

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 5, 2006 by the
(Date prior to or same as filing date.)

<u>Construction Contractors Board</u> (Agency and Division)	<u>OAD 812</u> (Administrative Rules Chapter Number)
<u>Catherine Dixon</u> (Rules Coordinator)	<u>700 Summer Street NE Suite 300, Salem OR 97310</u> (Address)
	<u>378-4621 ext. 4077</u> (Telephone)

to become effective January 1, 2007. Rulemaking Notice was published in the November 2006 Oregon Bulletin.**
(Date upon filing or later) (Month and Year)

RULE CAPTION

Clarify mailing provisions, clarify breach of contract complaint procedures, make housekeeping revisions, and change terminology.
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.

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
812-001-0135 812-002-0143

AMEND:

812-001-0130	812-003-0400	812-004-0300	812-004-0510	812-009-0050	812-010-0085	812-010-0360
812-001-0500	812-003-0430	812-004-0320	812-004-0520	812-009-0070	812-010-0090	812-010-0380
812-002-0140	812-004-0001	812-004-0340	812-004-0530	812-009-0090	812-010-0100	812-010-0420
812-002-0250	812-004-0110	812-004-0350	812-004-0535	812-009-0100	812-010-0110	812-010-0425
812-002-0440	812-004-0120	812-004-0360	812-004-0540	812-009-0120	812-010-0120	812-010-0430
812-002-0460	812-004-0140	812-004-0400	812-004-0550	812-009-0140	812-010-0140	812-010-0460
812-002-0480	812-004-0160	812-004-0420	812-004-0560	812-009-0160	812-010-0200	812-010-0470
812-002-0540	812-004-0180	812-004-0440	812-004-0590	812-009-0200	812-010-0220	812-010-0480
812-002-0670	812-004-0195	812-004-0450	812-004-0600	812-009-0220	812-010-0260	
812-003-0150	812-004-0210	812-004-0460	812-005-0200	812-009-0400	812-010-0290	
812-003-0160	812-004-0240	812-004-0470	812-005-0800	812-009-0430	812-010-0300	
812-003-0175	812-004-0250	812-004-0480	812-009-0010	812-010-0020	812-010-0320	
812-003-0260	812-004-0260	812-004-0500	812-009-0020	812-010-0040	812-010-0340	

REPEAL:

812-002-0130

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend & Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 36.224, 183.310 to 183.500, 670.310, 701.085, 701.145, 701.150, 701.235, 701.992 and 1999 OR Laws, ch. 849, sect. 8
Stat. Auth.

Other Authority

ORS 25.270, 25.785, 25.900, 36.224, 26.228, 36.230, 36.232, 36.600 to 36.740, 36.690, 36.700, 36.705, 36.710, 87.057, 87.058, 87.093, 183, 183.413 to 183.470, 183.415, 183.425, 183.440, 183.445, 183.450, 183.460, 183.464, 183.470, 183.480, 183.482, 279C.590, 701, 701.005, 701.010, 701.035, 701.055, 701.065, 701.072, 701.075, 701.077, 701.078, 701.080, 701.085, 701.100, 701.102, 701.105, 701.115, 701.125, 701.139 to 701.180, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.150, 701.180, 701.225, 701.227, 701.235, 701.260, 701.992, & 1999 OR Laws, ch. 849, sect. 8

Stats. Implemented

RULE SUMMARY

- 812-001-0135 is adopted to establish the date of receipt of documents and clarifying that a document received after 5:00 p.m. is considered received the next day.
- 812-002-0143 is adopted to define complainant.
- 812-002-0460 is amended to change the word "claim" to "complaint" and to clarify the rule is meant to restore the complainant to the position he/she was in before construction started, which includes demolition costs and costs to restore property.
- 812-004-0210 is amended to change the word "claim" to "complaint", to simplify language, and to clarify that an initial notice of arbitration conducted by CCB must be sent registered or certified mail, but notices related to other arbitration proceedings may be sent by regular mail.
- 812-004-0440 is amended to change the word "claim" to "complaint", to simplify language and to allow the CCB to continue processing a complaint while waiting for a party to begin mediation or arbitration under the contract or waive their right to mediation or arbitration under the contract.
- 812-004-0450 is amended to change the word "claim" to "complaint", to simplify language and to clarify that the CCB may hold more than one on-site meeting.
- 812-004-0520 is amended to change the word "claim" to "complaint", to simplify language, correct cite reference, and add a new subsection (2)(d) that allow the agency to suspend complaint processing if an owner of a residential structure who is a complainant submits to the agency a copy of a notice of defect involving the structure at issue.
- 812-010-0020 is amended to change the word "claim" to "complaint", to simplify language and delete language no longer needed.
- 812-010-0260 is amended to change the word "claim" to "complaint", to simplify language and eliminate requirement that a recording be made on tape to allow for other types of recordings.
- 812-010-0420 is amended to change the word "claim" to "complaint", to simplify language and correct a cite reference.
- OAR 812-001-0130, 812-001-0500, 812-002-0140, 812-002-0250, 812-002-0440, 812-002-0480, 812-002-0540, 812-002-0670, 812-003-0150, 812-003-0160, 812-003-0175, 812-003-0260, 812-003-0400, 812-003-0430, 812-004-0001, 812-004-0110, 812-004-0120, 812-004-0140, 812-004-0160, 812-004-0180, 812-004-0195, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0350, 812-004-0360, 812-004-0400, 812-004-0420, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0510, 812-004-0530, 812-004-0535, 812-004-0540, 812-004-0550, 812-004-0560, 812-004-0590, 812-004-0600, 812-005-0200, 812-005-0800, 812-009-0010, 812-009-0020, 812-009-0050, 812-009-0070, 812-009-0090, 812-009-0100, 812-009-0120, 812-009-0140, 812-009-0160, 812-009-0200, 812-009-0220, 812-009-0400, 812-009-0430, 812-010-0040, 812-010-0085, 812-010-0090, 812-010-0100, 812-010-0110, 812-010-0120, 812-010-0140, 812-010-0200, 812-010-0220, 812-010-0290, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, 812-010-0425, 812-010-0430, 812-010-0460, 812-010-0470, and 812-010-0480 are amended to change the word "claim" to "complaint" and to simplify language.

Authorized Signer

Catherine Dixon
Printed Name

December 12, 2006
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 Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm 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) 378-4621 ext. 4077 for assistance in receiving a copy.

812-001-0135

Receipt Date of Documents

Any document delivered to the agency, including documents delivered by mail, fax, e-mail, or any other type of delivery, before or at 12:00:00 midnight will be considered received on the day of delivery ending at midnight. Any document delivered to the agency after 12:00:00 midnight will be considered received on the day of delivery beginning immediately after midnight.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

(12/06)

812-001-0130

Disposal of Large Objects Submitted as Exhibits

Large objects submitted with a [claim] **complaint** 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 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145

(10/98, 12/05, 12/06)

(Amended and renumbered from 812-001-0007, 12/05)

812-001-0500

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] **complaint** 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 nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 812-001-0500(7) and this agreement. This agreement relates to the following mediation:

a) _____
(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 812-001-0500(7), mediation communications in this mediation are: (check one or more)

Confidential and may not be disclosed to any other person.

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

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 administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.

c) _____
Name of Agency

Signature of Agency's authorized representative Date
(when agency is a party) or Agency employee acting
as the mediator (when Agency is mediating the dispute)

d) _____
Name of party to the mediation

Signature of party's authorized representative Date

e) _____
Name of party to the mediation

Signature of party's authorized representative Date

(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 section (9) of this rule is bound by the same confidentiality requirements as apply to the parties to the mediation.

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

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

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

the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

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

(A) A request for mediation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 36.224, 670.310 & 701.235

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

(3/99, 5/02, 12/04, 12/05, 12/06)

(Amended and renumbered from 812-001-0040, 12/05)

[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 & 701.235
Stats. Implemented: ORS 701.139 to 701.180
(12/03, 12/06)

812-002-0140

[Claims] Complaint

~~["Claims" as used in ORS chapter 701 are:]~~ **"Complaint," as used in ORS chapter 812, has the same meaning as "claim" in ORS 701.139-701.180. Complaints are classified by type as follows:**

(1) "Construction lien ~~[claim]~~ **complaint**" is a ~~[claim]~~ **complaint** filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien.

(2) "Employee ~~[claim]~~ **complaint**" is a ~~[claim]~~ **complaint** 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]~~ **complaint**" is a ~~[claim]~~ **complaint** 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]~~ **complaint**" is a ~~[claim]~~ **complaint** 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]~~ **complaint**" is a ~~[claim]~~ **complaint** filed by an owner for breach of contract, or for negligent or improper work subject to ORS chapter 701, or a construction lien ~~[claim]~~ **complaint**.

(6) "Primary contractor~~["~~~~[claim]~~ **complaint**" is a ~~[claim]~~ **complaint** by a primary contractor against a licensed subcontractor.

(7) "Subcontractor ~~[claim]~~ **complaint**" is a ~~[claim]~~ **complaint** 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 & 701.235
Stats. Implemented: ORS 87.058, 87.093 & 701
(4/98, 6/00, 5/02, 10/04, 12/06)

812-002-0143

Complainant

"Complainant" means a person who files a claim against a contractor under ORS 701.139 to 701.180.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.139 to 701.180
(12/06)

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]~~ **complaint**, "direct contractual relationship" means a relationship created by a contract between ~~[claimant]~~ **the complainant** and **the** respondent providing that **the** respondent perform construction work in return for valuable consideration conveyed directly from ~~[claimant]~~ **the complainant** to **the** respondent.

