

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on July 8, 2011 by the
(Date prior to or same as filing date.)

Construction Contractors Board OAR 812
(Agency and Division) (Administrative Rules Chapter Number)
Catherine Dixon 700 Summer St NE Suite 300, Salem OR 97301 934-2185
(Rules Coordinator) (Address) (Telephone)
to become effective July 8, 2011 through January 4, 2012
(Date upon filing or later) (A maximum of 180 days including the effective date.)

RULE CAPTION

Amend and Adopt rules to implement SB 939, Dispute Resolution Services Change to Mediation Only Process
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 rules) with the Administrative Rules Unit prior to filing

ADOPT:

812-004-1001	812-004-1180	812-004-1260	812-004-1360	812-004-1460	812-004-1530
812-004-1110	812-004-1195	812-004-1300	812-004-1400	812-004-1490	812-004-1537
812-004-1120	812-004-1210	812-004-1320	812-004-1420	812-004-1500	812-004-1600
812-004-1140	812-004-1240	812-004-1340	812-004-1440	812-004-1510	
812-004-1160	812-004-1250	812-004-1350	812-004-1450	812-004-1520	

AMEND:

812-004-0001 812-009-0010 812-010-0020

SUSPEND:

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.145, 701.235, 1999 OR Laws ch. 849, sect. 8

Other Auth.: SB 939 (2011) implementation

Stats. Implemented: ORS 36.600 to 36.600; ch. 183, 183.413 to 183.470, 701.133, 701.139, 701.140, 701.145, 701.146, 701.148, SB 939 (2011)

RULE SUMMARY

812-004-0001, 812-009-0010, and 812-010-0020 are amended to implement SB 939 (2011). They identify the existing rules as applicable to complaints filed before July 1, 2011.

812-004-1001, 812-004-1110, 812-004-1120, 812-004-1140, 812-004-1160, 812-004-1180, 812-004-1195, 812-004-1210, 812-004-1240, 812-004-1250, 812-004-1260, 812-004-1300, 812-004-1320, 812-004-1340, 812-004-1350, 812-004-1360, 812-004-1400, 812-004-1420, 812-004-1440, 812-004-1450, 812-004-1460, 812-004-1490, 812-004-1500, 812-004-1510, 812-004-1520, 812-004-1530, 812-004-1537, 812-004-1600 are adopted to implement SB 939 (2011).

	Catherine Dixon	July 8, 2011
Signature	Printed name	Date

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

ARC 940-2005

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.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Construction Contractors Board
Agency and Division

OAR 812
Administrative Rules Chapter Number

In the Matter of: Amendments to OAR 812

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Amend and Adopt rules to implement SB 939, Dispute Resolution Services Change to Mediation Only Process

Statutory Authority: ORS 183.310 to 183.500, 670.310, 701.145, 701.235, 1999 OR Laws ch. 849, sect. 8

Other Authority: SB 939 (2011) implementation

Stats. Implemented: ORS 36.600 to 36.600; ch. 183, 183.413 to 183.470, 701.133, 701.139, 701.140, 701.145, 701.146, 701.148, SB 939 (2011)

Need for the Temporary Rule(s):

- 812-004-0001, 812-009-0010, and 812-010-0020 are amended to implement SB 939 (2011). They identify the existing rules as applicable to complaints filed before July 1, 2011.
- 812-004-1001, 812-004-1110, 812-004-1120, 812-004-1140, 812-004-1160, 812-004-1180, 812-004-1195, 812-004-1210, 812-004-1240, 812-004-1250, 812-004-1260, 812-004-1300, 812-004-1320, 812-004-1340, 812-004-1350, 812-004-1360, 812-004-1400, 812-004-1420, 812-004-1440, 812-004-1450, 812-004-1460, 812-004-1490, 812-004-1500, 812-004-1510, 812-004-1520, 812-004-1530, 812-004-1537, 812-004-1600 are adopted to implement SB 939 (2011). SB 939 changes the CCB DRS process by eliminating hearings and moves to a mediation only process.

Documents Relied Upon, and where they are available: ORS 701 and OAR 812 and SB 939 (2011). Documents are on the agency website at www.oregon.gov/ccb or a paper copy is available upon request.

Justification of Temporary Rule(s):

The CCB finds that following the permanent rulemaking process, instead of taking this temporary rulemaking action, would result in serious prejudice to the public interest. The rule amendments and adoptions are needed immediately to implement SB 939, which becomes operative July 1, 2011.

