

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 April 22, 2008 by the
(Date prior to or same as filing date.)

Construction Contractors Board ORAR 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 May 1, 2008 Rulemaking Notice was published in the April 2008 Oregon Bulletin.**
(Date upon filing or later) (Month and Year)

RULE CAPTION

Amended to adopt revised forms, meet new requirements, housekeeping, and revise appeal process

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

RULEMAKING ACTION

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

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
812-009-0435

AMEND:
812-001-0120 812-001-0160 812-001-0200 812-009-0400 812-009-0420 812-012-0130

REPEAL:
Temporary rule OAR 812-001-0200 filed on January 2, 2008 Temporary rule OAR 812-012-0130 filed on January 18, 2008

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, 293.445, 670.310, 701.235, 701.305, 701.325, 701.330 & 701.530
Stat. Auth.

Other Authority

ORS 87.093, 183.341, 183.413 to 183.470, 183.460, 192.430, 293.445, 701.235, 701.250, 701.260, 701.305, 701.325, 701.330 & 701.530
Stats. Implemented

RULE SUMMARY

OAR 812-001-0120 is amended to adopt the current version of Attorney General's Uniform and Model Rules of Procedure.

OAR 812-001-0160 is amended to delete the word "tape" before the word "recording" since tapes are no longer used for hearings.

OAR 812-001-0200 is amended to adopt the revised version of the forms: "Information Notice to Owner About Construction Liens" and "Consumer Protection Notice".

OAR 812-009-0400 is amended to add "Dispute Resolution" to the title to avoid confusion and to revise the date written response to exceptions are due to the agency and to delete the word "tape" and replace it with the word "recording" since tapes are no longer used for hearings.

OAR 812-009-0420 is amended to delete the written arguments language since the exceptions are the respondent's written arguments and adds a notification requirement in the exceptions from the respondent that they intend to rely on oral testimony. The changes to the rule flesh out how the procedure will work in Enforcement cases, as is currently done for DRS cases.

OAR 812-009-0435 is adopted to establish procedures for rescheduling of cases on appeal before the Appeal Committee.

OAR 812-0012-0130 is amended to delete 812-012-0130(2) because it places contractors in an unworkable position as it relates to delivery of CCB "Consumer Protection Notice" and "Notice of Procedure" documents when contracting to perform small repair projects. In many cases, these oral agreements are made by telephone and the work is performed when owners are not present at the job sites. Small electrical, plumbing, and glazing repair projects, for example, are often ordered by consumers over the telephone. The only written document is the invoice prepared by the contractor at the conclusion of the work. This is often impossible as these deals are often made over the telephone.

Authorized Signer

Catherine Dixon
Printed Name

April 28, 2008
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.

812-001-0120

Uniform and Model Rules

The Construction Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 to 137-005-0070, revised [~~January 1, 2006~~] **January 1, 2008**, with the following exceptions: OAR 137-003-0015, 137-005-0060, and 137-005-0070.

Stat. Auth.: ORS chapter 670.310 & 701.235

Stats. Implemented: ORS chapters 183.341

(6/80, 11/80, 1/82, 3/82, 4/82, 10/82, 1/83, 2/83, 3/83, 7/83, 3/84, 5/84, 1/86, 5/86, 3/88, 11/88, 12/88, 1/89, 11/89, 4/90, 10/90, 11/90, 2/92, 3/92, 4/92, 5/92, 7/92, 8/92, 12/92, 1/94, 6/94, 7/94, 6/95, 6/96, 11/97, 3/99, 9/01, 10/04, 12/05, 3/06)

(Amended and renumbered from 812-001-0003, 12/05, 4/08)

812-001-0160

Requests for Information; Charges for Records

(1) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:

- (a) License numbers.
- (b) Name of licensed entity and any assumed business names on file with the agency.
- (c) Type of business entity.
- (d) Category of license.
- (e) Class of independent contractor license status.
- (f) Personal names of owner, partners, joint venturers, members, corporate officers, or trustees.
- (g) The dates in the license history and the action that took place on those dates.

(2) The agency may make the following charges for records:

- (a) \$20 for each certification that an entity has or has not been licensed with the Construction Contractors Board.
- (b) \$20 for certified copies of documents.
- (c) \$5 for the first 20 copies made and 25 cents per page thereafter.
- (d) \$20 for duplicate **audio** recordings of, Board meetings and Appeal Committee meetings.
- (e) \$20 for duplicate [~~tape~~] **audio** recordings of a three hour agency hearing or arbitration and \$10 for duplicate **audio** recordings of each additional 90 minutes or fraction thereof of the hearing or arbitration.
- (f) Charge as determined by preparation time and production cost for mailing labels of licensees.
- (g) \$10 per half-hour unit or portion of a half-hour unit for research or copying of records for each request from a person beginning with the 31st minute of research or copying time.

Stat. Auth.: ORS 293.445, 670.310 & 701.235

Stats. Implemented: ORS 192.430, 293.445, 701.235 & 701.250

(1/83, 3/83, 3/84, 5/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 2/89, 6/89, 7/89, 11/89, 2/90, 5/90, 6/90, 2/92, 4/92, 2/95, 9/95, 5/96, 5/97, 4/98, 9/98, 3/99, temp. 6/99, 9/99, 6/00, 12/00, 12/01, 5/02, 2/04, 12/04, 8/05, 12/05, 5/06, 6/07, 4/08)

(Amended and renumbered from 812-001-0015, 12/05)

812-001-0200

Consumer 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 [~~December 4, 2007~~] **December 20, 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)~~] **ORS 701.330(1)**, the board adopts the form "Consumer Protection Notice" as revised [~~December 4, 2007~~] **December 20, 2007**.