(2) For a material ~~[claim]~~ **complaint** or subcontractor ~~[claim]~~ **complaint**, "direct contractual relationship" means a relationship created by a contract between ~~[claimant]~~ **the complainant** and **the** respondent providing that ~~[claimant]~~ **the complainant** provide labor, material or rental equipment in return for valuable consideration conveyed directly from **the** respondent to ~~[claimant]~~ **the complainant**.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.235
(10/04, 12/06)

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] **complainant** means the most recent of:

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

(b) The forwarding address for the contractor or [claimant] **complainant**, 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 & 701.235
Stats. Implemented: ORS 701.080
(4/98, 3/99, 12/03, 12/06)

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] **complainant** 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, **plus the cost to demolish work that has no value, and to restore the property to the condition it was in before work began.**

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085 & 701.140
(4/98, 6/00)

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] **complaint**;

(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 & 701.235
Stats. Implemented: ORS 701.145
(4/98, 3/03, 12/06)

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] **complaint** 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 & 701.235

Stats. Implemented: ORS 701.010, 701.140 & 701.225

(4/98, 6/00, 9/01, 5/02, temp. 9/03, 12/03, 12/05, 12/06)

812-002-0670

Respondent

"Respondent" means a contractor that a [claim] **complaint** 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 & 701.235

Stats. Implemented: ORS 701.139-701.180

(temp. 1/00, 5/00, 4/01, 12/01, 12/05, 12/06)

812-003-0150

Bonds Generally

(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) A properly executed bond [shall] **must** 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."

(3) If a [claim] **complaint** 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] **must** be held until final disposition of the [claim] **complaint**.

(4) Bond documents received at the agency office from a surety company or agent via electronic facsimile [~~shall~~] **must** be accepted as original documents. The surety [~~shall~~] **must** provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

(12/04, 12/06)

812-003-0160

Entity Name Required on Bond

(1) The name of the entity as it appears on the bond must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

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

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners (except limited partners);

(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 limited partnership, the bond must be issued in the name of all general partners and the name of the limited partnership and any other business name(s) used. Limited partners do not need to be listed on the bond;

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

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

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

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

(12/04, 12/06)

812-003-0175

Increased Bond Amounts, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond in an amount up to five times the amount required for the category of license under OAR 812-003-0170, if:

(a) The business has unpaid debts under a final order or arbitration award of the board;

(b) An owner or officer of the business has unpaid debts under a final order or arbitration award of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order or arbitration award of the board and such debt remains unpaid.

(2) For purposes of this rule, "owner" means an "owner" as defined in ORS 701.077 and OAR 812-002-0537.

(3) For purposes of this rule, "officer" means an "officer" as defined in OAR 812-002-0533.

(4) Debts due under a final order or arbitration award of the board include amounts not paid by a surety on [~~owner or non-owner claims~~] **complaints**.

Stat. Auth.: ORS 670.310, 701.085(8) & 701.235

Stats. Implemented: ORS 701.085(8)

(temp. 3/06, 9/06, 12/06)

812-003-0260

Application for New License

(1) Each entity [~~shall~~] **must** complete an application form prescribed by the agency. Information provided on the form [~~shall~~] **must** include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name, date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust; or

(G) All members of a limited liability company, and if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees or members of the entity that is a member of the limited liability company that is the subject of this paragraph.

(d) Social security number of the owner of a sole proprietorship;

(e) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(f) Category of license requested as required under OAR 812-003-0130;

(g) Name and identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.072 or is otherwise exempt under Division 6 of these rules;

(h) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(i) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(j) Litigation, [~~claim~~] **complaint**, and licensing history;

(k) Criminal background;

(l) Independent contractor certification statement and 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; and

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond as required under OAR 812-003-0150; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

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

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.072, 701.075, 701.085, 701.105, &
701.125
(12/04, 8/05, 5/06, 9/06, 12/06)

812-003-0400

Restoration of Bond after Payment on [Claim] Complaint

If a surety company pays all or part of a [claim] **complaint** against a licensed contractor from the contractor's surety bond, the agency [shall] **must** 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) through (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 & 701.235

Stats. Implemented: ORS 701.085

(5/02, 12/04, 12/06)

(Amended and renumbered from 812-003-0040, 12/04)

812-003-0430

Time Period for Perfecting a Lien or [Claim] Complaint

For liens perfected and claims **or complaints** commenced on or after January 1, 1998:

- (1) The time period under ORS 701.065(2)(a)(A) and ORS 701.065(2)(c)(B) 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;
- (2) 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

Stats. Implemented: ORS 701.065

(12/04, 12/06)

812-004-0001

Application of Rules

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

(2) Except as provided in section (4) of this rule, the following rules apply to a [claim] **complaint** involving work on a large commercial structure or an appurtenance to the structure and any other [claim] **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 [claim] **complaint** involving work on a residential structure under section (1) of this rule apply to a [claim] **complaint** involving work on a small commercial structure or an appurtenance to the structure.

(b) The rules that apply to the [claim] **complaint** involving work on a large commercial structure under section (2) of this rule apply to a [claim] **complaint** involving work on a small commercial

structure or an appurtenance to the structure if the [claimant] **complainant** files the [claim] **complaint** under ORS 701.146.

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

- (a) The [claim] **complaint** is filed by the owner of the structure;
- (b) The total contract for the work is \$25,000 or less; and
- (c) The [claimant] **complainant** files the [claim] **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)

812-004-0110

[Claim] Complaint Processing Fee; Waiver of Fee

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

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

(3) A [claimant] **complainant** may request that the agency waive the [claim] **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 [claim] **complaint** processing fee if the waiver request submitted by the [claimant] **complainant** shows that:

(a) The [claimant] **complainant** is an individual;

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

(c) [Claimant's] **The complainant'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] **complainant**, who requests a waiver of the [claim] **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 [claimant] **complainant** pay a [claim] **complaint** processing fee of \$97 if the agency finds that the [claimant] **complainant** provided false information on a request for a waiver of the [claim] **complaint** processing fee submitted under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.146 & 701.147

(12/03, temp. 12/03, 2/04, 5/04, 12/06)

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, limited partnership or partnership, may be held individually liable for [claim-actions] **complaints** brought under ORS 701.139 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 183.310 to 183.500, 670.310 & 701.235

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

(10/98, 6/00, 12/01, 8/05, 12/06)

812-004-0140

Liability of Contractor for ~~[Claim]~~ Complaint Related to Contractor's Property

(1) If an employee ~~[claim]~~ complaint, material ~~[claim]~~ complaint or subcontractor ~~[claim]~~ 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 ~~[claimants]~~ 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(6).

(2) If a licensed contractor files a ~~[claim]~~ complaint against another licensed contractor arising from property owned by the contractor filing the ~~[claim]~~ complaint, the contractor filing the ~~[claim]~~ 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: ORS 701

(10/98, 6/00, 12/06)

812-004-0160

Establishment of ~~[Co-Claimant]~~ Co-Complainant

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.455, 701.140 & 701.145

(10/98, 12/01, 12/06)

812-004-0180

~~[Claimants']~~ Complainant's Responsibility to Pursue ~~[Claim]~~ Complaint

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

(2) The agency may close a ~~[claim]~~ complaint under OAR 812-004-0260 if:

(a) The ~~[claimant]~~ complainant ~~[fails to]~~ **does not** respond to a written request from the agency, or to provide requested information or ~~[documentation]~~ documents within a time limit specified in that request; or

(b) The ~~[claimant]~~ complainant ~~[fails to]~~ **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 812-004-0260.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145

(10/98, 4/01, 12/05, 12/06)

812-004-0195

Exhibits

(1) If a party to a ~~[claim]~~ 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: ORS 183.450 & 183.460

(10/04, 12/05, 12/06)

812-004-0210

Address of ~~[Claimant]~~ Complainant and Respondent

(1) Initial notice of a contested case or of arbitration conducted by the agency directed to the last known address of record of a party to a ~~[claim shall be]~~ complaint is 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]~~ complaint is 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]~~ complaint and until 90 days after the date the agency notifies the parties that the ~~[claim]~~ complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.080

(12/03, 12/06)

812-004-0240

Exhaustion of Surety Bond

~~[At any time during the processing of a claim, if the agency becomes aware of partial or full exhaustion of the surety bond by prior claims, it may notify the claimant and close the claim file, or it may process the claim to a final order and close the claim file.]~~ The agency may continue processing a complaint even though the surety bond related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.085, 701.145 & 701.150

(10/98, 12/04, 12/05, 12/06)

812-004-0250

Award of ~~[Claim]~~ Complaint 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]~~ complaint 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]~~ complaint;

(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]~~ complaint.

(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]~~ complaint 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]~~ complaint may include interest expressly allowed as damages under a contract that is the basis of the ~~[claim]~~ complaint.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a ~~[claim]~~ complaint processing fee paid by the ~~[claimant]~~ complainant 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] **complainant** to initiate under ORS 701.145 because of the nature or complexity of the [claim] **complaint**.

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

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 4/01, 12/01, 8/03, temp. 12/03, 2/04, 10/04, 8/05, 12/05, 12/06)

812-004-0260

Order Closing a [Claim] **Complaint**

(1) If the agency closes a [claim] **complaint** because the [claimant] **complainant** ~~failed to~~ **did not** act in response to a request from the agency, the closure of the [claim] **complaint** is an order that is not an order in a contested case. An order to close a [claim] **complaint** 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] **complaint** under this rule only if it complies with the following:

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

(b) The agency may not close the [claim] **complaint** sooner than 14 days after giving the ~~notification~~ **notice** required in subsection (2)(a) of this rule.