	Catherine Dixon	July 8, 2011
Signature	Printed name	Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2005

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534)

FOR ADMINISTRATIVE RULES

AGENCY NAME: Construction Contractors Board
ADDRESS: 700 Summer St. NE Ste 300
CITY/STATE: Salem OR 97309
PHONE: (503) 378-4621

PERMANENT:
TEMPORARY:

HEARING DATE:
EFFECTIVE DATE: July 8, 2011

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL
RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

- 812-004-0001, 812-009-0010, and 812-010-0020 are amended to implement SB 939 (2011). They identify the existing rules as applicable to complaints filed before July 1, 2011.
- 812-004-1001, 812-004-1110, 812-004-1120, 812-004-1140, 812-004-1160, 812-004-1180, 812-004-1195, 812-004-1210, 812-004-1240, 812-004-1250, 812-004-1260, 812-004-1300, 812-004-1320, 812-004-1340, 812-004-1350, 812-004-1360, 812-004-1400, 812-004-1420, 812-004-1440, 812-004-1450, 812-004-1460, 812-004-1490, 812-004-1500, 812-004-1510, 812-004-1520, 812-004-1530, 812-004-1537, 812-004-1600 are adopted to implement SB 939 (2011).

Description of the need for, and objectives of the rule:

- 812-004-0001, 812-009-0010, and 812-010-0020 are amended to implement SB 939 (2011). They identify the existing rules as applicable to complaints filed before July 1, 2011.
- 812-004-1001, 812-004-1110, 812-004-1120, 812-004-1140, 812-004-1160, 812-004-1180, 812-004-1195, 812-004-1210, 812-004-1240, 812-004-1250, 812-004-1260, 812-004-1300, 812-004-1320, 812-004-1340, 812-004-1350, 812-004-1360, 812-004-1400, 812-004-1420, 812-004-1440, 812-004-1450, 812-004-1460, 812-004-1490, 812-004-1500, 812-004-1510, 812-004-1520, 812-004-1530, 812-004-1537, 812-004-1600 are adopted to implement SB 939 (2011). SB 939 changes the CCB DRS process by eliminating hearings and moves to a mediation only process.

List of rules adopted or amended:

Adopt:

812-004-1001	812-004-1180	812-004-1260	812-004-1360	812-004-1460	812-004-1530
812-004-1110	812-004-1195	812-004-1300	812-004-1400	812-004-1490	812-004-1537
812-004-1120	812-004-1210	812-004-1320	812-004-1420	812-004-1500	812-004-1600
812-004-1140	812-004-1240	812-004-1340	812-004-1440	812-004-1510	
812-004-1160	812-004-1250	812-004-1350	812-004-1450	812-004-1520	

Amend:

812-004-0001	812-009-0010	812-010-0020
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Materials and labor costs increase or savings:

The rule amendments have no known impact on materials and labor costs.

Estimated administrative construction or other costs increase or savings:

The rule amendments have the following impact on administrative construction or other cost increases or savings. Currently, a complainant pays \$50 to file a CCB complaint. There is no additional cost to complainant or respondent, if the complainant requests an administrative hearing. Under the new rules (and SB 939), complainants that do not settle may go to arbitration or court. The following indicates those costs:

Action/Fee	Arbitration	Small Claims Court	Circuit Court
Complainant/Plaintiff:			
• Filing/processing fee	½ of \$975 - \$8,700	\$46.50 - \$86.50	\$197 - \$527
• Civil service		\$36.00	\$36.00
• Atty. Fees	Unknown	\$0	Unknown
Respondent/Defendant:			
• Filing/processing fee	½ of \$975 - \$8,700	\$74 - \$143, plus \$150 for jury trial	\$197 - \$527
• Atty. Fees	Unknown	\$0	Unknown

Where there is a range, the amount of filing and processing fees are usually determined by the amount of damages sought.

The Construction Contractors Board (CCB) budget (HB 5012 (2011)) eliminated Dispute Resolution Services (DRS) hearings held at the Office of Administrative Hearings (OAH), saving CCB \$1,025,000. The resulting changes necessary to implement the elimination of CCB’s DRS hearings and move to the mediation only process are contained in SB 939 (2011).

Land costs increase or savings:

The rule amendments have no measurable impact on the cost of new home or a building lot.

