

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 4, 2007 by the
(Date prior to or same as filing date.)

<u>Construction Contractors Board</u> (Agency and Division)	<u>OAR 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, 2008 . Rulemaking Notice was published in the November 2007 Oregon Bulletin.**
(Date upon filing or later) (Month and Year)

RULE CAPTION

Implement 2007 Legislative Changes and Clarify Language and Adopt or Amend Definitions

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.

812-002-0265	812-002-0630	812-003-0155	Division 12	812-012-0130
812-002-0170	812-002-0635	812-005-0270	812-012-0110	

AMEND:

812-001-0200	812-002-0640	812-003-0175	812-003-0250	812-003-0310	812-004-0260	812-005-0250	812-009-0140
812-002-0140	812-002-0760	812-003-0180	812-003-0260	812-003-0380	812-004-0560	812-008-0040	812-010-0420
812-002-0143	812-003-0150	812-003-0190	812-003-0280	812-003-0400	812-004-0600	812-008-0060	812-010-0470
812-002-0420	812-003-0160	812-003-0200	812-003-0290	812-004-0240	812-005-0200	812-008-0070	
812-002-0580	812-003-0170	812-003-0240	812-003-0300	812-004-0250	812-005-0210	812-008-0110	

REPEAL:

812-002-0840

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 87.093, 183.310 to 183.500, 293.445, 670.310, 701.055, 701.085, 701.150, 701.235, 701.350, 701.530, 701.992 & 1999 OR Laws, Ch. 948, Sec. 8
Stat. Auth.

Chapter 113, Oregon Laws 2007 (HB 2111), Chapter 114, Oregon Laws 2007 (HB 2109), Chapter 203, Oregon Laws 2007 (HB 2309), Chapter 222, Oregon Laws 2007 (SB 95), Chapter 288, Oregon Laws 2007 (HB 2423), Chapter 511, Oregon Laws 2007 (SB 605), Chapter 541, Oregon Laws 2007 (HB 2117), Chapter 648, Oregon Laws 2007 (HB 2654) & Chapter 793, Oregon Laws 2007 (SB 94)

Other Authority

ORS 25.270, 25.785, 25.900, 36.690, 36.700, 36, 705, 36.710, 87.005, 87.058, 87.093, 183.415, 183.450, 183.460, 183.464, 183.470, 183.480, 293.445, 445.080, 448.279, 448, 115, 656.029, 670.410, 670.600, 670.605, 671.510-671.710, 701, 701.005, 701.035, 701.055, 701.065, 701.072, 701.075, 701.077, 701.078, 701.085, 701.105, 701.115, 701.125, 701.130, 701.135, 701.139-701.180, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.150, 701.225, 701.235, 701.350, & 701.355, 701.530, section 2 chapter 203 OR Laws 2007 (HB 2309), sections 5, 14 & 17 Oregon Laws 2007 (HB 2654)

Stats. Implemented

RULE SUMMARY

- 812-001-0200 is amended to implement HB 2654: (1) is amends the Information Notice to include information about section 5, chapter 648, Oregon Laws 2007 (HB 2654) which prohibits a lien if a written contract is required and is not used. (2) and (4) are amended to adopt the notices in section 14, chapter 648, Oregon Laws 2007 (HB 2654). (3) Is amended to adopt the revised form with cite reference corrections made in section 17, chapter 648, Oregon Laws 2007 (HB 2654), and (6) is amended to revise the cite references.
- 812-002-0140 is amended to implement Chapter 793, Oregon Laws 2007 (SB 94) that revised the language in ORS 701.139-701.180 to refer to "complaints" rather than "claims." This amendment adjusts CCB rules to reflect this change.
- 812-002-0143 is amended to implement Chapter 793, Oregon Laws 2007 (SB 94) that revised the language in ORS 701.139-701.180 to refer to "complaints" rather than "claims." This amendment adjusts CCB rules to reflect this change.
- 812-002-0170 is adopted to define "contractor" as the term is used in new division 12. This term includes both licensed and non-licensed persons or entities.