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

(3) The agency may reopen a [claim] **complaint** closed under this rule if the record of the [claim] **complaint** contains evidence that shows that the ~~cause of the failure of claimant to~~ **reason the complainant did not** act as requested by the agency was due to excusable neglect by the [claimant] **complainant**. The agency may reopen the [claim] **complaint**:

(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] **complaint**.

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.480, 701.140, 701.145 & 701.147

(04/01, 9/01, 5/02, 8/03, 12/04, 12/05, 12/06)

Filing of [Claims] **Complaints**

812-004-0300

Filing Date of [Claims] **Complaints**

(1) Except as provided under section (3) of this rule, a [claim] **complaint** submitted to the agency for processing under ORS 701.145 ~~shall be~~ **is** deemed to have been filed when a [Statement of Claim] **Breach of Contract Complaint** 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] **complainant** and respondent.

(2) The agency ~~shall~~ **must** return a [Statement of Claim] **Breach of Contract Complaint** that ~~fails to~~ **does not** meet the requirements of section (1) of this rule to the person who submitted the [claim] **complaint**.

(3) If the agency returns a [~~Statement of Claim~~] **Breach of Contract Complaint** to a person under section (2) of this rule because the person [~~failed to~~] **did not** meet the requirements of OAR 812-004-0340(2)(m) related to [~~pre-claim~~] **pre-complaint** notice, that person may resubmit the [~~Statement of Claim~~] **Breach of Contract Complaint** with the required evidence. If the resubmitted [~~Statement of Claim~~] **Breach of Contract Complaint** satisfies the agency that the person met the requirements under OAR 812-002-0340(2)(m,) before the agency received the original [~~Statement of Claim~~] **Breach of Contract Complaint**, the [~~claim shall be~~] **complaint is** deemed to have been filed on the date the [~~Statement of Claim~~] **Breach of Contract Complaint** was first received by the agency.

(4) A [~~Statement of Claim~~] **Breach of Contract Complaint** that does not fully comply with the requirements of OAR 812-004-0340 is subject to OAR 812-004-0350.

(5) The date of filing of a [~~claim~~] **complaint** submitted to the agency for processing under ORS 701.146 is the date when [~~claimant~~] **the complainant** complies with ORS 701.146(2) and 701.147(1).

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 3/03, 10/04, 12/05, 12/06)

812-004-0320

Jurisdictional Requirements

(1) A [~~claim~~] **complaint** must be of a type described under ORS 701.140.

(2) A [~~claim~~] **complaint** must be filed with the agency within the time allowed under ORS 701.143.

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

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

(b) For a material [~~claim~~] **complaint, the** respondent will be considered licensed if one or more invoices involve material delivered while **the** respondent was licensed. Damages will be awarded only for material delivered within the period of time that **the** respondent was licensed.

(c) For an employee or employee trust [~~claim~~] **complaint, the** respondent will be considered licensed if **the** respondent was licensed on one or more days that [~~claimant~~] **the complainant** or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which **the** respondent was licensed.

(4)(a) [~~Claimant~~] **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 [~~claim~~] **complaint** requires that [~~claimant~~] **the complainant** be licensed under ORS 701.055 in order to perform the work; and

(B) [~~Claimant~~] **The complainant** files a [~~claim~~] **complaint** arising out of a contract to construct the work at issue and the [~~claim~~] **complaint** is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, “properly licensed” means the [~~claimant~~] **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 [~~claim~~] **complaint**;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to [~~claimant’s~~] **the complainant’s** license status as an “exempt” or “nonexempt” contractor; and

(D) Complied with any other requirements and restrictions on [~~claimant’s~~] **the complainant’s** license.

(5) [~~Claims~~] **Complaints** will be accepted only when one or more of the following relationships exist[s] between the [~~claimant~~] **complainant** and the respondent:

(a) A direct contractual relationship based on a contract entered into by the [~~claimant~~] **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 ~~[claimant]~~ **the complainant** and **the** respondent providing that ~~[claimant]~~ **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 an inspection report or repairs made by the respondent.

(6) ~~[Claims]~~ **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 ~~[claim]~~ **complaint** or any portion of a ~~[claim]~~ **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 ~~[claim]~~ **complaint** previously filed by the same ~~[claimant]~~ **complainant** against the same respondent, except that the agency may process a ~~[claim]~~ **complaint** that would otherwise be dismissed under this section (7) if the previously filed ~~[claim]~~ **complaint** was:

(a) Withdrawn ~~[prior to]~~ **before** the on-site meeting;

(b) Closed or dismissed with an explicit provision allowing the subsequent filing of a ~~[claim]~~ **complaint** containing the same allegations as the closed or dismissed ~~[claim]~~ **complaint**; or

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

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

(9) A ~~[claim]~~ **complaint** by a person furnishing material, or renting or supplying equipment to a contractor may not include a ~~[claim]~~ **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) ~~[Claims]~~ **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.

(11) The agency may process a ~~[claim]~~ **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: ORS 701.065, 701.139, 701.140, 701.143, 701.145, 701.146 & 701.147
(10/98, 6/00, 12/01, 5/02, 3/03, 8/03, 12/03, 10/04, 12/04, 12/05, 12/06)

812-004-0340

Form of ~~[Claims]~~ **Complaints, ~~[Pre-claim]~~ **Pre-complaint** Notice**

(1) A ~~[claim]~~ **complaint** must be submitted on a ~~[Statement of Claim]~~ **complaint** form provided by the agency. **The complaint form shall be entitled “Breach of Contract Complaint.”** The agency may require the use of the most recent revision of the ~~[Statement of Claim]~~ **complaint** form.

(2) The ~~[claimant shall]~~ **complainant must** submit the following information **on or** with the ~~[Statement of Claim]~~ **complaint form required under section (1) of this rule** if applicable:

(a) The name, address and telephone number of the ~~[claimant]~~ **complainant**;

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

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

(d) Identification of the type of ~~[claim]~~ **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 ~~[claim]~~ **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 contractor, if known;
(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the ~~[claimant]~~ **complainant** that the ~~[Statement of Claim]~~ **information provided on the complaint form** is true;

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

(m) ~~[Documentation]~~ **Documents** described in section (9) of this rule that ~~[is]~~ **are** related to the ~~[pre-claim]~~ **pre-complaint** notice requirement in ORS 701.147.

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

(3) A subcontractor ~~[claim]~~ **complaint** must include copies of each original invoice relating to the ~~[claim]~~ **complaint**.

(4) An employee ~~[claim]~~ **complaint** must include copies of time cards or other evidence of the amount of ~~[compensation-claimed]~~ **wages or benefits requested**.

(5) An employee trust ~~[claim]~~ **complaint** must include the name of each employee that is the subject of the ~~[claim]~~ **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 ~~[claim]~~ **complaint** must include evidence that the ~~[claimant]~~ **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 ~~[lien-claimant]~~ **lienor**, if applicable, and any foreclosure documents.

(7) A material ~~[claim]~~ **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 ~~[claim]~~ **complaint**.

(8) A ~~[claim]~~ **complaint** involving negligent or improper work must include a list of the alleged negligent or improper work. A ~~[claim]~~ **complaint** involving a breach of contract ~~[shall]~~ **must** describe the nature of the breach of contract.

(9) A ~~[claim]~~ **complaint** must include one of the following:

(a) A copy of the ~~[pre-claim]~~ **pre-complaint** notice required under ORS 701.147 and of the certified or registered mail receipt for the ~~[pre-claim]~~ **pre-complaint** notice; or

(b) Written evidence that **the** respondent had actual notice of the dispute that is the subject of the ~~[claim]~~ **complaint** at least 30 days before ~~[claimant]~~ **the complainant** filed the ~~[claim]~~ **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 ~~[claim]~~ **complaint** sent to **the** respondent by ~~[claimant]~~ **the complainant**; or

(B) A letter signed by **the** respondent acknowledging receipt of a notice of intent to file a ~~[claim]~~ **complaint**.

(c) Written evidence that ~~[claimant]~~ **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 ~~[claim]~~ **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 [claimant] **the complainant** and **the** respondent are parties to another [claim] **complaint** filed with the agency arising from the same contract or issues that are the subject of the [claim] **complaint**.

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

(11) The [Statement of Claim] **completed complaint** form must be signed by the [claimant] **complainant** or an agent of the [claimant] **complainant**.

(12) A [Statement of Claim] **complaint form submitted to the agency** 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

(10/98, 6/00, 4/01, 12/01, 5/02, 3/03, 12/03, 12/05, 12/06)

812-004-0350

Procedure if Information on [Statement of Claim] Complaint Form is Incomplete

If the agency receives a [Statement of Claim] **complaint form** that does not meet the requirements of OAR 812-004-0340, the agency may close the [claim] **complaint** if the [claimant fails to] **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: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

(3/03, 12/06)

812-004-0360

Addition of [Claim] Complaint Items at On-Site Meeting

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

(10/98, 11/02, 12/05, 12/06)

Administrative Processing of [Claim] Complaint

812-004-0400

Initial Administrative Processing of [Claims] Complaints; Collection of Fee

(1) Upon receipt of a [claim] **complaint**, the agency [shall] **must** :

(a) Send a copy of the [claim] **complaint** to the respondent;

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

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

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

(e) If the agency determines that the [claim] **complaint** should be dismissed based on the information submitted by [claimant] **complainant**, the agency [shall] **must** issue a proposed order to dismiss under OAR 812-004-0550. If the [claimant] **complainant** requests a hearing on the dismissal and the agency

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

(f) If the [claimant fails to] **complainant does not** 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] **complaint**. 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] **complaint**. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a [claim] **complaint** 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] **complaint**.