Other costs increase or savings:

The proposed rules have the following fiscal impact on state agencies, units of local government or the public. The Construction Contractors Board (CCB) budget (HB 5012 (2011)) eliminated Dispute Resolution Services (DRS) hearings held at the Office of Administrative Hearings (OAH) saving CCB \$1,025,000. Presumably, an equal amount of revenue is eliminated for OAH. The resulting changes necessary to implement the elimination of CCB’s DRS hearings and move to the mediation only process are contained in SB 939 (2011). See other costs in the chart above.

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: Catherine Dixon
EMAIL ADDRESS: catherine.a.dixon@state.or.us

812-004-0001

Application of Rules

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

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

- (a) OAR 812-004-0001 through 812-004-0240;
- (b) OAR 812-004-0260 through 812-004-0320;
- (c) OAR 812-004-0340, except 812-004-0340(2)(c), (2)(i) and (8);
- (c) OAR 812-004-0420;
- (d) OAR 812-004-0520; and
- (e) OAR 812-004-0550 through 812-004-0600.

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

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

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

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

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

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

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

812-004-1001

Application of Rules

(1) The rules in 812-004-1001 to 812-004-1600 apply to all complaints filed under ORS 701.145 on or after July 1, 2011.

(2) The following rules apply to a complaint filed under ORS 701.146:

- (a) OAR 812-004-1001 through 812-004-1240;**
- (b) OAR 812-004-1260 through 812-004-1320;**
- (c) OAR 812-004-1340, except 812-004-1340(2)(c), (2)(i) and (8);**
- (c) OAR 812-004-1420;**
- (d) OAR 812-004-1520; and**
- (e) OAR 812-004-1600.**

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1110

Complaint Processing Fee; Waiver of Fee

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

(2) The agency must collect the processing fee under OAR 812-004-1400.

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

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

(a) The complainant is an individual;

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

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

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1120

Liability of Licensee

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1140

Liability of Contractor for Complaint Related to Contractor's Property

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1160

Establishment of Co-Complainant

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1180

Complainant's Responsibility to Pursue Complaint

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

(2) The agency may close a complaint under OAR 812-004-1260 if:

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

(b) The complainant does not respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 812-004-1260(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1195

Exhibits

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1210

Address of Complainant and Respondent

(1) All communications directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1240

Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1250

Payments From the Bond for Court Costs, Complaint Processing Fee, Interest and Other Costs

(1) For complaints filed under ORS 701.145, the agency may include the following costs in the amount of a judgment that is subject to payment by a surety or financial institution:

(a) Court costs;

(b) Interest;

(c) Costs, other than attorney fees, to pursue litigation or the complaint; or

(d) Service charges or fees.

(2) For complaints filed under ORS 701.145, the agency's determination of payment due from a surety or financial institution may not include amounts arising out of claims for anything other than construction work involving negligence, improper work or breach of contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1260

Closing a Complaint

(1) The agency may close a complaint because:

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

(b) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140;

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

(d) The complainant failed to pay the complaint processing fee as required under OAR 812-004-1110 and 812-004-1400;

(e) The complaint contains a mediation or arbitration agreement that the complainant has not waived;

(f) The complainant does not comply with the on-site meeting requirements as provided in OAR 812-004-1450(2);

(g) The complainant and respondent settle the complaint as provided in OAR 812-004-1500;

(h) The complainant does not, within 30 days of the date of completion of the settlement agreement, notify the agency whether the terms of the settlement agreement have been fulfilled;

(i) The complainant fails to provide documents to the agency as required by OAR 812-004-1520; or

(j) The agency does not timely receive evidence of a stay or counter-suit on a construction lien complaint, as provided in OAR 812-004-1530.

(2) The agency may close a complaint under section (1) of this rule if the agency notifies the complainant that complainant must provide information or that complainant must comply with an agency rule and that:

(a) Failing to respond to the agency's request may result in closing the complaint; and

(b) Closing the complaint will prevent access to the bond, letter of credit or cash deposit.

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

(4) The agency may, within 60 days after closing a complaint, reopen a complaint closed under section (1) of this rule if the complainant did not comply with the agency's request or failed to comply with an agency rule due to excusable neglect by the complainant. The agency may reopen the complaint after receiving evidence supporting reopening the complaint.

(5) The agency's determination to close a complaint is an order in other than a contested case.

(6) The agency's determination to close a complaint is subject to judicial review under ORS 183.484.