- 812-002-0265 is adopted to implement sections 23 & 23a, chapter 648, Oregon Laws 2007 (HB 2654) that amends ORS 701.005 to define what “exercises management or supervisory authority over the construction activities of the business means regarding the RMI.
- 812-002-0420 is amended to clarify when the agency will backdate a license.
- 812-002-0580 is amended to include an individual who files an employee complaint under ORS 701.140(4), which provides for a complaint “by a person furnishing labor to a contractor to the definition of “person”.
- 812-002-0630 is adopted to define what “reinstate” a license means.
- 812-002-0635 is adopted to define what “reissue” a license means.
- 812-002-0640 is amended to clarify when the agency will backdate a license and to implement chapter 203, Oregon Laws 2007 (HB 2309) that allows for bond alternatives for nonprofits rehabilitating drug houses (Meth).
- 812-002-0760 is amended to implement chapter 511, Oregon Laws 2007 (SB 605) that amends the definition of “contractor” to include cleaning or servicing of chimneys and to implement chapter 541, Oregon Laws 2007 (HB 2117A) that changes “landscape contractor” to “landscape contracting business.”
- 812-002-0840 is repealed. Section 7, chapter 648, Oregon Laws 2007 (HB 2654) requires the agency to adopt rules defining standard terms of written contracts. This amendment repeals OAR 812-002-0840 so that elements of this definition can be incorporated into new rule OAR 812-012-0100.
- 812-003-0150, 812-003-0155, 812-003-0160, 812-003-0175, 812-003-0180, 812-003-0190, 812-003-0260, 812-003-0280, 812-003-0290, 812-003-0310, 812-003-0380, 812-003-0400, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0600, 812-005-0200, 812-005-0210, 812-005-0250, 812-010-0420 and 812-010-0470 are amended to implement chapter 203, Oregon Laws 2007 (HB 2309) that allows for bond alternatives for nonprofit organizations rehabilitating drug houses (Meth). Establishes rules for letters of credit or cash deposits.
- 812-003-0170 is amended to amended to implement chapter 203, Oregon Laws 2007 (HB 2309) that allows for bond alternatives for nonprofit organizations rehabilitating drug houses (Meth) and to implement chapter 648, Oregon Laws 2007 (HB 2654) that increases the bond amounts by \$5,000 for initial licenses issued on or after January 1, 2008.
- 812-003-0200 is amended to implement section 19, chapter 648, Oregon Laws 2007 (HB 2654) requiring liability insurance to have completed operations coverage.
- 812-003-0240 is amended to implement chapter 541, Oregon Laws 2007 (HB 2117A) that changes “landscape contractor” to “landscape contracting business”.
- 812-003-0250 is amended to eliminate a conflict between CCB statute and workers’ compensation statute. The amendment exempts persons who perform services on a volunteer basis for nonprofit, religious, charitable or relief organizations from workers’ compensation insurance requirements.
- 812-003-0300 is amended to clarify consequences when a license is lapsed and to clarify backdating, reissue and reinstatement.
- 812-004-0560 is amended to comply with section 4(4), chapter 288, Oregon Laws 2007 (HB 2423), that requires that if an order is issued upon default, the order must be based on a record that consists of all materials submitted by the party the order is adverse to.
- 812-005-0270 is adopted to implement sections 23 & 23a, chapter 648, Oregon Laws 2007 (HB 2654) that amends ORS 701.005 requiring applicants or licensees to submit evidence that the RMI performs management or supervisory authority over the construction activities of the business.
- 812-008-0040 is amended to delete certification as a member of a professional home inspector association certified by the agency because the agency does not certify membership criteria.
- 812-008-0060, 812-008-0070 and 812-008-0110 are amended to implement Chapter 222, Oregon Laws 2007 (SB 95) that amended ORS 701.350 to set a fee for issuance of an initial two-year certificate for home inspector certification.
- 812-009-0140 is amend to comply with section 4(4), chapter 288, Oregon Laws 2007 (HB 2423), which requires that if an order is issued upon default, the order must be based on a record that consists of all materials submitted by the party the order is adverse to.
- Division 12 (Contractor Duties) is adopted to implement chapter 648, Oregon Laws 2007 (HB 2654).
- 812-012-0110 is adopted to implement section 7, chapter 648, Oregon Laws 2007 (HB 2654) that require the agency to adopt rules defining standard terms of written contracts effective 1/1/08. This rule defines those terms. Section 14, chapter 648, Or Laws 2007 (HB 2654) authorizes the board to adopt rules specifying the time and manner of delivery of the Consumer Notice Form and Notice of Procedure and requiring a contractor to maintain evidence of delivery of these notices. Requiring the contractor to maintain a copy of the contract is part of the evidence of delivery of these notices
- 812-012-0130 is adopted to implement section 7, chapter 648, Oregon Laws 2007 (HB 2654) regarding delivery and proof of delivery of consumer notice.

Authorized Signer

Catherine Dixon
Printed Name

12-13-07
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.

812-001-0200

Consumer [~~Protection~~] Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled “Information Notice to Owner About Construction Liens,” as revised [~~February 3, 2006~~] **December 4, 2007**. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under section 14 (1), chapter 648, Or Laws 2007 (HB 2654), the board adopts the form “Consumer Protection Notice” as revised December 4, 2007.

~~[(2)]~~ (3) In order to comply with the requirement to adopt a “Information Notice to Property Owners About Construction Responsibilities” form under section 17 (5), chapter 648, Or Laws 2007 (HB 2654), the [~~Construction Contractors~~] board adopts the form “Information Notice to Property Owners About Construction Responsibilities” as revised [~~June 26, 2007~~] **December 4, 2007**.

(4) In order to comply with the requirement to adopt a notice of procedure form under section 14 (2), chapter 648, Or Laws 2007 (HB 2654), the board adopts the form “Notice of Procedure” dated December 4, 2007.

~~[(3)]~~ (5) The [~~Construction Contractors~~] board adopts the form “Notice of Compliance with Homebuyer Protection Act” (HPA) as revised December 16, 2003.

~~[(4)]~~ (6) The [~~Construction Contractors~~] board adopts the form “Model Features for Accessible Homes” dated [~~December 6, 2005~~] **December 4, 2007**.

Stat. Auth.: ORS 87.093, 670.310, 701.055, 701.235 & 701.530

Stats. Implemented: ORS 87.093, 701.055, 701.235 & 701.530 & sections 5, 14 & 17 Oregon Laws 2007 (HB 2654)

(4/81, 11/81, 1/82, 3/82, 6/82, 1/83, 1/83, 3/83, 3/83, 10/83, 2/87, 7/87, 1/89, 11/89, 5/92, 7/92, 8/92, 3/99, 9/99, temp. 5/00, 8/00, 6/02, 12/02, temp. 3/03, 6/03, 12/03, temp. 12/03, temp. 12/03, 2/04, 5/04, temp. 6/04, 8/04, 12/05, temp. 1/06, 3/06, 6/07, 12/07)

(Amended and renumbered from 812-001-0020, 12/05)

812-002-0140

Complaint

“Complaint,” as used in ORS chapter 812, [~~has the same meaning as “claim” in~~] **means a complaint filed and processed under** ORS 701.139-701.180. Complaints are classified by type as follows:

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

(2) “Employee complaint” is a 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 complaint” is a 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 complaint” is a 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 complaint” is a complaint filed by an owner for breach of contract, or for negligent or improper work subject to ORS chapter 701, or a construction lien complaint.