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 6/00, 12/01, 6/03, 12/03, 12/06)

812-004-0420

Processing Owner and Primary Contractor [Claim] Complaints Together

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

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 12/05, 12/06)

812-004-0440

Contracts With Arbitration Agreements

(1) If a [claim] **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. Unless the contract requires mediation or arbitration by the agency, the agency [shall] **must** take the following action:

(a) The agency [shall] **must** inform the [claimant] **complainant** by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the [claim] **complaint** 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] **complainant**; or

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

(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] **complainant** within 30 days [of] **from** the date of the written notice described in subsection (1)(a) of this rule, the agency may close the [claim] **complaint** under OAR 812-004-0260. The agency may not close the [claim] **complaint** under section (1) of this rule if the respondent initiates mediation or arbitration under the contract [prior to] **before** the expiration of the 30-day period for providing the waiver or evidence [of initiation of] **that** mediation or arbitration **was initiated**.

(c) The agency [shall] **must** inform the respondent by written notice that:

(A) [Respondent] **If the respondent wants the issues in the complaint mediated or arbitrated 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.**

~~(B)~~ [that failure to] **If the respondent does not** initiate mediation or arbitration [within this time period is a waiver of respondent's] **and submit evidence within the time provided in paragraph (1)(c)(A) of this subsection, the respondent waives the** right to mediation or arbitration under the contract;

~~(B)~~ **(C)** The agency will continue to process the [claim] **complaint** [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] **until the agency receives the evidence required under paragraphs (1)(c)(A) and (B) of this subsection;** and

~~(C)~~ **If the respondent submits timely evidence that the respondent began mediation or arbitration within the time allowed under ORS 701.180,** the agency will suspend processing of the [claim if respondent or claimant initiates mediation or arbitration under the contract] **complaint pending the outcome of the 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)~~ **(d)** If mediation or arbitration under the contract is properly commenced under **this** section (1) of this rule, the agency [shall] **must** suspend processing the [claim] **complaint** until the mediation or arbitration is complete.

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

(3) Notwithstanding receipt of a notice of intent to file a [claim] **complaint** under ORS 701.147 or any prior communication from the agency referencing a [claim] **complaint**, for purposes of ORS 701.180, a respondent receives notice of a [claim] **complaint** 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] **complaint** as a contested case.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

(6/80, 11/80, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 3/84, 5/84, 2/85, 3/85, 4/85, 2/87, 3/87, 7/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 10/98, 4/01, 12/01, temp. 12/03, 2/04, 10/04, 12/05, 12/06)

812-004-0450

On-site Meeting and Attendance of [Claimant] the Complainant

(1) The agency may schedule ~~an~~ **one or more** on-site ~~meeting~~ **meetings** among the parties for the purpose of discussion of a settlement of a [claim] **complaint** and investigation of the [claim] **complaint** under ORS 701.145. The agency [shall] **must** mail notice of ~~the~~ **a** meeting no less than 14 days ~~prior to~~ **before** the date scheduled for the meeting. The notice [shall] **must** include ~~notification~~ **notice** of the requirements of section (2) and (3) of this rule and [shall] **must** comply with the requirements of OAR 812-004-0260.

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

(a) The [claimant] **complainant** must allow access to the property that is the subject of the [claim] **complaint**.

(b) The [claimant] **complainant** or an agent of the [claimant] **complainant** must attend the meeting. An agent of the [claimant] **complainant** must have knowledge of all [claim] **complaint** items included in

the [claim] **complaint** and must have authority to enter into a settlement of the [claim] **complaint**. The agency may waive the requirement that an agent have authority to enter into a settlement of the [claim] **complaint** if there is evidence that the respondent will not attend the on-site meeting.

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

(3) If the [claimant fails to] **complainant does not** comply with the requirements of section (2) of this rule, the agency may close the [claim] **complaint** under OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

(4/01, 12/01, 12/05, 12/06)

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] **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: ORS 183.415, 183.460, 701.140 & 701.145

(10/98, 6/00, 12/01, 12/05, 12/06)

(Based on former OAR 812-004-0035(2), 1998)

812-004-0470

Challenge to Investigation Report

[Claimant] **The complainant** 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 & 701.235

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

(10/98, 6/00, 12/01, 5/02, 12/04, 12/05, 12/06)

(Amended and renumbered from 812-004-0580, 12/01)

812-004-0480

Resolution by Settlement and Construction of Settlement Agreement

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

(2) If [claimant] **the complainant** 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] **complaint**, the [claimant] **complainant** accepts a promissory note from the respondent or other compromise as settlement of the [claim] **complaint**, the agency may consider the agreement to be a substituted contract, and base the continued processing of the [claim] **complaint** on the substituted contract.

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 6/00, 4/01, 12/01, 12/05, 12/06)

812-004-0500

Closure of [Claim] Complaint After Settlement

If [claimant] **the complainant** and respondent agree to a settlement, the following apply:

(1) The agency [shall] **must** notify the [claimant] **complainant** that the [claimant] **complainant** must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days [of]

from 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] **complainant** notifies the agency that the terms of the settlement agreement have been fulfilled, the agency [shall] **must** close the claim.

(3) If the [claimant] **complainant** does not notify the agency as required under section (1) of this rule, the agency may close the [claim] **complaint** under OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

(10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 12/05, 12/06)

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] **complaint** if a [Statement of Claim] **Breach of Contract Complaint** is filed under OAR 812-004-0300 and 812-004-0340 within the time [limitation] **limit** 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] **complaint** based on a court judgment, arbitration award or other entity determination [shall] **must** be processed under OAR 812-004-0520. An award of damages on the [claim] **complaint** 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] **complaint** 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

(1/82, 3/82, 4/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/87, 12/87, 1/88, 11/89, 2/90, 4/90, 5/90, 6/90, 10/90, 2/92, 4/92, 1/95, 11/97, 10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 12/01, 10/04, 12/06)

(Amended and renumbered from 812-004-0200, 12/01)

812-004-0520

Processing of [Claim] Complaint 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] **complaint** if:

(a) **The** respondent submits a complaint against [claimant] **the complainant** to a court, arbitrator or other entity that relates to same facts and issues contained in the [claim] **complaint** filed against **the** 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] **complaint**;

(b) [Claimant] **The complainant** submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the [claim] **complaint** filed against respondent; or

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

(d) The complainant in an owner claim 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.

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

(a) The notice of suspension of processing ~~[shall]~~ **must** include ~~[notification]~~ **notice** of the requirements contained in subsections (3)(b) and (d) of this rule and ~~[shall]~~ **must** comply with the requirements of OAR 812-004-0260.

(b) Beginning six months after the date that the agency suspends processing the ~~[claim]~~ **complaint** and no less frequently than every sixth month thereafter, the ~~[claimant shall]~~ **complainant must** deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity **or with regard to the notice of defect**.

(c) The agency may, at any time, demand from the ~~[claimant]~~ **complainant** a written report describing the current status of the action before the court, arbitrator or other entity **or with regard to the notice of defect**. The demand ~~[shall]~~ **must** be in writing and ~~[shall]~~ **must** comply with the requirements of OAR 812-004-0260. The ~~[claimant shall]~~ **complainant must** deliver a written response to the agency within 30 days ~~[of]~~ **from** the date the **agency mails the** demand letter ~~[is mailed by the agency]~~.

(d) Within 30 days ~~[of]~~ **from** the date of final action by the court, arbitrator or other entity, the ~~[claimant shall]~~ **complainant must** 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]~~ **the complainant** complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the ~~[claim]~~ **complaint**. If the ~~[claimant fails to]~~ **complainant does not** comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the ~~[claim]~~ **complaint** under OAR 812-004-0260.

(4) If the agency suspends processing a ~~[claim]~~ **complaint** 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]~~ **must** notify the ~~[claimant]~~ **complainant** that the ~~[claimant]~~ **complainant** must file the ~~[claim]~~ **complaint** 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]~~ **complainant** has done so within 30 days ~~[of notification]~~ **from mailing of the notice**. The notice ~~[shall]~~ **must** comply with the requirements of OAR 812-004-0260.

(b) If the ~~[claimant fails to]~~ **complainant does not** submit the evidence as required under subsection (4)(a) of this rule, the agency may close the ~~[claim]~~ **complaint** under OAR 812-004-0260.

(5) If the agency suspends processing a ~~[claim]~~ **complaint** 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]~~ **must** notify the ~~[claimant]~~ **complainant**, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the ~~[claim]~~ **complaint** and that the ~~[claimant]~~ **complainant** must:

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

(B) Submit evidence, including a copy of the complaint, to the agency that the ~~[claimant]~~ **complainant** complied with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the ~~[claimant fails to]~~ **complainant does not** submit the evidence as required under subsection (5)(a) of this rule, the agency may close the ~~[claim]~~ **complaint** under OAR 812-004-0260.

(6) If the agency resumes processing a ~~[claim]~~ **complaint** under section (3) of this rule:

(a) The agency ~~[shall]~~ **must** accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the ~~[claim]~~ **complaint**.