(7) A party must file a motion for reconsideration of the agency's determination to close a complaint before seeking judicial review of the order.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1300

Filing Date of Complaint

(1) Except as provided under section (3) of this rule, a complaint filed with the agency under ORS 701.139 is deemed to have been filed when a complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-1340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-1340(2)(m) related to pre-complaint notice, that person may resubmit the complaint with the required evidence. If the resubmitted complaint satisfies the agency that the person met the requirements under OAR 812-004-1340(2)(m) before the agency received the original complaint, the complaint is deemed to have been filed on the date the complaint was first received by the agency.

(4) A complaint that does not fully comply with the requirements of OAR 812-004-1340 is subject to OAR 812-004-1350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.133(1) and 701.146(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1320

Jurisdictional Requirements

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

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

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

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. A surety company or financial institution is only liable for payments for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant, or the employee that is the subject of the trust, performed work that was not paid for. A surety company or financial institution is only liable for payments for unpaid wages or benefits provided on days on which the respondent was licensed.

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

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.021 in order to perform the work; and

(B) The complaint does not arise from defects, deficiencies or inadequate performance of construction work.

(b) As used in section (4) of this rule, “properly licensed” means the complainant:

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

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

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-1250 as they applied to the complainant’s license status as an “exempt” or “nonexempt” contractor; and

(D) Complied with any other requirements and restrictions on the complainant’s license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

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

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

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

(d) A real estate purchase conditioned upon repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be closed if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed without a determination on the merits before the on-site meeting;

(c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110 or 812-004-1110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

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

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount, not including the processing fee required by 812-004-1110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1340

Form of Complaints, Pre-Complaint Notice

(1) A complaint must be submitted on a complaint form provided by the agency. The agency may require the use of the most recent revision of the complaint form.

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

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

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

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

(d) Identification of the type of complaint;

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

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

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

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

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

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

(k) A certification by the complainant that the information provided on the complaint form is true;

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

(m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS 701.133.

(n) Additional information required under sections (3) through (8) of this rule.

(3) A subcontractor complaint must include copies of each original invoice relating to the complaint.

(4) An employee complaint must include evidence that an employee worked for a contractor and evidence of the amount of unpaid wages or benefits. Evidence may include:

(a) Time cards;

(b) Paycheck stubs;

(c) W-4 forms; or

(d) A sworn affidavit or written declaration under perjury of a third-person stating facts that indicate the employee worked for the contractor. A written declaration under perjury must contain the following statement, "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

(5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

(a) The hours worked without payment of employee benefits;

(b) The amount of the unpaid benefits;

(c) The address of the job site where the employee worked; and

(d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien complaint must include evidence that the complainant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the

ledger sheet or other accounting of invoices from the lienor, if applicable, and any foreclosure documents.

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

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

(9) A complaint must include one of the following:

(a) A copy of the pre-complaint notice required under ORS 701.133 and of the certified or registered mail receipt for the pre-complaint notice; or

(b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:

(A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or

(B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.

(c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:

(A) Copies of a complaint or answer in the court action; or

(B) Copies of a document that initiated the mediation or arbitration.

(d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-1350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1350

Procedure if Information on Complaint Form is Incomplete

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1360

Addition of Complaint Items at On-Site Meeting

If the agency holds an on-site meeting, the complainant may add new complaint items up to and through the initial on-site meeting. New items added to a timely filed complaint under this rule are considered timely filed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1400

Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

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

(b) Verify that the complainant has provided information required under OAR 812-004-1340 and request additional information from the complainant if necessary;

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

(2) If the agency makes a preliminary determination under subsection (1)(c) of this rule that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-1110, the agency must request payment of the complaint processing fee. The agency may suspend processing of the complaint until complainant pays this fee.

(3) If the complainant does not pay the fee required under OAR 812-004-1110 within 14 days of written notification that the fee is due, the agency may close the complaint. The agency may extend the time for payment of the fee upon a showing of good cause by the complainant.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1420

Processing Owner and Primary Contractor Complaints Together

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1440

Contracts With Arbitration Agreements

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate 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.

(2) If the contract requires mediation or arbitration, the agency may notify the complainant in writing that the agency must close the complaint pursuant to OAR 812-004-1260(1)(e) unless, within 40 days, the agency receives:

(a) A written waiver of mediation or arbitration signed by the complainant; or

(b) Evidence that the complainant or respondent initiated mediation or arbitration to resolve the same facts and issues raised in the complaint.

(3) If the agency does not receive the written waiver of mediation or arbitration or evidence that the complainant or respondent initiated mediation or arbitration, the agency may close the complaint.