(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)] **ORS 701.325(3)**, the board adopts the form “Information Notice to Property Owners About Construction Responsibilities” as revised 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)] **ORS 701.330(2)**, the board adopts the form “Notice of Procedure” dated December 4, 2007.~~

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

(6) The board adopts the form “Model Features for Accessible Homes” dated December 4, 2007.

Stat. Auth.: ORS 87.093, 670.310, [~~701.055~~], 701.235, **701.325, 701.330** & 701.530

Stats. Implemented: ORS 87.093, [~~701.055~~], 701.235, **701.325, 701.330** & 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, 2/04, 5/04, temp. 6/04, 8/04, 12/05, temp. 1/06, 3/06, 6/07, 12/07, temp. 1/08, 4/08)

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

812-009-0400

Exceptions to Agency Orders, Dispute Resolution Complaints

(1) After a contested case complaint hearing, the complainant or respondent may file written exceptions if they believe that the administrative law judge made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2)(a) To be considered, the first exceptions must be received by the agency within 21 days from the date of mailing the proposed order.

(b) If one party files timely exceptions, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days from the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 812-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board’s Appeal Committee at a regular meeting of the committee.

(4) The exceptions must substantially conform to the requirements of OAR 812-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days before **the case is referred to** the Committee [~~meeting~~] **for scheduling** [~~date~~] if the original exceptions were timely received.

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party must include in the exceptions:

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

(B) A request for a copy of the [~~tape~~] **audio recording** of the hearing with the fee required under OAR 812-001-0160.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (6)(a) of this rule, the agency must send a copy of the [~~tape~~] **audio recording** of the hearing to the party that did not file the exceptions without charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony must prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions. The party must deliver the transcript to the agency within 21 days from the date the agency mails the [~~tape~~] **audio recording** of the hearing to the party.

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

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency within 21 days from the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency must mail a copy of the transcript prepared under section (7) of this rule to the party that filed the exceptions.

(8) The Appeal Committee may refuse to consider evidence of oral testimony submitted by a party if the party does not comply with the requirements of sections (6) and (7) of this rule.

(9) The complainant and respondent may appear before the members of the Committee to argue for or against the proposed order.

(10) The agency may waive or extend the time limits in sections (5) through (7) of this rule on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.460 & 701.260

(10/98, temp. 3/00, 6/00, 4/01, 3/03, 8/03, 12/04, 12/05, 12/06, 4/08)

812-009-0420

Exceptions to Agency Orders, Enforcement

(1) After a contested case enforcement hearing, the respondent may file written exceptions if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the agency within 21 days of the date of mailing of the proposed order. If written exceptions are not timely received, the agency may issue a final order as proposed.

(2) If exceptions are timely received, the matter will be set for consideration by the Appeal Committee at its next meeting for which agenda space is available. [~~Written argument in opposition to the proposed order will be accepted up to 15 days before the Appeal Committee meeting date if the original exceptions were timely received. The agency may waive the 15 day requirement.~~]

(3)(a) If the respondent intends to rely on oral testimony given at the hearing, the respondent must include in the exceptions:

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

(B) A request for a copy of the audio recording of the hearing with the fee required under OAR

812-001-0160.

(b) The respondent must prepare a typed transcript of the portions of the hearing testimony that the respondent contends support the exceptions. The respondent must deliver the transcript to the agency within 21 days from the date the agency mails the copy of the audio recording of the hearing to the respondent.

(4) The Appeal Committee may refuse to consider evidence of oral testimony submitted by respondent if the respondent does not comply with the requirements of section (3) of this rule.

[~~(3)~~] **(5)** The respondent may appear before the members of the Appeal Committee to argue against the proposed order, if the agency receives written notice of intent to do so before the Appeal Committee meeting date. Oral argument will be permitted only if the original exceptions were timely received.

Stat. Auth.: ORS 183.310, 670.310 & 701.235

Stats. Implemented: ORS 183.460 & ORS 701.260

(10/98, 12/05, 4/08)

812-009-0435

Rescheduling of Exceptions Before the Appeal Committee

If a party requests in writing to reschedule the case scheduled before the Appeal Committee, the request may be granted if:

(1) The request is promptly made after the party receives the notice of the scheduling of the matter before the Appeal Committee or is promptly made after emergency or unforeseen circumstances arise;

(2) The party establishes circumstances that prevent attendance by the party at the scheduled Appeal Committee meeting; and

(3) The circumstances preventing attendance at the Appeal Committee meeting are beyond the reasonable control of the requesting party.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.413 to 183.470 & 701.260

(4/08)

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)] **ORS 701.305**, the consumer notices described in OAR 812-001-0200**(1), (2) and (4)** shall be delivered on or before the date the [~~contact~~] **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)]~~ **(2)** 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, **701.305 & 701.330** [Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)]

Stats. Implemented: [Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)] **701.305 & 701.330**

(12/07, temp. 1/08, 4/08)