(b) Based on the judgment, award or decision, the agency ~~[shall]~~ **must** issue a proposed default order to pay damages or to dismiss or refer the ~~[claim]~~ **complaint** to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection ~~[(6)(a)]~~ **(6)(b)** 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]~~ **complaint** to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge ~~[shall]~~ **must** determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.

(7) At its discretion and with the agreement of ~~[claimant]~~ **the complainant** and respondent, the agency may hold an on-site meeting under OAR 812-004-0450 before suspending ~~[claim]~~ **complaint** processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the ~~[claim]~~ **complaint**.

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 6/00, 4/01, 5/02, 3/03, 8/03, 10/04, 8/05, 12/06)

812-004-0530

Construction Lien ~~[Claims]~~ **Complaints**

(1) Upon acceptance of a construction lien ~~[claim]~~ **complaint**, the agency ~~[shall]~~ **must** send a copy of the ~~[claim]~~ **complaint** to the respondent and ~~[shall]~~ **must** initiate an investigation to determine the validity of the ~~[claim]~~ **complaint**.

(2) For a construction lien ~~[claim]~~ **complaint** to be valid, the following conditions must be met:

(a) The ~~[claimant]~~ **complainant** 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]~~ **complainant's** property;

(b) The lienor must have delivered to the ~~[claimant]~~ **complainant** 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]~~ **complaint** processed under this rule.

(4) If at any time ~~[prior to]~~ **before** the issuance of an order the agency determines that the lien is unenforceable or invalid, the agency ~~[shall]~~ **must** dismiss the ~~[claim]~~ **complaint**. ~~[Prior to]~~ **Before** such dismissal, the lienor ~~[shall]~~ **must** 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]~~ **complaint** and to request ~~[an]~~ arbitration or **a** hearing.

(5)(a) A construction lien ~~[claim]~~ **complaint** 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]~~ **the complainant** for attorney fees incurred to discharge the lien ~~[shall]~~ **must** not exceed the amount of the lien.

(b) A construction lien ~~[claim]~~ **complaint** may not include excess interest paid as a result of the inability of the ~~[claimant]~~ **complainant** 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]~~ **complainant** by:

(a) Any amount the ~~[claimant]~~ **complainant** owes the primary contractor; and

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

(7) If a ~~[claimant]~~ **complainant** files two or more ~~[claims]~~ **complaints** against the respondent relating to work performed under the same contract and if the ~~[claimant]~~ **complainant** has not paid the respondent

the full amount of the contract, the amount awarded on each [claim] **complaint** will be reduced on a pro rata basis. A proposed or final order may not be issued on a [claim] **complaint** until all [claims] **complaints** involving the [claimant] **complainant** 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] **complaint**, the agency [shall] **must** send notice to the [claimant] **complainant** that:

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

(b) The agency will hold the [claim] **complaint** open for 60 days from the date of the notice to allow the [claimant] **complainant** to obtain a stay or to file a counter-suit or complaint in the foreclosure action; and

(c) The agency may close the [claim] **complaint** 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] **the complainant** obtained a stay; or

(B) That [claimant] **the complainant** filed the [claim] **complaint** as a counter-suit or complaint in the court.

(9)(a) Upon timely receipt of evidence that [claimant] **the complainant** obtained a stay, the agency will resume processing the [claim] **complaint**.

(b) Upon timely receipt of evidence that [claimant] **the complainant** filed a counter-suit or complaint in the court under paragraph (8)(c)(B) of this rule, the agency [shall] **must** suspend [process] **processing** the [claim] **complaint** and send notice to the [claimant] **complainant** of the requirements of OAR 812-004-0520(3). Further processing of the [claim] **complaint must** 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] **complaint** under OAR 812-004-0260 if the agency does not receive evidence that [claimant] **the complainant** obtained a stay or filed a counter-suit or complaint required under subsection (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] **complaint** involves the same facts and issues as any other open [claim] **complaint**, the agency [shall] **must** process the [claims] **complaints** together.

Stat. Auth.: 670.310 & 701.235

Stats. Implemented: ORS 87.057, 87.058 & 701.145

(3/81, 10/81, 11/81, 1/82, 3/82, 4/82, 10/82, 1/83, 2/83, 3/83, 7/83, 10, 83, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 11/89, 11/97, 10/98, 6/00, 4/01, 12/01, 5/02, 6/02, 12/04, 12/05, 12/06)

(Amended and renumbered from 812-004-0220, 12/01)

812-004-0535

Elements of [Claim] Complaint That Must Be Proved

The following provisions apply to OAR 812-004-0540(5) and (6), 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 complainant** the record of the [claim] **complaint** must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) [Claimant] **The complainant** suffered damages;

(b) [Respondent] **The 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] **must** dismiss the [claim] **complaint** if the evidence in the record of the [claim] **complaint** 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] **complaint** for damages must be dismissed if the record of the [claim] **complaint** contains evidence that

persuades the agency, arbitrator or administrative law judge that the [claimant] **complainant** is not entitled to recover the damages. Evidence that the [claimant] **complainant** may not be entitled to recover all or part of the damages [claimed] **alleged** 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

(3/03, 8/03, 12/03, 2/04, 8/05, 12/06)

812-004-0540

Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A [claimant] **complainant** may seek monetary damages if the agency has not closed the [claim] **complaint** and:

(a) The [claimant] **complainant** 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] a settlement agreement [proposed by the agency] but, through no fault of the [claimant] **complainant**, the **respondent failed to satisfy one or more** terms of the settlement agreement [have not been fulfilled by the respondent], and the **complainant so advises the** agency [is so advised] in writing [by the claimant] within 30 days [of] **from** the date the settlement agreement was to have been completed.

(2) If the [claimant] **complainant** seeks monetary damages or the agency so requests, the [claimant] **complainant must** file a [declaration] **statement** of damages stating the amount the [claimant] **complainant** alleges the respondent owes the [claimant] **complainant**, limited to [claim] **complaint** items listed in the [Statement of Claim] **Breach of Contract Complaint** and those [claim] **complaint** items added up to and through any initial on-site meeting. The agency may require the [claimant] **complainant** to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost [of correction of] **to correct** 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] **complaint** for an arbitration or contested case hearing under section (4) of this rule after each party to the [claim] **complaint** has had an opportunity to provide evidence supporting its position with regard to the [claim] **complaint**. The agency may require that the [claimant] **complainant** file a [declaration] **statement** of damages and supporting evidence described under section (2) of this rule, except that the [declaration] **statement** of damages [shall] **must** be limited to [claim] **complaint** items listed in the [Statement of Claim] **Breach of Contract Complaint**.

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

(a) Issue a proposed default order proposing dismissal of the [claim] **complaint** under OAR 812-004-0550(2) or payment of an amount by the respondent to the [claimant] **complainant**; or

(b) Refer the [claim] **complaint** to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the [claim] **complaint** and whether the amount [claimed] **of damages alleged**, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to [claimant] **the complainant** only if the record of the [claim] **complaint** supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the [claim] **complaint** contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6)(a) If the record of a [claim] **complaint** supports an award of damages to [claimant] **the complainant** under OAR 812-004-0535 and **the** respondent pays [claimant] **the complainant** the amount of those damages after [claimant] **the complainant** submits **to the agency** the [claim] **complaint**

processing fee required under OAR 812-004-0110 [~~to the agency~~], the agency may issue a proposed default order proposing that **the** respondent reimburse [~~claimant for~~] **the complainant** the amount of the processing fee paid.

(b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the [~~claimant~~] **complainant** to satisfy a written settlement agreement that [~~claimant~~] **the complainant** signed.

(c) Before issuing a proposed **default** order under subsection (6)(a) of this rule, the agency [~~shall~~] **must** notify **the** respondent of the agency's intent to issue the proposed order and allow **the** respondent 30 days to submit written evidence that **the** respondent reimbursed the [~~claimant~~] **complaint** processing fee to [~~claimant~~] **the complainant**.

(7) 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

(10/98, temp. 1/00, 5/00, 4/01, 5/02, 11/02, 3/03, 8/03, 2/04, 12/04, 8/05, 12/06)

812-004-0550

Proposed Default Order to Dismiss, Other Resolution of [~~Claim~~] Complaint by Proposed Default Order

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

(a) The [~~claim~~] **complaint** is not the type of [~~claim~~] **complaint** that the agency has jurisdiction to determine under ORS 701.140.

(b) The [~~claim~~] **complaint** was not filed within the time limit specified under ORS 701.143.

(c) The [~~claimant~~] **complainant** did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(b).

(d) The [~~claim~~] **complaint** 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~~] **complainant** is less than an amount due to the respondent from the [~~claimant~~] **complainant** under the terms of the contract.

(f) The [~~claimant~~] **complainant** contends that the respondent [~~failed to~~] **did not** fulfill the terms of a settlement that resolved the [~~claim~~] **complaint** 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~~] **complaint** if the agency investigates the [~~claim~~] **complaint** and [~~after the investigation~~] finds that the record of the [~~claim~~] **complaint** supports dismissal under OAR 812-004-0535.

(3) If the [~~claimant~~] **complainant** 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~~] **complaint** for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the [~~claimant~~] **complainant** file a [~~declaration~~] **statement** of damages stating an amount the [~~claimant~~] **complainant** alleges the respondent owes the [~~claimant~~] **complainant** and refer the [~~claim~~] **complaint** for [~~an~~] arbitration or **a** contested case hearing to determine if the [~~claim~~] **complaint** should be dismissed and if not, the validity of the [~~claim~~] **complaint** and whether the amount [~~claimed~~] **alleged**, 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

(temp. 1/00, temp. 3/00, 5/00, 4/01, 5/02, 3/03, 8/03, 2/04, 12/06)

812-004-0560

General Requirements for Proposed Default Order or Referral to Office of Administrative Hearings, Hearing Request

(1) A proposed default order on a ~~[claim]~~ **complaint** issued by the agency ~~[shall]~~ **must** 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]~~ **complaint** 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]~~ **before** the agency's referral of the ~~[claim]~~ **complaint** to the Office of Administrative Hearings.

