

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 28, 2009 by the
(Date prior to or same as filing date.)

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

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

RULE CAPTION

Notify agency of court judgments and entity name changes, and establishes penalties for noncompliance, establishes penalties for failure to pay OR-OSHA penalties.

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

RULEMAKING ACTION

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

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
812-001-0220 812-012-0170

AMEND:
812-003-0200 812-003-0320 812-005-0280 812-005-0800

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, 701.235, 701.238 & 701.992
Stat. Auth.

Other Authority

ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.056, 701.068, 701.073, 701.088, 701.091, 701.098, 701.102, 701.106, 701.109, 701.227, 701.238, 701.305, 701.315, 701.330, 701.345, & 701.992
Stats. Implemented

RULE SUMMARY

- 812-001-0220 adopts the form "Unpaid Court Judgment Filing with the CCB (ORS 701.109)".
- 812-003-0200 is amended to move the penalty to penalty rule, OAR 812-005-0800.
- 812-003-0320 is amended to clarify that a licensed contractor must notify the agency if it changes its name. The change occurs by: (1) changing the legal name (e.g., the corporate name); (2) changing or adding a new assumed business name; or (3) changing a personal surname. Contractors will have 30 days to submit a record change and a \$20 fee to notify the agency of the name change(s).
- 812-005-0280 is amended to renumber to add a subsection that permits CCB to sanction a contractor who fails to pay a civil penalty final order for OR-OSHA violations, correct and make the language consistent wording changing "reissue" to "issue", adds language that permits CCB to sanction a contractor who has been sanctioned by DCBS for a fifth (or subsequent) repeat violation of OR-OSHA laws; and permits CCB to sanction a contractor who has been sanctioned by DCBS for willful or egregious violation of OR-OSHA laws.

- 812-005-0800 is amended to establish a civil penalty for failing to make a record change of an entity name and adds a civil penalty for failure to comply with ORS 701.109(2) for failing to deliver a copy of required final court judgments; to establish a penalty for failure to comply with ORS 701.109(2) by submitting a copy of final judgments; and to establish penalty for failing to maintain insurance, as required in ORS 701.073, or provide proof of insurance as required in OAR 812-003-0200.
- 812-012-0170 is adopted to require contractors to pay judgments or arbitration orders that arise from breach of contract or negligent or improper work and relate to construction of a residential structure. The rule sets forth the same statutory timeline. The rule also requires that the filing be accompanied by a completed form adopted under OAR 812-001-0220.

Authorized Signer

Catherine Dixon
Printed Name

May 6, 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 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.

812-001-0220

Unpaid Court Judgment Form Adoption

The Construction Contractors Board adopts the form “Unpaid Court Judgment Filing With the CCB (ORS 701.109)”.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.109

(5/09)

812-003-0200

Insurance Generally

(1) An applicant for a license, renewal or reissue shall certify that the applicant:
(a) Has procured insurance 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 in at least the amount required in OAR 812-003-0221;

(e) A statement that products and completed operations coverage is included as required by ORS 701.073(1).

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

(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 701.098.]~~

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073 & 701.098

(12/04, 5/06, 9/06, 12/07, 2/08, 5/09)

812-003-0320

Record Changes

(1) Except as provided in section ~~[(3)]~~ **(4)** of this rule, requests for record changes that require a new license card shall be accompanied by a \$20 fee.

(2) Every licensed entity that changes its name, including any assumed business name under which it may operate, must notify the agency within 30 days of assuming, filing or registering the new name. This section also applies to sole proprietors that change their surname.

~~[(2)]~~ **(3)** Except as provided in OAR 812-003-0190, requests for business name amendments of a partnership, joint venture, corporation, limited liability company or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

~~[(3)]~~ **(4)** No charge will be made for an address change on the record.

~~[(4)]~~ **(5)** With the exception of record changes due to agency error, a record change request shall be submitted in writing.

Stat. Auth.: ORS 670.310, 701.235 & 701.238

Stats. Implemented: ORS 701.056, 701.068, 701.088 & 701.238

(6/76, 7/76, 11/77, 1/78, 5/78, 5/80, 6/80, 10/80, 11/80, 1/83, 3/83, 10/83, 3/84, 5/84, 1/89, 11/89, 9/99, 6/00, 8/00, 12/04, 6/08, 5/09)

(Amended and renumbered from 812-003-0005, 12/04)

812-005-0280

Fitness Standards

(1) In considering whether to revoke, suspend, or refuse to issue a license pursuant to ORS 701.098(1)(h)(A)-(I), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting.