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

(7) “Subcontractor complaint” is a 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, 12/07)

812-002-0143

Complainant

“Complainant” means a person who files a [claim] **complaint** 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, 12/07)

812-002-0170

Contractor

“Contractor” has the same meaning as that term is given in ORS 701.005. Contractors include persons who are and who are not licensed under ORS chapter 701.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005
(12/07)

812-002-0265

Exercises Management or Supervisory Authority Over the Construction Activities of the Business

“Exercises management or supervisory authority over the construction activities of the business” as used in ORS 701.005 means meaningfully participating in:

(1) The administration of construction contracts performed by the business; or

(2) The administration of the day-to-day operations of the business.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005
(12/07)

812-002-0420

Lapse in License

“Lapse in license” as used in ORS 701.065(2)(b)(A), ORS 701.115(4); OAR 812-006-0020(1)(b), and OAR 812-006-0020(2)(b) commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed, **reissued** or reinstated by the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.065, 701.115 & 701.225
(4/98, 6/00, 6/03, temp. 7/03, 12/03, 12/05, 12/07)

812-002-0580

Person

“Person” means [a] :

(1) An individual, including, but not limited to a self-employed individual[;];

(2) A partnership, joint venture, limited liability partnership, or limited partnership[;];

(3) A corporation[;];

(4) A trust[;];

(5) A limited liability company[;]; or

(6) Other entity.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.005, 87.093, 445.080, 656.021, 656.029 & 701
(4/98, 9/98, 8/05, 12/07)

812-002-0630

Reinstate

A license is reinstated when licensure is approved by the Board after a lapse that occurred because the license was suspended. A reinstated license is effective from the date that the suspension ends.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085

(12/07)

812-002-0635

Reissue

A license is reissued when licensure is approved by the Board after a lapse that occurred because the licensee failed to renew the license and failed to provide proof of bonding, letter of credit, or cash deposit coverage and insurance coverage during the lapse. A reissued license is effective from the date that the lapse ends.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085

(12/07)

812-002-0640

Renewal

“Renewal” (of license) as used in ORS 701.065, 701.085 and 701.115 includes but is not limited to the act of submitting a replacement bond, a bond rider, **or letter of credit or cash deposit**, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education. **A renewed license is effective from the last date on which the contractor was licensed, either because the renewal application was submitted and approved prior to the expiration date or because the Board, in accordance with ORS 701.115 and OAR 812-003-0290(3)(b), designated the last date on which the contractor was licensed as the effective date of licensure where a lapse in licensure occurred.**

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 670.410, 701.055, 701.065, 701.085, 701.105, 701.115, 701.125, 701.130 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(4/98, 9/98, 6/00, 6/03, 12/05, 12/07)

812-002-0760

Work as a Contractor Includes

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

(1) Except as modified by section [~~(9)~~] **(8)** of this rule, construction, alteration, repair, improvement, inspection, set-up, erection, moving, or demolition of a structure or any other improvement to real estate, including activities performed on-site in the normal course of construction, or receiving and accepting any payments for the above.

[~~(2)~~] **(2)** ~~Chimney or flue inspection or repair.~~

[~~(3)~~] **(2)** Concrete, asphalt and other testing that involves structural modifications, and soils testing associated with planned or existing structures.

[~~(4)~~] **(3)** Construction management.

[~~(5)~~] **(4)** Excavation, backfill, grading, and trenching for the structure or its appurtenances or to accomplish proper drainage and not for landscaping.

[~~(6)~~] **(5)** Improvement of lots with the intent of selling lots with structure(s). This may include contracting with a primary contractor to construct, alter or improve structures.

[~~(7)~~] **(6)** Inspection of cross connections and testing of backflow prevention devices performed by persons licensed under ORS 448.279 by the Health Division except when performed by a person licensed

as a landscape ~~[contractor]~~ **contracting business** as provided under ORS 671.510 through 671.710 or when performed by an employee of a water supplier as defined in ORS 448.115.

~~[(8)]~~ **(7)** Labor only, regardless of whether compensated by the hour or by the job.

~~[(9)]~~ **(8)** Pest control, if in the course of that work any structural modifications are performed.

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

~~[(10)]~~ **(9)** Shoring.

~~[(11)]~~ **(10)** Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 448.279, 448.115, 671.510-671.710, 701.005 & 701.055

(4/98, 6/05, 12/07)

812-002-0840

Written Contract

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

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

~~(2) Customer’s name and address;~~

~~(3) Address where work is to be performed;~~

~~(4) General description of work to be performed;~~

~~(5) Estimated start and completion dates;~~

~~(6) Price; and~~

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

~~Stat. Auth.: ORS 670.310 & 701.235~~

~~Stats. Implemented: ORS 701.055~~

~~(4/98, 6/00)~~

812-003-0150

Bonds, Generally

(1) A properly executed bond must:

(a) Be ~~[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 must]~~

(b) Include ~~[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)~~ (2) If a 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 must be held until final disposition of the complaint.

~~(4)~~ (3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety 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 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/04, 12/06, 12/07)

812-003-0155

Letters of Credit or Cash Deposits, Generally

(1) A properly executed letter of credit or cash deposit authorized under section 2, chapter 203 (HB 2309) must:

(a) Be signed by an authorized agent of the issuing financial institution, must bear the financial institution's account number, and must be filed within the time stated on the letter of credit or cash deposit. Additionally, the agency may require the licensee and financial institution to use the most recent revision of the letter of credit or cash deposit form.

(b) 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 letter of credit or cash deposit is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

"This letter of credit or cash deposit shall be one continuing obligation, and the liability of the financial institution for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this letter of credit or cash deposit.

"This letter of credit or cash deposit 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, or until released by the Oregon Construction Contractors Board. The financial institution may be relieved of further liability for work performed on contracts entered into only after the release by the Oregon Construction Contractors Board. Release of the letter of credit or cash deposit shall not limit the responsibility of the financial institutions for final orders relating to work performed during the work period of a contract entered into prior to the release.

"This letter of credit or cash deposit shall not be valid for purposes of licensing in accordance with ORS chapter 701 unless filed with the Construction Contractors Board within ten (10) days of the date shown below."

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the letter of credit or cash deposit required under ORS 701.085 is in effect, the agency shall provide notice to the financial institution that issued the letter of credit or cash deposit. The financial institution must hold the letter of credit or cash deposit until final disposition of the complaint.