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

(a) The referral to the Office of Administrative Hearings ~~[shall]~~ **must** identify by date the ~~[declaration]~~ **statement** of damages or the ~~[Statement of Claim]~~ **Breach of Contract Complaint** that limits the amount that the respondent may be ordered to pay the ~~[claimant]~~ **complainant** and state the amount that the order is limited to under OAR 812-009-0160 and OAR 812-010-0420.

(b) The agency ~~[shall]~~ **must** serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a ~~[claimant]~~ **complainant** under OAR 812-009-0160 and OAR 812-010-0420; and

(B) The procedure to file a new ~~[declaration]~~ **statement** of damages under OAR 812-009-0020 and OAR 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 **the agency mails** 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 (6)(b) of this rule, a contested case notice issued under this rule ~~[shall]~~ **must** include a statement that the agency's file on the ~~[claim]~~ **complaint** 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]~~ **complaint**, a contested case notice issued under this rule ~~[shall]~~ **must** include a statement that the agency's file on the ~~[claim]~~ **complaint** 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 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

(1/86, 5/86, 11/89, 11/97, 10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 6/02, temp. 9/02, 11/02, 3/03, 8/03, 12/04, 12/06)

812-004-0590

Referral of [Claim] Complaint 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 **conducts a hearing on a complaint:**

(a) The hearing [shall] **must** 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 (1)(b) of this rule 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] **must** be held as a contested case hearing under OAR 137-003-0501 to OAR 137-003-0700 and the rules in division 9 of this chapter if:

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

(B) The agency requests under sections (4) and (7) of this rule that the [claim] **complaint** be heard as a contested case.

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

(a) The [claimant] **complainant** files a complaint in court that alleges the elements of the [claim] **complaint** 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] **complaint** and that allows the [claimant] **complainant** to file a response alleging the elements of the [claim] **complaint**.

(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] **limit** in this rule constitutes waiver of the right to have the [claim] **complaint** 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] **must** 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] **complaint** be heard as a contested case filed under subsection (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] **must** 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.

(b) A referral of a [claim] **complaint** to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the [claim] **complaint** be heard as a contested case under subsection (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] **complaint**.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (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] **complaint** being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the [claimant] **complainant** in a [claim] **complaint** does not seek \$1,000 or more, a hearing on the [claim] **complaint** may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (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] **complaint** 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] **complaint**.

[~~(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 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

(9/99, temp. 1/00, 5/00, 6/02, 9/02, 8/03, 12/04, 8/05, 12/05, 12/06)

812-004-0600

Payment From Surety Bonds

(1) The agency may notify the surety company of [~~claims~~] **complaints** pending.

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

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(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 or award pending judicial review by the Court of Appeals; and

(d) All other [~~claims~~] **complaints** 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~~] **complaint**.

(3) Except as provided in section (5) of this rule, [~~claims~~] **complaints** related to a job that are satisfied from a surety bond [~~shall~~] **must** be paid as follows:

(a) If a surety bond was in effect when the work period began, payment [~~shall~~] **must** 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~~] **must** 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~~] **complaint** under subsection (3)(a) or (b) of this rule is liable for all [~~claims~~] **complaints** related to the job and subsequent surety bonds have no liability for any [~~claim~~] **complaint** 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~~] **complaint** is filed relating to work performed during that work period, the [~~claimant~~] **complainant** may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) If **the** respondent maintains multiple surety bonds, the following apply:

(a) If multiple surety bonds were in effect when the work period began, payment [~~shall~~] **must** 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~~] **must** be made from multiple surety bonds.

(c) Payment to satisfy a [~~claim~~] **complaint** made under section (5) of this rule from a surety bond [~~shall~~] **must** 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~~] **complaint** 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~~] **complaint must** be made in the same proportion that the amount due on that [~~claim~~] **complaint** bears to the total due on all [~~claims~~] **complaints** that must be paid.

(7) The full penal sum of a bond [~~shall~~] **must** be available to pay [~~claims~~] **complaints** under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170.

(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~~] **complainant** and payment is due from the surety bonds of the respondents, payment [~~shall~~] **must** be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment [~~shall~~] **must** be made from the remaining bond or in equal amounts from the remaining bonds. If one of the respondents liable on the [~~claim~~] **complaint** makes payment on the [~~claim~~] **complaint**, 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~~] **complaint** on the execution of a release by [~~claimant~~] **the complainant**.

(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

(6/80, 11/80, 3/81, 10/81, 11/81, 1/83, 3/83, 6/84, 9/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 11/89, 11/97, 2/98, 10/98, 3/99, 6/00, 4/01, 12/01, temp. 5/02, 9/02, 6/04, 10/04, 12/04, 6/05, 12/06)

812-005-0200

Unpaid Final Orders that Exceed the Contractor's Bond

(1) Under ORS 701.085(7), the agency [~~shall~~] **must** suspend the license of a licensee if the agency issues a final order on a [~~claim~~] **complaint** that exceeds the amount of the bond available to pay the order.

(2) A suspension issued under section (1) of this rule [~~shall~~] **must** remain in effect until the unpaid amount of the order is paid or until the license of the licensee expires.

(3) The agency may not reinstate or renew a license suspended under section (1) of this rule until the final order described in section (1) of this rule and any subsequently issued order that is unpaid, is paid, or discharged in bankruptcy.

(4) As a condition of ending a suspension or renewing a license that was suspended under ORS 701.085(7) and section (1) of this rule, the agency may require a licensee to file a bond up to five times as much as the amount required of a licensee under ORS 701.085(2) to (5). The amount of the increased bond required must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders described in section (4) of this rule exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the amount required under ORS 701.085.

(b) If the sum of the unpaid final orders described in section (4) of this rule exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the agency may require a bond three times the bond amount required under ORS 701.085.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond in the amount of five times the normal amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

(12/04, 6/05, 12/05, 12/06)

812-005-0800

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 OAR 812-003-0120, 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 OAR 812-003-0120, 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 812-003-0120: 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 812-003-0260: 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(4), 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 812-003-0130, 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(8), 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, 701.075 or 701.078, 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)(k) 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 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

\$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)(k) 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)(g), 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 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$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 812-008-0201(4): \$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 279C.590:

(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]~~ **breach of contract complaint** with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.055(11)(a), failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of ORS 701.135(1)(f), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

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

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100, 701.135, 701.175, 701.227, & 701.992

(4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/85, 4/85, 1/87, 3/87, 1/88, 2/88, 6/88, 1/89, 11/89, 2/90, 3/90, 4/90, 5/90, 6/90, 7/90, 10/90, 11/90, 3/91, 9/91, 1/92, 2/92, 4/92, 6/92, 5/93, 12/93, 1/95, 9/95, 10/95, 8/96, 10/98), temp. 11/99, 5/00, 6/00, temp. 11/00, 4/01, 12/01, temp. 3/02, 3/02, 6/02, 9/02, 12/03, 6/04, 12/04, 12/05, 1/06, 6/06, 12/06)

812-009-0010

Application of Rules

Subject to OAR 812-004-0590, contested case hearings on ~~[claims]~~ **complaints** arising under ORS 701.139-701.180 ~~[shall be]~~ **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)

812-009-0020

Amendment to ~~[Declaration]~~ Statement of Damages

(1) If the agency refers a ~~[claim]~~ **complaint** to the Office of Administrative Hearings for a hearing on the amount the respondent owes the ~~[claimant]~~ **complainant**, the ~~[claimant]~~ **complainant** may amend the amount the ~~[claimant]~~ **complainant** alleges the respondent owes the ~~[claimant]~~ **complainant** by filing an amended ~~[declaration]~~ **statement** of damages. An amended ~~[declaration]~~ **statement** of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and OAR 812-009-0085. An amended ~~[declaration]~~ **statement** 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]~~ **before** the scheduled date of a hearing on the matter.

(2) An amended ~~[declaration]~~ **statement** 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]~~ **statement** of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the ~~[Statement of Claim]~~ **Breach of Contract Complaint** and ~~[claim]~~ **complaint** items added up to and through the initial on-site meeting. The amended ~~[declaration]~~ **statement** of damages must be signed by the ~~[claimant]~~ **complainant**.

(3) An amended ~~[declaration]~~ **statement** of damages making a significant change in the amount the ~~[claimant]~~ **complainant** alleges that the respondent owes the ~~[claimant]~~ **complainant** 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, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413, 183.415, 701.145 & 701.147
(10/98, temp. 1/00, temp. 3/00, 5/00, 11/02, 8/03, 12/06)

Attorney General noted that rule is authorized under OAR 137-003-0501(2) and does not require Attorney General approval in letter dated 2/24/00

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] **complaint** 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, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413, 183.415, 701.145 & 701.147

(temp. 3/00, 5/00, 8/03, 12/06)

Authorized by Attorney General order dated 2/24/00

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] **must** refer the [claim] **complaint** to the agency with a memorandum recommending that processing of the [claim] **complaint** be suspended under ORS 701.145 and OAR 812-004-0520 and stating the basis of the recommendation. A copy of this memorandum [shall] **must** be served on the parties.

