determine whether to grant a postponement or continuance. That determination shall be final.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 10-2002, f. & cert. ef. 11-20-02

#### 812-010-0260

##### Recording of Hearing

(1) Unless otherwise agreed by the parties and the arbitrator, the arbitrator shall make a tape recording of the hearing.

(2) The agency may dispose of tape recordings of hearings when 90 days have passed after the arbitrator issues an award in the matter. However, if a party timely files exceptions to the award, the agency will not dispose of the tape recording of the hearing until the court makes final determination of the matter.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0280

##### Conduct of Hearing; Authority of Arbitrator

(1) An arbitrator may conduct arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(2) The oral hearing may be waived and held by briefs and documents if the parties so stipulate. The arbitrator shall determine whether to grant waiver of oral hearing and that determination shall be final.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-010-0290

##### Summary Disposition

An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-010-0300

##### Arbitration in the Absence of a Party

(1) Except as provided in section (2) of this rule, an arbitration may proceed in the absence of any party who, after due notice, fails to appear. An award shall not be made solely on the default of a party. The arbitrator may require the attending party to submit such evidence as the arbitrator may require for the making of an award.

(2) Notwithstanding section (1) of this rule, an arbitrator may dismiss a claim without an evidentiary hearing if the party making the claim fails to appear after due notice and without good cause.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0320

##### Discovery

(1) Parties to an arbitration are encouraged to exchange information informally, prior to the hearing. After making reasonable attempts to obtain any of the following, a party may make written request of the arbitrator for an order directing the other party to comply:

(a) Production of documents, objects, or other information relevant to the dispute;

(b) Permission to enter upon private property to inspect improvements relevant to the dispute; or

(c) Other forms of discovery.

(2) The arbitrator may, at the arbitrator's discretion, order compliance. This rule does not require discovery. If the arbitrator does order discovery, the arbitrator shall control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0340

##### Subpoenas; Evidence

(1) The arbitrator or an attorney for a party to the arbitration may issue subpoenas for witnesses and documents for the arbitration hearing.

(2) The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed with the agency prior to or at the hearing.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99

#### 812-010-0360

##### Close of Hearing

When satisfied that the parties have completed their presentations, the arbitrator shall close the hearing.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0380

##### Waiver of Right to Object to Noncompliance with These Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections prior to the close of the hearing shall be deemed to have waived the right to object.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145(9)  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98

#### 812-010-0400

##### Service of Notices and Other Communications

(1) Communication including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail.

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice of the arbitration hearing, the notice of hearing shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.080, ORS 701.147 & ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-010-0420

##### Time, Form, and Scope of Award; Limitation on Award

(1) An award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award shall be in writing and shall be signed or otherwise authenticated by the arbitrator.

(4) The award shall fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award shall contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) Subject to sections (10) and (11) of this rule, an arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Statement of Claim filed by the party under OAR 812-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 701.085 and the parties to the claim have not agreed that the arbitration will bind 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 (7) of this rule.

(7) An arbitrator shall consider any amounts owed by a party claiming damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party claiming the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a declaration of damages as to the offset. If the party asserting the offset did not file a declaration of damages, the amount of the offset may not exceed the amount of the award.

(8)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from respondent's bond required under ORS 701.085 and other amounts that are not payable from the bond under OAR 812-004-0250 or any other law, the award shall segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (8)(b) of this rule.

(9) If a limitation on damages under section (5) of this rule is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

(10) If a limitation of damages under section (5) of this rule is based on a declaration of damages or Statement of Claim that does not include a request for an award of the claim-processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (5) of this rule shall be increased by the amount of the claim-processing fee paid by the claimant under OAR 812-004-0110 and 812-004-0400.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be comply with ORS 36.685(1).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.145 & 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0425

##### Petition to Modify or Correct an Award

(1) A party to arbitration or the agency may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator shall mail copies of the petition to the other parties to the arbitration and to the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the claims submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

(d) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator shall issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

(11) If the arbitrator who prepared the award is not available to consider a petition modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

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

Stats. Implemented: ORS 183, 701.147 & 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0430

##### Form of Petition to Vacate, Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 812-010-0425 shall conform to the following requirements:

(a) The petition shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition shall be titled "Petition to Modify or Correct an Arbitration Award" and shall show the names of the parties to the arbitration and the party submitting the petition at the top of the page. If the petition is filed in a claim, the first page shall show the claim number.

(c) Each page of the petition shall be numbered at the bottom of the page.

(d) For each modification or correction sought by petitioner, the following information should be included in the petition:

(A) The page or pages that petitioner asks to be modified or corrected;

(B) The text that petitioner asks to be modified or corrected; and

(C) An explanation or argument supporting petitioner's request for the modification or correction.