(3) Letters of credit or cash assignment documents received at the agency office from a financial institution via electronic facsimile may be accepted as original documents. The financial institution must provide the original documents to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701 and section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/07)

812-003-0160

Entity Name Required on Bond, Letter of Credit or Cash Deposit

(1) The name of the entity as it appears on the bond, **letter of credit or cash deposit** 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, **letter of credit or cash deposit** must include the name of the sole proprietor;

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

(c) If the entity is a limited liability partnership, the bond, **letter of credit or cash deposit** 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, **letter of credit or cash deposit** 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, **letter of credit or cash deposit**;

(e) If the entity is a corporation or trust, the bond, **letter of credit or cash deposit** must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond, **letter of credit or cash deposit** 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, **letter of credit or cash deposit** does not limit the liability of an entity. Complaints against a licensed [~~and bonded~~] entity will be processed regardless of business names used by an entity.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/04, 12/06, 12/07)

812-003-0170

Bond, Letter of Credit or Cash Deposit [Amounts]

(1) **Except as provided in subsection (2) below, [the following] a surety bond, letter of credit or cash deposit [amounts are] required under ORS 701.085[(2)-(5)] must be in one of the following amounts:**

(a) **For a** General Contractor—All Structures: \$15,000

(b) **For a** General Contractor—Residential: \$15,000

(c) **For a** Specialty Contractor—All Structures: \$10,000

(d) **For a** Specialty Contractor—Residential: \$10,000

(e) **For a** Limited Contractor: \$5,000

(f) **For an** Inspector: \$10,000

(g) **For a** Licensed Developer: \$15,000

(2) Effective January 1, 2008, a surety bond, letter of credit or cash deposit required under ORS 701.085 for new license applicants must be in one of the following amounts:

- (a) For a General Contractor—All Structures: \$20,000**
- (b) For a General Contractor—Residential: \$20,000**
- (c) For a Specialty Contractor—All Structures: \$15,000**
- (d) For a Specialty Contractor—Residential: \$15,000**
- (e) For a Limited Contractor: \$10,000**
- (f) For an Inspector: \$15,000**
- (g) For a Licensed Developer: \$20,000**

~~[(2)]~~ **(3)** A contractor may obtain or maintain a bond, **letter of credit or cash deposit** in an amount that exceeds the amount required under section (1) of this rule if the bond, **letter of credit or cash deposit** obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/04, 6/05, 12/05, 12/07)

812-003-0175

Increased Bond, Letter of Credit or Cash Deposit Requirement [~~Amounts~~], Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond, **letter of credit or cash deposit** 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 **or financial institution** on complaints.

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

Stats. Implemented: ORS 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(temp. 3/06, 9/06, 12/06, 12/07)

812-003-0180

Effective and Cancellation Dates of the Bond, Letter of Credit or Cash Deposit

(1) The surety [~~bond's~~] **bond, letter of credit or cash deposits** effective date is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

~~(2)~~ The bond shall remain in effect and be continuous until cancelled by the surety or until the licensee no longer meets the requirements for licensing as determined by the agency, whichever comes first.

~~[(2)]~~ **(3)** A surety bond may be cancelled by the surety only after the surety has given 30 days' notice to the agency. Cancellation will be effective no less than 30 days after receipt of the cancellation notice.

(4) The letter of credit or cash deposit shall remain in effect and be continuous until released by the agency.

~~[(3)]~~ **(5)** Immediately upon cancellation of the bond, **or cancellation without an authorized release by the agency of a letter of credit or cash deposit** the agency may send an emergency suspension notice

to the contractor as provided for in ORS 701.135[~~(2)~~] **(4)**(a)(A), informing the contractor that the license has been suspended.

[~~(4)~~] **(6)** The bond, **letter of credit or cash deposit** shall be subject to final orders as described in OAR 812-004-0600.

[~~(5)~~] **(7)** The surety **or financial institution** will be responsible for ascertaining the [~~bond's~~] **bond, letter of credit or cash deposit's** effective date.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085, 701.135 & section 2, chapter 203, Oregon Laws 2007 (HB 2309) (12/04, 5/06, 12/07)

812-003-0190

New Bond, Letter of Credit or Cash Deposit Required for Change in Entity

(1) If an entity licenses as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types, the application must be accompanied by a new [~~bond~~]:

(a) Bond separate from the bond held for the previous entity;

(b) Letter of credit separate from the letter of credit held for the previous entity; or

(c) Cash deposit separate from the previous cash deposit held for the previous entity.

(2) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309) (12/04, 12/07)

812-003-0200

Insurance Generally

(1) An applicant for a license, renewal or reissue shall certify that the applicant:

(a) Has procured the minimum amount of insurance per occurrence as required by ORS 701.105 and as provided in OAR 812-002-0380 from an insurer transacting insurance in Oregon; and

(b) Will continue to meet those insurance requirements for as long as the applicant is licensed.

(2) Licensees shall provide a certificate of insurance or other evidence of insurance as required by the agency upon request or prior to the expiration date of their insurance.

(3) A certificate of insurance must include:

(a) The name of the insurer;

(b) Policy or binder number;

(c) Effective dates of coverage;

(d) Coverage amount per occurrence;

(e) A statement that products and completed operations coverage is included as required by ORS 701.105(1).

(f) The agent's name, and agent's telephone number; and

[~~(f)~~] **(g)** The CCB listed as the certificate holder.

(4) If the licensee, in performance of work subject to ORS chapter 701, through failure to comply with this rule, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurer had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.135.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.105

(12/04, 5/06, 9/06, 12/07)

812-003-0240

Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines “independent contractor” for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for “independent contractors”. One requirement is that an “independent contractor” must be engaged in an “independently established business.” Another requirement is related to licenses and certificates that are required for an “independent contractor” to provide services. A third requirement is that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others.

(b) The specific focus of this rule is the “direction and control” requirement. See ORS 670.600 for the requirements of the “independently established business” test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the “direction and control” test:

(A) “Means” are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) “Manner” is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) “Free from direction and control” means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor’s services does not constitute direction and control over the means or manner of providing those services.

(4) Application of “direction and control” test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) [~~Landscape~~] **Landscape contracting** businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor’s services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

(6) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

(7) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.075(1)(j).

Stat. Auth.: ORS 670.310, 670.605 & 701.235

Stats. Implemented: ORS 670.600, 670.605, 701.005 & 701.075

(12/04, 12/05, temp. 1/06, 3/06, 1/07, 12/07)

812-003-0250

Exempt and Nonexempt Class of Independent Contractor Licenses

Contractors shall license as either nonexempt or exempt as provided in ORS 701.035.