(2) If a [claim] **complaint** is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the [claim] **complaint**; or

(b) Refer the [claim] **complaint** back to the administrative law judge with instructions to resume the hearing.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

(temp. 1/00, 5/00, 4/01, 3/03, 8/03, 12/06)

Authorized by Attorney General order dated 1/27/00

812-009-0090

Discovery and Subpoenas

(1) The agency delegates to the administrative law judge assigned to hear a [claim] **complaint** the authority to:

(a) Order and control discovery under OAR 137-003-0570 related to the hearing on the [claim] **complaint**, 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] **complaint**.

(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, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.425, 183.440, 183.445, 183.450, 701.145 & 701.147

(temp. 1/00, temp. 3/00, 5/00, 8/03, 12/06)

Authorized by Attorney General order dated 1/27/00

812-009-0100

Burden of Proof and Failure to Meet Burden

[Claimant] **The complainant** must submit sufficient credible evidence into the record to support an award of damages under OAR 812-004-0535. If ~~[claimant fails to]~~ **the complainant does not** carry this burden of proof, the administrative law judge ~~[shall]~~ **must** dismiss the ~~[claim]~~ **complaint**.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183 & ORS 701

(10/98, temp. 3/00, 4/01, 3/03, 8/03, 2/04, 12/06)

812-009-0120

Determination of Validity of ~~[Claim]~~ **Complaint**

In determining the validity of the ~~[claim]~~ **complaint**, the administrative law judge ~~[shall]~~ **must** determine:

- (1) Whether the ~~[claim]~~ **complaint** 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]~~ **complaint** supports an award of damages under OAR 812-004-0535.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183 & ORS 701

(10/98, temp. 3/00, 12/01, 3/03, 8/03, 2/04, 12/06)

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]~~ **complaint** of the time and place of a hearing on the ~~[claim]~~ **complaint** and a party ~~[failed to]~~ **did not** 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]~~ **complaint** based on a lack of evidence in the record supporting ~~[claimant's claim]~~ **the complainant's complaint**, 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]~~ **complainant did not** appear at the hearing.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147

(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 4/01, 9/01, 5/02, 8/03, 12/06)

Authorized for use until authorization revoked by Attorney General order dated 02/27/01; authorization revoked by order dated 10/23/01. Authorized for use by Attorney General order dated 5/17/02.

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]~~ **complaint** is referred for a hearing to determine the amount, if any, that a respondent owes a ~~[claimant]~~ **complainant**, the administrative law

judge may not issue an order in an amount greater than the total amount [claimant] **the complainant** alleges **the** respondent owes [claimant] **the complainant** in:

(a) The most recent [declaration] **statement** of damages or amended [declaration] **statement** of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The [Statement of Claim] **Breach of Contract Complaint** filed under OAR 812-004-0340, if no [declaration] **statement** of damages was filed.

(3) If a [claim] **complaint** is referred for a hearing to determine whether any portion of a judgment is within the **agency's** 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] **complainant** or dismiss the [claim] **complaint**.

(5) An administrative law judge [shall] **must** consider any amounts due to the respondent from the [claimant] **complainant** 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] **must** issue a proposed and final order under OAR 137-003-0645(4) that [shall] **must** 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] **statement** of damages or [Statement of Claim] **Breach of Contract Complaint** that includes an itemization of [claim] **complaint** items and the total of those items is different from the total damages [claimant] **the complainant** alleges is due from the respondent, the limitation on damages [shall] **must** 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] **statement** of damages or [Statement of Claim] **Breach of Contract Complaint** that does not include a request for an award of the [claim] **complaint** 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] **complaint** processing fee paid by the [claimant] **complainant** under OAR 812-004-0110 and 812-004-0400.

(9) If a [claim] **complaint** is referred for a hearing solely to determine if the Board has jurisdiction over the [claim] **complaint** and the administrative law judge finds that the Board has jurisdiction over the [claim] **complaint**, the administrative law judge [shall] **must** issue an intermediate order that the Board resume processing the [claim] **complaint**. The Board may accept the order to resume processing or issue a proposed and final order **under OAR 137-003-0060** to dismiss the [claim] **complaint** for lack of jurisdiction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147

(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 8/00, 5/02, 11/02, 8/03, 10/04, 12/05, 12/06)

Authorized by Attorney General order dated 07/11/00

812-009-0200

Final Order Without a Proposed Order

(1) Notwithstanding OAR 812-009-0160 (6), an administrative law judge [shall] **must** issue a final order under OAR 137-003-0665 in a contested case without issuing a proposed order if:

(a) The total amount ~~[alaimed]~~ **alleged** to be due to any ~~[claimant]~~ **complainant** in a hearing does not exceed \$2,500;

(b) The parties voluntarily agree to a settlement of a ~~[elaim]~~ **complaint** in accordance with ORS 183.415(5), except as provided in section (2) of this rule; or

(c) The hearing was requested by **the** respondent after the parties voluntarily agreed to a settlement of a ~~[elaim]~~ **complaint** and the following conditions exist:

(A) The settlement's essential terms are limited to the respondent's agreement to pay money to ~~[elaimant]~~ **the complainant** in exchange for ~~[elaimant]~~ **the complainant's** release of the ~~[elaim]~~ **complaint**; 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 ~~[elaim]~~ **complaint** in accordance with ORS 183.415(5) and the settlement agreement includes an agreement for future performance, the administrative law judge ~~[shall]~~ **must** issue an intermediate order containing any necessary findings of fact and return the ~~[elaim]~~ **complaint** to the agency for further processing and issuance of the final order.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147

(temp. 1/00, temp. 3/00, 5/00, 6/02, 8/03, 12/06)

Authorized by Attorney General order dated 1/27/00

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 ~~[elaim]~~ **complaint** issued by an administrative law judge under this division ~~[shall]~~ **must** be filed with the agency.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.482, 701.145 & 701.147

(temp. 1/00, temp. 3/00, 5/00, 8/03, 12/06)

Authorized by Attorney General order dated 1/27/00

812-009-0400

Exceptions to Agency Orders, ~~[Claims]~~ **Complaints**

(1) After a contested case ~~[elaim]~~ **complaint** hearing, ~~[elaimant]~~ **the complainant** 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]~~ **from** 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]~~ **from** 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]~~ **must** include in the exceptions:

(A) A notice of the intention to rely on oral testimony; and

(B) A request for a copy of the tape of the hearing with the fee required under OAR 812-001-0160.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (6)(a) of this rule, the agency ~~shall~~ **must** 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~~ **must** 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 **within** 21 days ~~after~~ **from** the date the agency mails the tape of the hearing to the party.

(d) The agency ~~shall~~ **must** mail a copy of the transcript to the other party to the ~~claim~~ **complaint**.

(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 **within** 21 days ~~after~~ **from** the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency ~~shall~~ **must** mail a copy of the transcript prepared under section (7) of this rule 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~~ **does not** comply with the requirements of sections (6) and (7) of this rule.

(9) ~~Claimant~~ **The complainant** 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~~ **limits** 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 & 701.235

Stats. Implemented: ORS 183.460 & 701.260

(10/98, temp. 3/00, 6/00, 4/01, 3/03, 8/03, 12/04, 12/05, 12/06)

812-009-0430

Form of Exceptions to Agency Order in a ~~Claim~~ **Complaint**

(1) Exceptions to an agency order filed by a party to a ~~claim~~ **complaint** under OAR 812-009-0400 or a respondent under 812-009-0420 ~~shall~~ **must** conform to the following requirements:

(a) Exceptions ~~shall~~ **must** be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions ~~shall~~ **must** be titled "Exceptions to Proposed Order." If the exceptions are filed in a ~~claim~~ **complaint**, the first page ~~shall~~ **must** show the ~~claim~~ **file** number, the names of the parties to the ~~claim~~ **complaint** 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~~ **must** show the name of the respondent at the top of the page.

(c) Each page of the exceptions ~~shall~~ **must** 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~~ **must** 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~~ **must** be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information ~~[shall]~~ **must** 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]~~ **must** be included in the exceptions.

(h) The party submitting the exceptions ~~[shall]~~ **must** 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 & 701.235

Stats. Implemented: ORS 183, 701.145 & 701.147

(4/01, 8/03, 12/05, 12/06)

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]~~ **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 ~~[claim]~~ **complaint** is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board ~~[shall]~~ **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 ~~[shall be]~~ **is** 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 to 183.500, 670.310 & 701.235~~

~~Stats. Implemented: ORS 36.600 to 36.740, 183, 701.139, 701.147, & 701.148~~

~~(10/98, 9/99, 12/01, 6/02, 9/02, 8/03, 12/03, 5/04, 10/04, 12/06)~~

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]~~ **complaints** 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 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.148

(10/98, 9/99, 12/01, 5/02, 12/04, 12/06)

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]~~ **must** be filed as follows:

(a) With the agency before a ~~[claim]~~ **complaint** 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]~~ **complaint** 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]~~ **complaint** 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]~~ **must** serve copies of the document filed on the parties to the ~~[claim]~~ **complaint** or dispute or their counsel if the parties are represented. Service under this section ~~[shall]~~ **must** 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]~~ **complaint** 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]~~ **complaint** or dispute of any change in the party's address, withdrawal or change of party's attorney or change of address of the party's attorney.