(e) The party submitting the petition shall sign and date the petition. The date shall be the date the petition is served on the arbitrator and 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 & ORS 701.235

Stats. Implemented: ORS 183 & ORS 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

#### 812-010-0440

##### Payments from Licensee's Bond

If an award or amended award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. Payments from the bond shall be subject to the laws in ORS chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

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

Stats. Implemented: ORS 701.143 & 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0460

##### Filing with Court, Exceptions

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party shall serve the agency with a copy of a petition filed under this section.

(2) A party may petition the court to vacate, modify or correct an award under ORS 36.705 or 36.710. The petitioning party shall serve the agency with a copy of a petition filed under this section.

(3) Failure of a party to serve the agency under sections (2) and (3) of this rule constitutes a waiver of any objection to transmittal of the award to respondents surety company for payment under OAR 812-004-0600.

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

Stats. Implemented: ORS 701.145 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0480

##### Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules shall be interpreted and applied by the agency administrator or a person designated by the agency administrator.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00

#### 812-010-0500

##### Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to ORS 36.660(1) to (3).

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04

#### 812-010-0510

##### Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to ORS 36.660(4).

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

Stats. Implemented: ORS 701.148

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

#### 812-010-0520

##### Attorney Fees and Costs

If a person commences a civil action against an arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings arising from the services of the arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings or if a person seeks to compel an arbitrator or representative of the Office of Administrative Hearings to testify or produce records in violation of OAR 812-010-0510 the court may award attorney fees and costs as provided in ORS 36.660(5).

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

Stats. Implemented: ORS 701.148

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## DIVISION 11

## APPROVED TRAINING AND PROFESSIONAL CREDENTIALS



**812-011-0000**

**Authority, Purpose, Scope**

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 701.120.

(2) Purpose. The purpose of these rules is to provide needed information to the public about contractors who have successfully completed accredited abatement training or training in approved lead safe work practices.

(3) Scope:

(a) These rules recognize approved or accredited work practices training that qualifies as information released by the agency to the public per ORS 701.250.

(b) These rules establish the procedures for adding and deleting approved or accredited training to agency records released to the public per ORS 701.250.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.120

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

**812-011-0010**

**Definitions**

The following definitions apply to division 11 of OAR chapter 812:

(1) "Accredited training" means education that is recognized as having met minimum standards prescribed by the United States Environmental Protection Agency under **40 CFR 745**.

(2) "Approved training" means education mandated by the United States Department of Housing and Urban Development as providing specialized instruction for construction contractors.

(3) "Lead safe work practices" means a set of measures designed to reduce human exposure or likely exposure to lead-based paint hazards.

(4) "Credential holder" means a sole proprietor, partner, corporate officer, LLC member or trustee of an entity licensed with the agency who is not an employee and who has successfully completed accredited or approved training.

(5) "Successful completion" means meeting all course requirements as required by a training provider.

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.120

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

**812-011-0030**

**Approved and Accredited Training**

(1) The agency shall accept the following lead safe work practices training:

(a) Successful completion of a lead-based paint supervisor or worker training course accredited by the Oregon Department of Human Services;

(b) Successful completion of training in a lead-based paint training course accredited by the United States Environmental Protection Agency under **40 CFR 745**;

(c) Successful completion of a lead-based paint training course accredited by states authorized by the United States Environmental Protection Agency under **40 CFR 745**; or

(d) Successful completion of training in remodeling or operations and maintenance approved by the United States Department of Housing and Urban Development under **24 CFR 35**, et. seq.

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

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.120

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02

**812-011-0050**

**Procedures**

The agency shall use the following procedures to add and delete information from licensee records the agency releases to the public per ORS 701.250:

(1) If a credential holder wants approved or accredited training in OAR 812-011-0030 added to the licensee's records, the credential holder shall send the following to the agency:

(a) A written request that a credential holder's approved or accredited training be included in the licensee's records;

(b) The licensee's active Construction Contractors Board license number(s); and

(c) A copy of a course completion certificate for an approved or accredited training by an organization listed in OAR 812-011-0030.

(2) When the agency receives the information in section (1) of this rule, the agency will add the following to the licensee's records that the agency releases per ORS 701.250:

(a) Name of the approved or accredited training course or program; and

(b) Contact information for the organization listed in OAR 812-011-0030 that provided the approved or accredited training.

(3) The agency may state in records released to the public that the agency is not responsible for the quality of work of a credential holder who has successfully completed approved or accredited training in OAR 812-011-0030.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.120

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02

**812-011-0070**

**Advertising**

A licensee who has successfully completed approved professional credentials in this division may include this information in the licensee's advertising or in other information presented to the public regarding the qualifications of the licensee if the credentials are