

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 January 27, 2009 by the  
(Date prior to or same as filing date.)

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

to become effective February 1, 2009. Rulemaking Notice was published in the January 2009 Oregon Bulletin.\*\*  
(Date upon filing or later) (Month and Year)

**RULE CAPTION**

Adds a definition, amends fee and commercial continuing education language, and adjusts civil penalties relating to written contracts  
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.  
812-002-0262 812-003-0141

**AMEND:**  
812-003-0140 812-005-0800 812-020-0070

**REPEAL:**

**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 183.310 to 183.500, 670.310, 701.124, 701.235, 701.238 & 701.992  
Stat. Auth.

Other Authority

ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.056, 701.063, 701.091, 701.098, 701.106, 701.124, 701.227, 701.238, 701.305, 701.315, 701.330, 701.345 & 701.992  
Stats. Implemented

**RULE SUMMARY**

- 812-002-0262 is adopted to provide an exemption for tree removal contractors who are "engaged in the commercial harvest of forest products". This definition derives from the common and ordinary term used in the phrase.
- 812-003-0140 is amended because in the 2007 legislative session CCB's law changed the fees from licensing and renewal fees to application fees. Part of the reason for the change was due to the fact that the agency spends its time and resources to process a new license or renewal application whether the license is ever issued or not.
- 812-003-0141 is adopted to allow the agency to refund a portion of the unused two-year fee of a four-year license, if licensee within the first two-years following renewal voluntarily terminates their license. This was formerly part of 812-003-0140.
- 812-005-0800 is amended—currently CCB may impose a civil penalty upon a contractor who fails to use a written contract in an amount of not less than \$200 or more than \$2,000. Yet, if a contractor uses a written contract, but the contract does not contain all of the required terms, the penalties are more severe. The amendment to subsection (11) makes failing to use a written contract the more severe offense. As of 2009, if a contractor uses a written contract, but fails to include all of the required provisions, the civil penalty is not less than \$500 or more than \$5,000. This is more than the sanction for not using a written contract at all—arguably the more serious violation. The amendment to subsection (34) reduces the sanctions to reflect that this is the less serious violation.

- 812-020-0070 is amended to clarify that, at the time of certification, the number of key employees is determined as of the previous date when the license was issued, reissued or renewed.

\_\_\_\_\_  
Authorized Signer

Catherine Dixon  
Printed Name

January 30, 2009  
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 1<sup>st</sup> 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 15<sup>th</sup> 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](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.

**812-002-0262**

**Engaged in the Commercial Harvest of Forest Products**

**“Engaged in the commercial harvest of forest products” as used in ORS 701.005(5)(e) means engaged in buying or selling fallen trees, logs, poles or pilings. “Engaged in the commercial harvest of forest products” does not mean masticating, chipping or mulching trees or brush on site.**

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

**Stats. Implemented: ORS 701.005**

**(1/09)**

**812-003-0140**

**License Application Fees**

(1) The **application** fee for all [~~license~~] **new**, renewal, or [~~reissue applications is \$260 for a period of two years~~] **reissued licenses is \$260.**

(2) [~~Fees~~] **Application fees** will not be [~~prorated~~] **refunded or transferred.**

[~~(3) Except as provided in sections (4) and (5) of this rule, licensing, renewal, or reissue application fees are non-refundable and nontransferable.~~

[~~(4) When an applicant withdraws their application for a new license or renewal prior to issuance or fails to complete the licensing or renewal process, the agency may refund the application fee, but will retain a processing fee of \$40.~~

[~~(5) If a licensee paid an application fee for a four-year renewal and voluntarily terminated their license within the first two years following the renewal, the agency may refund the unused two-year application fee only if the following conditions are met:~~

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

[~~(b) The licensee will return the original license card(s) to the agency; and~~

[~~(c) The agency will retain a \$40 processing fee.]~~

Stat. Auth.: ORS 670.310, 701.238 & 701.235

Stats. Implemented: ORS 701.056, 701.063, & 701.238

(12/04, 8/05, 12/06, 2/08, 1/09)

**812-003-0141**

**Four-Year Renewal Fees**

**If, on or before July 1, 2008, a licensee paid an application fee for a four-year renewal and voluntarily terminated their license within the first two years following the renewal, the agency may refund the unused two-year application fee of \$260, less processing fee, only if the following conditions are met:**

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

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

**(3) The agency will retain a \$130 processing fee.**

**Stat. Auth.: ORS 670.310, 701.238 & 701.235**

**Stats. Implemented: ORS 701.056, 701.063, & 701.238**

**(1/09)**

**812-005-0800**

**Schedule of Penalties**

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(a) A “complaint for damages” as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency’s request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an “Information Notice to Owners about Construction Liens” as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) ~~[Failure]~~ **Failing** to use a written contract as required by ORS 701.305[;]: ~~[\$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000]~~ **\$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.**

(12) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

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

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

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

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.098(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(34) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110:

~~[(a) On or before December 31, 2008: first offense, a warning letter; second offense, \$500 civil penalty; and third offense, up to \$5,000 civil penalty.~~

~~[(b) After December 31, 2008: first offense, \$500 civil penalty; second offense, \$2,000 civil penalty; and third offense, up to \$5,000 civil penalty]~~ **\$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.**

(35) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(36) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or ORS 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(37) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(38) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

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

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.091, 701.098, 701.106, 701.227, 701.305, 701.315, 701.330, 701.345 & 701.992

(4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/85, 4/85, 1/87, 3/87, 1/88, 2/88, 6/88, 1/89, 11/89, 2/90, 3/90, 4/90, 5/90, 6/90, 7/90, 10/90, 11/90, 3/91, 9/91, 1/92, 2/92, 4/92, 6/92, 5/93, 12/93, 1/95, 9/95, 10/95, 8/96, 10/98), temp. 11/99, 5/00, 6/00, temp. 11/00, 4/01, 12/01, temp. 3/02, 3/02, 6/02, 9/02, 12/03, 6/04, 12/04, 12/05, 1/06, 6/06, 12/06, 6/07, 2/08, 6/08, 9/08, 11/08, 1/09)

## **812-020-0070**

### **Certification of Hours – Continuing Education for Commercial Contractors**

(1) Upon renewal, a commercial contractor must certify that one or more key employees obtained the continuing education required by OAR 812-020-0050 to 812-020-0073.

(2) For a commercial general or specialty contractor – level 1 with five or more key employees, the commercial contractor must certify that one or more key employees completed at least 80 hours during the preceding license period.

(3) For a commercial general or specialty contractor – level 1 with four or fewer key employees, the commercial contractor must certify as follows:

(a) With four key employees, that one or more key employees completed at least 64 hours during the preceding license period.

(b) With three key employees, that one or more key employees completed at least 48 hours during the preceding license period.

(c) With two key employees, that one or more key employees completed at least 32 hours during the preceding license period.

(d) With one key employee, that the key employee completed at least 16 hours during the preceding license period.

(4) For a commercial general or specialty contractor – level 2, the commercial contractor must certify that one or more key employees completed at least 32 hours during the preceding license period.

(5) For purposes of sections (2) to (4) of this rule, the number of key employees is the number of such persons employed by the commercial contractor [~~on the most recent date of license issue or reissue~~] **as of the previous date of license issuance, reissuance or renewal.**

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

(11/08, 1/09)