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

(a) Sole proprietorships with one or more employees;

(b) Partnerships or limited liability partnerships with one or more employees;

(c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members;

(d) Joint ventures with one or more employees;

(e) Joint ventures with more than two joint venturers if any of the joint venturers are not family members;

(f) Limited partnerships with one or more employees;

(g) Limited partnerships with more than two general partners if any of the general partners are not family members;

(h) Corporations with one or more employees;

(i) Corporations with more than two corporate officers if any of the corporate officers are not family members;

(j) Trusts with one or more employees;

(k) Trusts with more than two trustees if any of the trustees are not family members.

(l) Limited liability companies with one or more employees; or

(m) Limited liability companies with more than two members if any of the members are not family members.

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

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

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

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

(4) Except as provided in section (5) **and (6)** of this rule, entities shall supply the following employer account numbers as required under ORS 701.075:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities are not required to supply employer account numbers under section (4) of this rule except as follows:

(a) Partnerships, joint ventures, limited liability partnerships, and limited partnerships that have no employees and are not directly involved in construction work may be classed as exempt when the entity certifies that all partners or joint venturers qualify as nonsubject workers under ORS 656.027. Such partnerships or joint ventures must supply the Internal Revenue Service employer identification number or federal identification number.

(b) Corporations qualifying as exempt under ORS 656.027(10) must supply the Oregon Employment Department and Oregon Department of Revenue combined business identification number unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation.

(c) Corporations qualifying as exempt must supply the Internal Revenue Service employer identification number or federal identification number.

(d) Limited liability companies must supply the Internal Revenue Service employer identification number or federal identification number unless the limited liability company has only one member and has no employees.

(6) Nonexempt entities that qualify under ORS 656.027 (20) need not supply an Oregon workers' compensation account number or workers' compensation insurance carrier name and policy or binder number.

~~(6)~~ (7) Out-of-state applicants with no Oregon subject workers as provided in ORS 656.126 and OAR 436-050-0055 must supply their home state account numbers, and need not supply an Oregon workers' compensation account number.

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

Stats. Implemented: ORS 701.035 & 701.135

(1/89, 11/89, 3/91, 9/91, 5/92, 7/92, 8/92, 12/92, 4/93, 8/93, 1/94, 6/94, 7/94, 9/95, 5/97, 6/97, 4/98, 9/98, 6/99, 6/03, 12/04, 8/05, 5/06, 12/07)

(Amended and renumbered from 812-003-0002, 12/04)

812-003-0260

Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form 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 or partners, if partners are human beings, in a general partnership;
 - (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, 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, **letter of credit or assignment of savings** 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 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/04, 8/05, 5/06, 9/06, 12/06, 8/07, 12/07)

812-003-0280

Renewal and Reissue of License

(1) Notwithstanding OAR 812-003-0300(3), a license may be renewed or reissued upon:

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

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

(2) A licensee may qualify for Limited Contractor license and reduce the bond to \$5,000 upon certification that:

(a) The licensee will not enter into contracts that exceed \$5,000;

(b) The licensee's gross business sales of work subject to ORS chapter 701 was less than \$40,000 in the previous twelve months and is expected to be less than \$40,000 during the next twelve months; and

(c) The licensee agrees that if the licensee's gross construction business volume exceeds \$40,000 during the coming year the licensee will immediately increase the bond amount to the amount required under OAR 812-003-0170, and increase the insurance coverage if necessary, to meet the requirements of the appropriate license category.

(3) A bond may be reduced under section (2) of this rule by submitting a decrease rider to an existing bond or submitting a new bond. The effective date on either the decrease rider or the new bond must be the license renewal date or after.

(4) The agency may refuse to authorize a reduced bond amount under section (2) of this rule until any pending complaint against the licensee is resolved.

(5) If a licensee provides a decrease rider to an existing bond under section (3) of this rule before the license renewal date, the agency will determine the effective date to be the date of renewal or reissue.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085, 701.105, 701.115, 701.125 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(12/04, 5/06, 12/06, 12/07)

812-003-0290

Effective Dates of Renewal or Reissue of License

(1)~~(a)~~ Except as provided in **section (2)** ~~[subsections (1)(b) and (c)]~~ of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

~~(b)~~ **(2)** The effective date of a license may be prior to the date of receipt of all documents and fees required by law and by these rules if the agency determines that delays in receipt of required documents or fees were caused by agency error.

~~(c) If the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a license prior to receipt of all documents and fees if the surety concurs with the decision of the agency to pre-date the bond.]~~

~~(2)~~ **(3)** The effective date of renewal shall be the previous license expiration date when:

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

(b) All requirements for renewal **are met after the previous expiration date**, including **but not limited to, proof of insurance coverage and bond or letter of credit or cash deposit coverage during**

the period of lapse, [~~submission of either a valid continuous until canceled bond or back dated new bond, certification of insurance coverage, and payment of renewal fee are met,~~] providing the contractor applies for renewal not more than one year after the license lapses.

~~[(3)]~~ **(4)** If the contractor applies for renewal less than one year after the license lapses **and does not have proof of insurance coverage and bond or letter of credit or cash deposit coverage during the period of lapse,** the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, **submission of** a [~~new application~~] renewal form, payment of the [~~new license~~] fee, a newly issued continuous until canceled bond, or reinstatement of an existing continuous until canceled bond, **or letter of credit, or cash deposit,** and certification of insurance coverage.

(5) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, **submission of** a new application form, payment of the [~~new license~~] fee, a newly issued continuous until canceled bond, or reinstatement of an existing continuous until canceled bond, **or letter of credit, or cash deposit,** and certification of insurance coverage.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(12/04, 12/07)

812-003-0300

Consequence of Lapse in License

(1) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred until the date the license is:

(a) Backdated and renewed;

(b) Reissued; or

(c) Reinstated.

(2) During a period of lapse, the entity shall not perform the work of a contractor.