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

Stats. Implemented: ORS 183 & 701

(5/02, 8/03, 12/03, 12/06)

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]~~ **complaint** as a contested case, the Office of Administrative Hearings ~~[shall]~~ **must** retain jurisdiction over the ~~[claim]~~ **complaint**. The Office of Administrative Hearings ~~[shall]~~ **must** 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]~~ **complaint** filed a **court** complaint ~~[under that rule that]~~ **and OAR 812-004-0590** requires that the ~~[claim]~~ **complaint** be decided in court, the Office of Administrative Hearings ~~[shall]~~ **must** return the ~~[claim]~~ **complaint** to the agency.

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

Stats. Implemented: ORS 183, 701.147 & 701.148

(6/02, 8/03, 12/06)

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]~~ **before** arbitration. The agency may grant or deny the request at its discretion.

(4) If the parties to an arbitration settle a ~~[claim]~~ **complaint** 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, 670.310, & 701.235

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/01, temp. 9/02, 11/02, 8/03, 12/06)

812-010-0110

[Declaration] Statement of Damages and Amendment to [Declaration] Statement of Damages

(1) If the party asserting ~~[the claim]~~ **a complaint** has not previously filed a ~~[Statement of Claim]~~ **Breach of Contract Complaint** or ~~[declaration]~~ **statement** of damages under OAR 812-004-0340, 812-004-0540 or 812-004-0550, the party ~~[shall]~~ **must** file with the agency on a form provided by the agency a ~~[declaration]~~ **statement** 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]~~ **must** file with the agency on a form provided by the agency a ~~[declaration]~~ **statement** 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]~~ **statement** 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]~~ **statement** of damages. An amended ~~[declaration]~~ **statement** of damages must be delivered to the arbitrator as required by OAR 812-010-0085. An amended ~~[declaration]~~ **statement** of damages filed under this section must be received by the arbitrator no later than 14 days ~~[prior to]~~ **before** the scheduled date of an arbitration on the matter.

(5) An amended ~~[declaration]~~ **statement** 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]~~ **statement** of damages must state the amount alleged to be owed to the party filing the amended ~~[declaration]~~ **statement** by the other party. If the subject of the arbitration is a ~~[claim]~~ **complaint**, the amount alleged to be owed must be limited to items of complaint in the ~~[Statement of Claim]~~ **Breach of Contract Complaint** and ~~[claim]~~ **complaint** items added up to and through the initial on-site meeting. The amended ~~[declaration]~~ **statement** of damages must be signed by the party filing the ~~[amended declaration]~~ **amendment**.

(6) An amended ~~[declaration]~~ **statement** 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

(9/99, temp. 7/00, 8/00, 12/01, 5/02, temp. 9/02, 11/02, 12/06)

812-010-0120

Time and Place of Arbitration Hearing; Notice

The Office of Administrative Hearings ~~[shall]~~ **must** fix a time and place for the arbitration hearing. The Office of Administrative Hearings ~~[will]~~ **must** mail notice of the time and place of the arbitration at least 21 days ~~[prior to]~~ **before** the arbitration, unless otherwise agreed to by the parties.

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

Stats. Implemented: ORS 701.147 & 701.148

(10/98, 9/99, temp. 7/00, 8/00, 12/01, 5/02, temp. 9/02, 11/02, 8/03, 12/06)

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~~ **must** 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~~ **must decide** whether the arbitrator should be disqualified. Such decision ~~shall be~~ **is** final.

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

Stats. Implemented: ORS 36.705 & 701.148

(10/98, 9/99, temp. 3/00; 5/00, 12/03, 5/04, 12/06)

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~~ **a** witness who is not a party during the testimony of other witnesses. The arbitrator ~~shall determine~~ **must decide** whether any other person may attend the hearing.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/04, 12/06)

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~~ **must decide** whether to grant a postponement or continuance. That ~~determination shall be~~ **decision is** final.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 11/02, 12/04, 12/06)

812-010-0260

Recording of Hearing

(1) Unless otherwise agreed by the parties and the arbitrator, the arbitrator [~~shall~~] **must** 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 **with the court**, the agency [~~will~~] **may** not dispose of the [~~tape~~] recording of the hearing until the court makes final determination of the matter.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/04, 12/06)

812-010-0290

Summary Disposition

An arbitrator may decide a request for summary disposition of a [~~claim~~] **complaint** 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 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

(12/03, 12/06)

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~~] **does not** appear. An award [~~shall~~] **must** 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~~] **complaint** without an evidentiary hearing if the party making the [~~claim fails to~~] **complaint does not** appear after due notice and without good cause.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/04, 12/06)

812-010-0320

Discovery

(1) Parties to an arbitration are encouraged to exchange information informally [~~, prior to~~] **before** 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~~] **may** control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/04, 12/06)

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~~] **is** the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence [~~shall not be~~] **is not** necessary.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but [~~shall~~] **must** give appropriate weight to any objections made. All documents to be considered by the arbitrator [~~shall~~] **must** be filed with the agency [~~prior to~~] **before** or at the hearing.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/04, 12/06)

812-010-0360

Close of Hearing

When satisfied that the parties have completed their presentations, the arbitrator [~~shall~~] **must** close the hearing.

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

Stats. Implemented: ORS 701.148

(10/98, 12/04, 12/06)

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~~] **does not** state objections [~~prior to~~] **before** the close of the hearing [~~shall be~~] **is** deemed to have waived the right to object.

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

Stats. Implemented: ORS 701.148

(10/98, 12/04, 12/06)

812-010-0420

Time, Form, and Scope of Award; Limitation on Award

(1) An award [~~shall~~] **must** 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~~] **must** be in writing and [~~shall~~] **must** be signed or otherwise authenticated by the arbitrator.

(4) The award [~~shall~~] **must** 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~~] **must** 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) 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~~] **statement** of damages or amended [~~declaration~~] **statement** of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The [~~Statement of Claim~~] **Breach of Contract Complaint** filed by the party under OAR 812-004-0340, if no [~~declaration~~] **statement** of damages was filed.

(6) When a [~~claimant~~] **complainant** makes a [~~claim~~] **complaint** against a respondent's surety bond required under ORS 701.085 and the parties to the [~~claim~~] **complaint** have not agreed that the arbitration

will bind **the** [claimant] **complainant**, only the [claimant] **complainant** may assert damages. The arbitrator may award damages to **the** [claimant] **complainant**, but not to **the** respondent. [Respondent] **The respondent** may assert amounts owed to it as an offset under section [(6)] (7) of this rule.

(7) An arbitrator [shall] **must** consider any amounts owed by a party [claiming] **alleging** 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] **alleging** the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a [declaration] **statement** of damages as to the offset. If the party asserting the offset did not file a [declaration] **statement** of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a [claim] **complaint** 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 **the** 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] **must** 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 (b) of this section.

(10) If a limitation on damages under section (4) is based on a [declaration] **statement** of damages or [Statement of Claim] **Breach of Contract Complaint** that includes an itemization of [claim] **complaint** items and the total of those items is different from the total damages **the** [claimant] **complainant** alleges is due from the respondent, the limitation on damages [shall] **must** be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

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

Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, 701.145 & 701.148

(10/98, 6/02, 9/02, 11/02, 8/03, 12/03, 12/04, 6/05, 12/06)

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] **must** 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. If the arbitrator waives or

extends the time limitations in sections (3) and (5), the arbitrator must notify the agency of 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~~] **complaint** not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the [~~claims~~] **complaints** submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the [~~claims~~] **complaints** submitted;

(d) Because the arbitrator has not made a final and definite award upon a [~~claim~~] **complaint** submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator [~~shall~~] **must** 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~~] **must** 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) 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 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183, 701.147 & 701.148

(6/02, 9/02, 8/03, 12/03, 10/04, 6/05, 12/06)

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~~] **must** conform to the following requirements:

(a) The petition [~~shall~~] **must** be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition [~~shall~~] **must** be titled "Petition to Modify or Correct an Arbitration Award" and [~~shall~~] **must** 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~~] **complaint**, the first page shall show the [~~claim~~] **file** number.

(c) Each page of the petition [~~shall~~] **must** 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~~] **must** sign and date the petition. The date [~~shall~~] **must** 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 to 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183 & 701.148

(6/02, 9/02, 12/03, 12/06)

812-010-0460

Petition to Court to Confirm Award or Vacate, Modify or Correct Award

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party ~~[shall]~~ **must** 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]~~ **must** serve the agency with a copy of a petition filed under this section.

(3) Failure of a party to serve the agency under section (2) of this rule constitutes a waiver of any objection to transmittal of the award to ~~[respondents]~~ **the respondent's** surety company for payment under OAR 812-004-0600.

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

Stats. Implemented: ORS 701.145 & 701.148

(10/98, 9/99, 6/02, 9/02, 12/03, 5/04, 10/04, 6/05, 12/06)

812-010-0470

Payments from Licensee's Bond

(1) If an award or amended award requires payment by a licensee and the licensee ~~[fails to]~~ **does not** pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. ~~[Payments]~~ **Payment** from the bond ~~[shall be]~~ **is** 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.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

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

Stats. Implemented: ORS 701.143 & 701.150

(10/98, /600, 12/01, 5/02, temp. 9/02, 11/02, 12/03, 5/04, 10/04, 6/05, 12/06)

(Amended and renumbered from 812-010-0440, 6/29/05)

812-010-0480

Interpretation and Application of Rules

The arbitrator ~~[shall]~~ **must** interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules ~~[shall]~~ **must** be interpreted and applied by the agency administrator or a person designated by the agency administrator.

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

Stats. Implemented: ORS 701.148

(10/98, temp. 3/00, 5/00, 12/04, 12/06)