

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on December 6, 2011 by the
(Date prior to or same as filing date.)

Construction Contractors Board OAR 812
(Agency and Division) (Administrative Rules Chapter Number)

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to become effective January 1, 2012 Rulemaking Notice was published in the November 2011 Oregon Bulletin.**
(Date upon filing or later) (Month and Year)

RULE CAPTION

Home Inspector Rule Amendments to Implement SB 153 (2011)

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

812-008-0000 812-008-0020 812-008-0030

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Other Auth.:

Stats. Implemented: ORS 701.081, 701.084, 701.350 & 701.355

RULE SUMMARY

- 812-008-0000 is amended to implement Senate Bill 153, which authorizes the CCB to adopt rules to determine whether an inspection and report, which is limited to one or more specific systems or components of a residential structure or appurtenance, is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.
- 812-008-0020, as amended, reflects three types of businesses that do not inspect the overall physical condition of homes but rather provide specialized services. These services include energy audits, forensic evaluation and home performance testing. Each term is defined. The term "home inspection" specifically excludes these services. The terms "component" and "system" are clarified with respect to home energy appliances – namely, hot water heaters, furnaces and air conditioners.
- 812-008-0030 is amended to do the following: (1) Clarify the "grandfather" exemption created under earlier law; and (2) Add new exemptions for: (a) energy audit; (b) forensic evaluation; and (c) home performance testing. The references to ORS 701.350(1) and 701.350(2) are removed from sections (1) and (2) of the rule. Those statutory provisions do not contain express exemptions. The only statutory exemption is for "grandfathered" contractors, in OAR 812-008-0030(3)(a).

Signature Catherine Dixon December 13, 2011
Printed name Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 p.m. on the preceding workday.

ARC 930-2005

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a copy of the notice. To view the language of each individual rule change, please go to our web site at http://www.oregon.gov/CCB/Laws_Rules.shtml#Administrative_Rule_Notices. If you don't have web access, contact Cathy Dixon at (503) 934-2185 for assistance in receiving a copy.

812-008-0000

Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS chapter 701.

(2) Purpose.

(a) The purpose of these rules is to create a program to certify home inspectors.

(b) These rules prescribe the requirements for certification and practices of individuals, and licensing of businesses engaged in home inspections.

(c) These rules cover businesses and all individuals who offer to undertake, submit a bid to undertake or undertake a home inspection.

(d) These rules identify when an inspection and report that is limited to one or more specific systems or components of a residential structure or appurtenance is not a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.

(3) Scope.

(a) These rules are limited to the establishment of certification for individuals and licensing of businesses that offer to undertake, submit a bid to undertake or undertake certified home inspections.

(b) These rules prescribe the requirements for, and the manner of certifying applicants to be Oregon certified home inspectors and the licensing of businesses employing these individuals, to assure the protection of consumers.

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

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355.

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 6/00, 12/11 eff. 1/1/12)

812-008-0020

Definitions

The following definitions apply to Division 8 of OAR chapter 812:

(1) "Administrator" means the Administrator of the agency.

(2) "Agency" means the Oregon Construction Contractors Board.

(3) "Automatic safety controls" means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.

(4) "Central air conditioning" means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

(5) "Certified individual" means an individual who successfully passes a test accredited by the agency, completes the education required for renewal, and satisfies any other requirements established by OAR chapter 812.

(6) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.

"Component" also includes, but is not limited to, the separate parts of an installed appliance or an electric or gas-powered system, including, but not limited to, a water heater, furnace or air conditioning unit.

(7) "Conspicuous" as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(8) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.

(9) “Dangerous or adverse situations” means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.

(10) “Describe” means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.

(11) “Dismantle” means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.

(12) “Energy audit” means evaluation or testing of components or systems with a focus on energy efficiency or renewable energy, which may lead to recommendations that improve energy efficiency or renewable energy generation. “Energy audit” also includes quality assurance review or verification of installed or retrofitted components or systems impacting energy efficiency or renewable energy generation.

~~[(12)]~~ **(13)** “Enter” means to go into an area and observe all visible components.

(14) “Forensic evaluation” means evaluation or testing of components or systems for purposes of envelope analysis, materials testing or failure due to water intrusion or other external causes.

~~[(13)]~~ **(15)** “Functional drainage” means a drain is functional when it empties in a reasonable amount of time.

~~[(14)]~~ **(16)** “Functional flow” means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(17) “Home performance testing” means evaluation or testing of components or systems for purposes of comfort, energy efficiency, safety or indoor air quality.

~~[(15)]~~ **(18)** “Home inspection” means an inspection of ~~[more than one inspection category]~~ **substantially all of the components or systems** as set forth in 812-008-0205 through 812-008-0214 **for the purpose of determining the overall physical condition and habitability of the inspected structure at the time of inspection.** A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction. **A home inspection does not include energy audit, forensic evaluation or home performance testing.**

~~[(16)]~~ **(19)** “Installed” means attached or connected such that the installed item requires tools for removal.

~~[(17)]~~ **(20)** “Normal operating controls” means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

~~[(18)]~~ **(21)** “Observe” means the act of making a visual examination.

~~[(19)]~~ **(22)** “On-site water supply quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water.

~~[(20)]~~ **(23)** “On-site water supply quantity” means the water quantity based on the rate of flow of water.

~~[(21)]~~ **(24)** “Operate” means to cause systems or equipment to function.

~~[(22)]~~ **(25)** “Oregon certified home inspector” means a person certified pursuant to **ORS chapter 701,** chapter 814, 1997 Oregon Laws and OAR chapter 812.

~~[(23)]~~ **(26)** “Readily accessible panel” means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

~~[(24)]~~ **(27)** “Representative number” for multiple identical components such as windows and electrical outlets means one such component per room; for multiple identical exterior components, one such component on each side of the building.

~~[(25)]~~ **(28)** “Roof drainage systems” means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

~~[(26)]~~ **(29)** “Shut down” means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the “off” position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

~~[(27)]~~ **(30)** “Solid fuel heating device” means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

~~[(28)]~~ **(31)** “Structural component” means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

~~[(29)]~~ **(32)** “System” means a combination of interacting or interdependent components, assembled to carry out one or more functions. **“System” also includes, but is not limited to, an installed appliance or an electric or gas-powered system, including but not limited to, a water heater, furnace or air conditioning unit.**

~~[(30)]~~ **(33)** “Technically exhaustive” means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

~~[(31)]~~ **(34)** “Test” means a test administered by the agency.

~~[(32)]~~ **(35)** “Underfloor crawl space” means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 12/04, 6/06, 12/11 eff. 1/1/12)

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 residential general contractor or residential specialty contractor, and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) The following persons are exempt from the requirements of this rule.

(a) Persons registered each year as a general contractor under ORS chapter 701 during the period from January 1, 1991, through August 11, 1997, as provided in [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].

(b) Persons performing an energy audit or issuing a report on an energy audit.

(c) Persons performing a forensic evaluation or issuing a report on a forensic evaluation.

(d) Persons performing home performance testing or issuing a report on a home performance testing.

(4) No person, including persons covered by section (3) of this rule, shall use the title Oregon certified home inspector without receiving such certification from the agency.

~~[(4)]~~ **(5)** Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

~~[(5)]~~ **(6)** All certificates to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350 & 355

(2/98, 10/98, temp. 6/99, 9/99, 6/00, 5/02, 2/08, 12/11 eff. 1/1/12)