~~[(2)]~~ **(3) Except as provided in OAR 812-003-0290(3)(b), a** [A] period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse. [~~This includes, but is not limited to, a new bond or a notice of reinstatement for the existing bond or on the effective date of a backdated bond or backdated reinstatement for the existing bond.~~]

~~[(3)]~~ **(4)** A license that has lapsed for 24 months or more must be issued a new identifying license number.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.055, 701.115 & 701.135

(12/04, 12/06, 12/07)

812-003-0310

License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety **bond, letter of credit or cash deposit remains** in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS 701.105 remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/04, 12/07)

812-003-0380

Converting From Inactive Back to Active Status

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

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

(b) Comply with section (3), (4) or (5) of this rule as applicable.

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

(a) Submit the fees required under OAR 812-003-0140;

(b) Submit the required surety bond, **or letter of credit, or cash deposit**, and general liability insurance for the category requested; and

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

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

(a) Submit all fees to date as required by OAR 812-003-0140 and 812-003-0320;

(b) Submit the required surety bond, **or letter of credit, or cash deposit**, and general liability insurance for the category requested; and

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

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

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

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

(c) Submit the required surety bond, **or letter of credit, or cash deposit**, and general liability insurance for the category requested; and

(d) Submit all fees required under OAR 812-003-0140.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115, 701.125 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(12/04, 6/05, 12/07)

812-003-0400

Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Complaint

If a surety company **or financial institution** pays all or part of a complaint against a licensed contractor from the contractor's surety bond, **letter of credit or cash deposit**, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond, **letter of credit or cash deposit** 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 **or financial institution** that the surety company **or financial institution** remains liable for the full original penal sum of the bond, **letter of credit or cash deposit**, notwithstanding the payment from the surety bond **letter of credit or cash deposit**.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(5/02, 12/04, 12/06, 12/07)

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

812-004-0240

Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

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

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.085, 701.145, 701.150 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(10/98, 12/04, 12/05, 12/06, 12/07)

812-004-0250

Award of 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 complaint that are payable from respondent's bond, **letter of credit or cash deposit** 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 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 complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond, **letter of credit or cash deposit** 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 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 complaint may include interest expressly allowed as damages under a contract that is the basis of the complaint.

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

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145, 701.146 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(10/98, 4/01, 12/01, 8/03, temp. 12/03, 2/04, 10/04, 8/05, 12/05, 12/06, 12/07)

812-004-0260

Order Closing a Complaint

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

(a) The agency must include notice in its request to the complainant that failure to act as requested may result in closure of the complaint and that closure of the complaint will prevent access to the bond, **letter of credit or cash deposit.**

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

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

(3) The agency may reopen a complaint closed under this rule if the record of the complaint contains evidence that shows that the reason the complainant did not act as requested by the agency was due to excusable neglect by the complainant. The agency may reopen the 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 complaint.

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

(5) A party must file a motion for reconsideration of an order closing a 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 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(04/01, 9/01, 5/02, 8/03, 12/04, 12/05, 12/06, 12/07)

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 complaint issued by the agency 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 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 before the agency's referral of the complaint to the Office of Administrative Hearings.

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

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

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

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

(B) The procedure to file a new 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.

(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 must include a statement that the agency's file on the 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 complaint, a contested case notice issued under this rule must include a statement that the agency's file on the 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.]~~

(6) A contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record for purposes of a default order under this rule and for purposes of a contested case hearing or arbitration on the complaint. For purposes of this rule, the agency's file consists of all documents submitted by parties, all agency correspondence with the parties and any other material designated by the agency as part of the record.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147; section 4, chapter 288, Oregon Laws 2007 (HB 2423)

(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, 12/07)

812-004-0600

Payment From Surety [~~Bonds~~] Bond, Letter of Credit or Cash Deposit

(1) The agency may notify the surety company or financial institution of complaints pending.

(2) The agency must notify the surety company or financial institution of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint 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 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 complaint.

(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, **letter of credit or cash deposit** was in effect when the work period began, payment must be made from that surety bond, **letter of credit or cash deposit**.

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

(c) A surety bond, **letter of credit or cash deposit** that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, **letters of credit or cash deposits** have no liability for any complaint related to the job.

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

(5) If the respondent maintains multiple surety bonds, **letters of credit or cash deposits**, the following apply:

(a) If multiple surety bonds, **letters of credit or cash deposits** were in effect when the work period began, payment must be made from all surety bonds, **letters of credit or cash deposits** in effect.

(b) If no surety bond, **letter of credit or cash deposit** was in effect when the work period began, but multiple surety bonds, **letters of credit or cash deposits** subsequently became effective during the work period of the contract and the effective dates of the surety bonds, **letters of credit or cash deposits** are substantially the same, payment must be made from multiple surety bonds, **letters of credit or cash deposits**.

(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond, **letter of credit or cash deposit** must be in the same proportion that the penal sum of the surety bond, **letter of credit or cash deposit** bears to the total of the penal sums of the multiple surety bonds, **letters of credit or cash deposits**.

(6) If more than one complaint must be paid from a surety bond, **letter of credit or cash deposit** under section (3) of this rule or multiple surety bonds, **letters of credit or cash deposits** under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, **letters of credit or cash deposits** payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(7) The full penal sum of a bond, **letter of credit or cash deposit** must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond, **letter of credit or cash deposit** 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 complainant and payment is due from the surety bonds, **letter of credit or cash deposit** of the respondents, payment must be made in equal amounts from each bond, **letter of credit or cash deposit** subject to payment. If one or more of the bonds, **letters of credit or cash deposits** is or becomes exhausted, payment must be made from the remaining bond, **letter of credit or cash deposit** or in equal amounts from the remaining bonds, **letters of credit or cash deposits**. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, **letter of credit or cash deposit** under this section by an amount equal to the payment made by the respondent.

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

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

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(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, 6/07, 12/07)

812-005-0200

Unpaid Final Orders that Exceed the Contractor's Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.085(7), the agency must suspend the license of a licensee if the agency issues a final order on a complaint that exceeds the amount of the bond, **letter of credit or cash deposit** available to pay the order.