(4) The agency must inform the respondent by written notice that, if the respondent wants to mediate or arbitrate under the contract, respondent must initiate the mediation or arbitration process under the contract within the time allowed under ORS 701.180 and submit evidence to the

agency within 40 days from the date of the agency's written notice that the respondent initiated mediation or arbitration under the contract.

(5) If mediation or arbitration under the contract is timely commenced under ORS 701.180, the agency must suspend processing the complaint until the mediation or arbitration is complete.

(6) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.133 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under section (4) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1450

On-site Meeting and Telephone Mediation; Attendance of the Complainant

(1) The agency may schedule one or more on-site meetings or telephone mediations among the parties for the purpose of discussing a settlement of a complaint under ORS 701.145. The agency must mail notice of an on-site meeting no less than 14 days before the date scheduled for the meeting. The notice must include notice of the requirements of section (2) and (3) of this rule and must comply with the requirements of OAR 812-004-1260(2).

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

(a) The complainant must allow access to the property that is the subject of the complaint.

(b) The complainant or an agent of the complainant must attend the meeting. An agent of the complainant must have knowledge of all complaint items included in the complaint and must have authority to enter into a settlement of the complaint.

(c) The complainant must allow the respondent to be present at the on-site meeting as required by ORS 701.145.

(3) If the complainant does not comply with the requirements of section (2) of this rule, the agency may close the complaint. OAR 812-004-1260 applies to closure of a complaint under this section.

(4) Except as provided in subsection (2)(c), the agency may continue to process the complaint if the respondent does not appear at the on-site meeting.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1460

Agency Recommendation of Resolution

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1480

Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the complainant and respondent for their consideration and agreement at or after an on-site meeting or telephone mediation conducted under OAR 812-004-0450.

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: SB 939 (2011)
(temp. 7/11)

812-004-1490

Subsequent On-Site Meetings; Determining Compliance; Closing Complaint

(1) If a dispute arises as to whether the respondent complied with the settlement agreement, the agency may schedule a subsequent on-site meeting.

(2) If the agency determines that the respondent complied with the terms of the settlement agreement, the agency may close the complaint.

(3) If the agency determines that the respondent did not comply with the terms of the settlement agreement, the complainant must obtain a judgment and submit the judgment to the agency in order to recover under the respondent's bond.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: SB 939 (2011)
(temp. 7/11)

812-004-1500

Closure of Complaint After Settlement

If the complainant and respondent agree to a settlement, within 30 days from the date the settlement agreement requires completion of the terms of the settlement, the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: SB 939 (2011)
(temp. 7/11)

812-004-1505

Complaint Not Settled

(1) For other than a BOLI final order, if the complainant and respondent do not settle the complaint, the complainant must obtain a court judgment, including a judgment on an arbitration award, in order to recover from the respondent's bond.

(2) The agency will process the judgment and issue its determination as to the amount of the judgment that complainant is entitled to recover from respondent's bond.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: SB 939 (2011)
(temp. 7/11)

812-004-1510

Court Judgments, Arbitration Awards and Bureau of Labor and Industries Final Orders

(1) A judgment based on a court action or arbitration award or a Bureau of Labor and Industries (BOLI) final order constitute the basis for a complaint if:

(a) A complaint is filed under OAR 812-004-1300 and 812-004-1340 within the time limit in ORS 701.143; and

(b) All or a portion of the judgment or the BOLI final order is within the jurisdiction of the agency.

(2) A complaint based on a judgment or BOLI final order will be processed under OAR 812-004-1520.

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: SB 939 (2011)
(temp. 7/11)

812-004-1520

Processing of Complaint Based on Judgments and Bureau of Labor and Industries Final Orders

(1) The agency may suspend processing a complaint if:

(a) The complainant or respondent submits to a court, arbitrator or BOLI a complaint based on the same facts and issues contained in the complaint filed with the agency; or

(b) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(2) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the notice of defect or action before the court, arbitrator or BOLI.

(3) The agency may, at any time, demand from the complainant a written report describing the current status of the notice of defect or the action before the court, arbitrator or BOLI. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(4) Within 30 days from the date of final action by the court or BOLI, the complainant must deliver to the agency a certified copy of the final judgment or BOLI final order. The agency may extend the time in which to submit the final judgment or BOLI final order if it determines there is good cause to do so.

(5) If the complainant does not comply with sections (2), (3) or (4) of this rule, the agency may close the complaint under OAR 812-004-1260(1)(i).