(a) Fitness to engage in construction contracting includes, but is not limited to the ability to:

(A) Refrain from violent, threatening, intimidating or sexually predatory behavior;

(B) Refrain from dishonest or fraudulent conduct; or

(C) Be financially responsible.

(b) Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(c) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by 701.098(1)(h)(A)-(I). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(d) Failure to provide requested information in ~~[(4)]~~ (1)(c) of this section may result in the denial of a license.

(2) The agency may revoke, suspend, or refuse to issue a license if the applicant, licensee, or an owner, officer or responsible managing individual of the applicant or licensee demonstrates a lack of financial responsibility pursuant to ORS 701.098(2) and ORS 701.102(2)(d).

(a) Lack of financial responsibility is evidenced by failure to pay a final order of the board, issued under ORS 701.145 or 701.146, where the final order exceeds the amount of the applicable bond and the final order was issued against:

~~[(a)]~~ **(i)** The applicant or licensee; or

~~[(b)]~~ **(ii)** A business in which the owner, officer or responsible managing individual of the applicant or licensee is, or was, an owner, officer or responsible managing individual during the work period in which the business' obligation giving rise to the final order arose or was incurred.

~~[(c)]~~ **(iii)** As used in ~~[section (2)]~~ **subsection (a)** of this rule, "officer" includes any person listed in ORS 701.005(11) or OAR 812-002-0533.

(b) Lack of financial responsibility is evidenced by failure to pay a civil penalty final order of the Director, Department of Consumer and Business Services, issued under ORS 654.086.

(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to ~~[reissue]~~ **issue** a license if a contractor engages in conduct that harms a consumer by:

(a) Arranging for or undertaking work as a contractor that:

(A) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;

(B) The work causes damage to the consumer or to the consumer's property; and

(C) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.

(4) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0160 and 437-001-0165 for a fifth or subsequent repeat violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

(5) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor

under OAR 437-001-0175 for a willful or egregious violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098 & 701.102

(6/08, 11/08, 5/09)

(Note: Section (1) was formerly 812-003-0450, 11/08)

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 to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense warning, second offense \$50, subsequent offenses \$200.

~~[(11)]~~ **(12)** Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

~~[(12)]~~ **(13)** 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)]~~ **(14)** 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)]~~ **(15)** Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

~~[(15)]~~ **(16)** 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)]~~ **(17)** Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

~~[(17)]~~ **(18)** 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)]~~ **(19)** 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)]~~ **(20)** 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)]~~ **(21)** 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)]~~ **(22)** 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)]~~ **(23)** 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)]~~ **(24)** Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

~~[(24)]~~ **(25)** 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)]~~ **(26)** Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

~~[(26)]~~ **(27)** Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

~~[(27)]~~ **(28)** 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)]~~ **(29)** 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)]~~ **(30)** 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)]~~ **(31)** 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)]~~ **(32)** 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)]~~ **(33)** 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)]~~ **(34)** 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)]~~ **(35)** Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

~~[(35)]~~ **(36)** 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)]~~ **(37)** 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)]~~ **(38)** Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

~~[(38)]~~ **(39)** 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.

(40) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(41) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the

insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(42) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

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, **701.073**, 701.091, 701.098, 701.106, **701.109**, 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 (eff. 2/1/09), 5/09)

812-012-0170

Unpaid Court Judgments

(1) A contractor against whom a court enters a judgment or order awarding arbitration must report that judgment or order to the Construction Contractors Board, if:

(a) The judgment or order arises from:

(A) Breach of contract,

(B) Negligent work, or

(C) Improper work.

(b) The judgment or order relates to construction or proposed construction of a residential structure.

(2) The contractor will transmit a copy of the final judgment or order to the Construction Contractors Board within 45 days after the final judgment or order is recorded.

(3) The contractor will transmit the copy of the final judgment or order with a completed "Unpaid Court Judgment Filing" form described in OAR 812-001-0220.

(4) The contractor is not required to send the Board a copy of the judgment or order, if:

(a) The contractor paid the damages and other amounts payable under the judgment or order within 30 days from the date the judgment or order was recorded; or

(b) The contractor appealed the judgment or order and has filed an undertaking on appeal as required by ORS 19.300.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.109

(5/09)