(2) A suspension issued under section (1) of this rule 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, **letter of credit or cash deposit** 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, **letter of credit or cash deposit** 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, **letter of credit or cash deposit** by less than 50 percent, the agency may require a bond, **letter of credit or cash deposit** 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, **letter of credit or cash deposit** by 50 percent or more, but less than 100 percent, the agency may require a bond, **letter of credit or cash deposit** three times the bond, **letter of credit or cash deposit** amount required under ORS 701.085.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, **letter of credit or cash deposit** by 100 percent or more, the agency may require a bond, **letter of credit or cash deposit** 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 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(12/04, 6/05, 12/05, 12/06, 12/07)

812-005-0210

Conditions to Require an Increased Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.085(8), the agency may require a bond, **letter of credit or cash deposit** of up to five times the normally required amount, if it determines that a current or previous license of an owner or officer, as those terms are defined in division 2 of these rules, has:

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

(b) Five or more breach of contract complaints filed under ORS 701.139 to 701.180 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(2) that exceeds the amount of the bond, **letter of credit or cash deposit**.

(2) The amount of the increased bond, **letter of credit or cash deposit** required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, **letter of credit or cash deposit** by less than 50 percent, the agency may require a bond, **letter of credit or cash deposit** two times the amount required under ORS 701.085.

(b) If the sum of the unpaid final orders exceeds the licensee's most recent bond, **letter of credit or cash deposit** by 50 percent or more, but less than 100 percent, the agency may require a bond, **letter of credit or cash deposit** three times the bond, **letter of credit or cash deposit** amount required under ORS 701.085.

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

(3) The amount of increased bond, **letter of credit or cash deposit** the agency may require under subsection (1)(b) of this rule will be based on the number of complaints filed and the time period that the complaints were received as follows:

(a) Two times the bond, **letter of credit or cash deposit** amount required under ORS 701.085 if five or more complaints are received in any twelve-month period.

(b) Three times the bond, **letter of credit or cash deposit** amount required under ORS 701.085 if five or more complaints are received in any six-month period.

(c) Five times the bond, **letter of credit or cash deposit** amount required under ORS 701.085 if five or more complaints are received in any three-month period.

(4) The amount of the increased bond, **letter of credit or cash deposit** required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, **letter of credit or cash deposit** by less than 50 percent, the agency may require a bond, **letter of credit or cash deposit** two times the bond amount required under ORS 701.085.

(b) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, **letter of credit or cash deposit** by 50 percent or more, but less than 100 percent, the agency may require a bond, **letter of credit or cash deposit** three times the bond, **letter of credit or cash deposit** amount required under ORS 701.085.

(c) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, **letter of credit or cash deposit** by 100 percent or more, the agency may require a bond, **letter of credit or cash deposit** five times the bond, **letter of credit or cash deposit** amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.005, 701.077, 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(12/04, 6/05, 12/05, 9/06, 12/06, 8/07, 12/07)

812-005-0250

Repeal of Increased Bond, Letter of Credit or Cash Deposit Requirement

(1) Under ORS 701.085(7) or (8) after two years of operating under the increased bond, **letter of credit or cash deposit**, an applicant or licensee may submit a written request to the Board appealing the agency's determination requiring an increased bond, **letter of credit or cash deposit** amount.

(2) A licensee required to file a bond, **letter of credit or cash deposit** of up to five times the normal amount may petition the agency to be relieved of that obligation after demonstrating to the agency two full years of acceptable business practices while having posted the increased bond, **letter of credit or cash deposit**.

(3) Petitions for return to normal bond, **letter of credit or cash deposit** requirements under ORS 701.085 must be made in writing and delivered to the agency. Such petitions must provide a full explanation why the licensee no longer poses an increased risk to the public and should be granted a license at the regular bond, **letter of credit or cash deposit** amount.

(4) The agency shall consider the following factors while considering the licensee's petition:

(a) After the increased bond, **letter of credit or cash deposit** requirement, whether the petitioner has:

(A) A history of paying Dispute Resolution Services complaints within ten (10) days of the order becoming final; or

(B) Incurred any unpaid court judgments;

- (b) A review of the petitioner's CCB enforcement/discipline history; and
- (c) A criminal history background check.

(5) The agency shall notify the licensee or applicant in writing within 30 days of the agency's decision regarding the petition. If the agency proposes to deny the petition, the agency shall notify the licensee or applicant of the basis for its proposed denial and provide notice and an opportunity for hearing, as provided for in ORS 183.415.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(9/06, 12/07)

812-005-0270

Duty to Submit Evidence of Management or Supervisory Authority

Upon request from the agency, a licensee must submit evidence to support compliance with the requirement that a responsible managing individual of the licensee exercises management or supervisory authority over the construction activities of the business as defined under ORS 701.005 and OAR 812-003-0265.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005 & 701.078
(12/07)

812-008-0040

Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

- (a) An application on a form provided by the agency;
- (b) The fee established in OAR 812-008-0110;
- (c) If applicable, CCB number and name of employing licensee;
- (d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and
- (e) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

- (a) Become licensed with the agency as a General Contractor, Specialty Contractor, or Inspector;
- (b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;
- (c) Submit an application on a form prescribed by the agency; and
- (d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university, (10 points maximum).

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university, (10 points maximum).

(c) One point for each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector, (10 points maximum).

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities, (10 points maximum).

(4) The applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country (16 points maximum).

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (16 points maximum).

~~[(c) Four points for each certification as a member of a professional home inspector association whose membership criteria have been certified by the agency in the last 12 months (8 points maximum).]~~

~~[(d)]~~ (c) One-half point for each letter of recommendation from an Oregon-certified home inspector (4 points maximum).

~~[(e)]~~ (d) One point for each building codes certification issued by a government agency (5 points maximum).

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

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 5/99, temp. 6/99, 2/00, 6/00, 8/00, temp. 10/00, 12/00, 4/01, 9/01, temp. 10/01, 5/02, 12/06, 12/07)

812-008-0060

Certification Issuance

(1) ~~[When granted, the certificate shall be mailed to the applicant.]~~

~~[(2)]~~ The effective date of the certificate will be the date applicant meets all agency requirements, **including but not limited the receipt of the fee required under OAR 812-008-0110 (4).**

~~[(3)]~~ (2) A unique certification number will be assigned to each certificate.