(6) If the agency suspends processing a complaint because respondent filed a court action, the complainant must file its complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the countersuit, complaint or counter claim, to the agency. The complainant must provide this information within 30 days from the date that the agency suspended processing the complaint, unless the agency determines there is good cause to extend the permissible time period.

(7) If the complainant does to submit the evidence required under subsection (6) of this rule, the agency may close the complaint.

(8) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-1450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1530

Construction Lien Complaints

(1) The agency may schedule one or more on-site meetings or telephone mediations among the parties to a construction lien complaint filed under ORS 701.140(2) and processed under ORS 701.145 for the purpose of discussing settlement of the complaint. Notice of the meeting must comply with OAR 812-004-1450(1). The agency may invite the lienor to participate in the settlement discussions. The on-site meeting may be held on the property of the complainant or another mutually agreeable site. OAR 812-004-1450(2), (3) and (4) apply to an on-site meeting held under this section.

(2) If the complaint does not settle, the complainant must:

(a) Join the respondent as a party in an action to foreclose the lien if the lienor has filed such an action; or

(b) File an action against respondent to recover damages caused by respondent's failure to pay for material, rental services, labor or subcontractor services that gave rise to the lien.

(3) The agency will suspend processing the complaint while the complainant complies with section (2) of this rule. If complainant fails, within 60 days from the date of the last on-site meeting or telephone mediation, to comply with section (2) of this rule, the agency may close the complaint. The agency may extend the time to comply with section (2) for good cause.

(4) While the court action described in section (2) is proceeding, the complainant must comply with OAR 812-004-1520.

(5) If a construction lien complaint involves the same facts and issues as any other open complaint, the agency may process the complaints together.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1537

Standards of Care and Workmanship

(1) For purposes of this rule, "NASCLA Standards" mean the Residential Construction Standards, dated March 20, 2009, as adopted by the National Association of State Contractors Licensing Agencies.

(2) Except as provided in section (3) of this rule, the agency will apply NASCLA standards; to the extent such standards cover the work at issue, in order to determine if construction work performed on a residential structure meets the standards of care and workmanship in the industry.

(3) The agency may apply a standard different than the NASCLA standard if:

(a) The contract between the parties provides for a standard of care and workmanship that differs from the NASCLA standard; or

(b) The work involved installation of a product for which the manufacturer provided installation instructions that establish a standard that differs from the NASCLA standard.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-004-1600

Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency must notify the surety company or financial institution the agency's determination. The determination is the amount of the judgment that is subject to payment by the surety or financial institution.

(2) A complaint is ready for payment when there is a court judgment and 30 days have elapsed or there is a BOLI final order and 60 days have elapsed and:

(a) The respondent has not paid the judgment or BOLI order;

(b) A court has not granted a stay of judgment or BOLI has not granted a stay of its final order; and

(c) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 are resolved, closed or have reached the same state of processing as the subject complaint.

(3) For purposes of section (2), a BOLI final order is final except that the 60-day period for judicial review has not expired.

(4) Complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the

agency received the complaint, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (4)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

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

(6) If the contractor holds a residential surety bond, that bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

(7) If the contractor holds a commercial surety bond, that bond is available only for payments ordered by the agency involving small or large commercial structures or for development of property zoned or intended for use compatible with small or large commercial structures.

(8) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (4) of this rule and the total amount due to be paid exceeds the total amount available from the surety bond, letter of credit or cash deposit, payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(9) The full penal sum of a bond is available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170 or 812-003-0171.

(10) If two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(11) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(12) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

(temp. 7/11)

812-009-0010

Application of Rules

Subject to OAR 812-004-0590, contested case hearings on complaints **filed before July 1, 2011**, arising under ORS 701.139-701.180 are governed by OAR 812-009-0020 – 812-009-0220 and OAR 137-003-0501–137-003-0700.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & 1999 Or. Laws, ch. 849, sect. 8
Stats. Implemented: ORS 183.413 to 183.470 & 701.145
(temp. 1/00, 5/00, 6/02, 12/06, temp. 7/11)

812-010-0020

Applicability of Rules; Application of ORS 36.600-36.740

(1) The rules in division 10 of this chapter apply **to complaints filed before July 1, 2011**, when:

(a) A complaint is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely complaint is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board must arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division is governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

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

Stats. Implemented: ORS 36.600 to 36.740, ch. 183, 701.133, 701.139 & 701.148
(10/98, 9/99, 12/01, 6/02, 9/02, 8/03, 12/03, 5/04, 10/04, 12/06, 6/08, temp. 7/11)