~~[(4)]~~ (3) All certificates shall be issued in the name of the individual who passed the test.

~~[(5)]~~ (4) An application **for certification** may be withdrawn **upon receipt of a written request to the agency** at any time **prior to the issuance of the certification** ~~[by written request to the agency].~~

(5) When granted, the certificate shall be mailed to the applicant.

(6) If denied, the agency shall state, in writing, the reasons for denial.

(7) A certificate shall be non-transferable and shall be effective for two years from date of issue.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 8/00, 6/03, 12/07)

812-008-0070

Requirements for Renewal of Certification

(1) ~~[For all certifications due to renew on or after July 1, 2006, and for all certification renewal applications received on or after July 1, 2006, the]~~ **An** Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(a) A properly completed renewal application on an agency form; and

(b) The renewal fee ~~[of \$150 (listed in)]~~ **as required under** OAR 812-008-0110[{}]; and

(c) Copies of completion certificates listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(6/99, 9/01, 3/03, 12/04, 1/06, 12/07)

812-008-0110

Prescribed Fees

The following prescribed fees are established:

(1) Application to become certified, \$50.

(2) Test, first attempt, \$50.

(3) Test, each sitting to retake one or more sections, \$25.

(4) **Initial two-year** Certification, [~~\$75 per year~~] **\$150**.

(5) Certification renewal (two years), \$150.

(6) Refunds:

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

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

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

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

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

Stats. Implemented: ORS 293.445, 701.350 & 701.355

(2/98, 6/99, 9/01, temp. 1/03, 6/03, 12/04, 12/05, 12/07)

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 complaint of the time and place of a hearing on the complaint and a party did not appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that ~~is~~ ~~adverse~~ to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3) ~~is~~.

~~[(b) Dismisses the complaint based on a lack of evidence in the record supporting 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 complainant did not appear at the hearing.]~~

(3) If a complainant does not appear at a hearing, an administrative law judge may dismiss a complaint under section (2) of this rule if the administrative law judge finds that the record does not contain sufficient evidence to support the complaint.

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, section 4, chapter 288, Oregon Laws 2007 (HB 2423)

(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 4/01, 9/01, 5/02, 8/03, 12/06, 12/07)

812-010-0420

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

(1) An award 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 must be in writing and must be signed or otherwise authenticated by the arbitrator.

(4) The award 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 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 statement of damages or amended statement of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Breach of Contract Complaint filed by the party under OAR 812-004-0340, if no statement of damages was filed.

(6) When a complainant makes a complaint against a respondent's surety bond, **letter of credit or cash deposit** required under ORS 701.085 and the parties to the complaint have not agreed that the arbitration will bind the complainant, only the complainant may assert damages. The arbitrator may award damages to the complainant, but not to the respondent. The respondent may assert amounts owed to it as an offset under section (7) of this rule.

(7) An arbitrator must consider any amounts owed by a party 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 alleging the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a statement of damages as to the offset. If the party asserting the offset did not file a 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 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, **letter of credit or cash deposit** required under ORS 701.085 and other amounts that are not payable from the bond, **letter of credit or cash deposit** under OAR 812-004-0250 or any other law, the award 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 statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages 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 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)
(10/98, 6/02, 9/02, 11/02, 8/03, 12/03, 12/04, 6/05, 12/06, 12/07)

812-010-0470

Payments from Licensee's Bond, Letter of Credit or Cash Deposit

(1) If an award or amended award requires payment by a licensee and the licensee does not pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond, **letter of credit or cash deposit** to the extent payment is authorized under ORS 701.150. Payment from the bond, **letter of credit or cash deposit** 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 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)

(10/98, /600, 12/01, 5/02, temp. 9/02, 11/02, 12/03, 5/04, 10/04, 6/05, 12/06, 12/07)

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

DIVISION 12 **CONTRACTOR DUTIES**

812-012-0110

Terms of Written Contract

(1) If a contractor is required to have a written contract under section 7, chapter 648, Oregon Laws 2007 (HB 2654), the written contract or attached addendum to the written contract must contain the following:

(a) A statement that the contractor is licensed by the Construction Contractors Board.

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(c) Effective July 1, 2008, an acknowledgment of a written offer of a warranty, if an offer is required by section 11, chapter 648 Oregon Laws 2007 (HB 2654), and indication of the acceptance or rejection of the offered warranty;

(d) A summary of the notices required under ORS 87.093 or under rules adopted under sections 13 (2) and 14 of chapter 648, Oregon Laws 2007 (HB 2654).

(e) Effective July 1, 2008, acknowledgment of the receipt of the maintenance information required by the board under section 13 of chapter 648, Oregon Laws 2007 (HB 2654);

(f) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

(g) Customer's name and address;

(h) Address where the work is to be performed;

(i) A description of the work to be performed;

(j) Price and payment terms;

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310 & 701.235, Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)

Stats. Implemented: Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)

(12/07)

812-012-0130

Delivery and Proof of Delivery of Consumer Notice

(1) If a contractor is required to have a written contract under section 7, chapter 648, Oregon Laws 2007 (HB 2654), the consumer notices described in OAR 812-001-0200 shall be delivered on or before the date the contract is entered into.

(2) If a contractor agrees to do construction work, but is not required to have a written contract under section 7, chapter 648, Oregon Laws 2007 (HB 2654), the contractor, at the time an agreement to do the work is entered into, must deliver to the property owner contracting for residential repair, remodel or construction work the following:

(a) Consumer Protection Notice; and

(b) Notice of Procedure.

(3) The contractor shall maintain proof of delivery of the Consumer Protection Notice, Notice of Procedure, and the notice required under ORS 87.093, if required, for a period of two years after the contract was entered into. Proof of delivery of the notices shall include, but not be limited to:

(a) A signed copy of the notices;

(b) An unambiguous phrase in the written contract that acknowledges receipt of the notices and that is initialed by the owner; or

(c) Copies of the written contract, if the notices are fully contained in the written contract.

Stat. Auth.: ORS 670.310 & 701.235, Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)

Stats. Implemented: Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)
(12/07)