

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 August 17, 2010 by the
(Date prior to or same as filing date.)

Construction Contractors Board OAD 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 September 1, 2010. Rulemaking Notice was published in the August 2010 Oregon Bulletin.**
(Date upon filing or later) (Month and Year)

RULE CAPTION

New definitions, larger bond requirements, lapsed license, close untimely complaints, lead-based paint, continuing education
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.

812-002-0390 812-007-0302 812-021-0016

AMEND:

812-003-0175 812-003-0330 812-004-0400 812-005-0210 812-008-0074 812-021-0025
812-003-0290 812-004-0260 812-004-0550 812-007-0020 812-020-0055

REPEAL:

Repeal temporary rule 812-002-0390 filed 5/18/10 Repeal temporary rule 812-003-0330 filed 6/4/10 Repeal temporary rule 812-020-0055 filed 5/18/10
Repeal temporary rule 812-003-0290 filed 6/4/10 Repeal temporary rule 812-007-0020 filed 6/1/10

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 670.310, 701.068, 701.085 (2005), 701.088, 701.124, 701.126, 701.235, 701.350, & 701.515

Stat. Auth.

Other Authority

ORS 183.415, 183.460, 183.470, 183.480, 701.005, 701.056, 701.063, 701.068, 701.085 (2005), 701.088, 701.094, 701.124, 701.126, 701.133, 701.140, 701.145, 701.146, 701.350, 701.355, & 701.505-701.520

Stats. Implemented

RULE SUMMARY

- 812-002-0390 is adopted to add a general definition for the term "key employee" to the definition section of the rules, Division 2.
- 812-003-0175 is amended to provide for greater protection when a residential general or residential specialty contractor with unpaid construction debts attempts to relicense as a residential limited contractor and thereby avoid the increased bond requirements.
- 812-003-0290 is amended to conform to ORS 701.063(4).
- 812-003-0330, 812-004-0260, and 812-004-0400, are amended to change the process the CCB uses to handle untimely complaints. Rather than issue an order of dismissal subject to contested case review, the agency will close the complaints. The result will be an order in other than a contested case. As such, review is by the circuit court.
- 812-004-0550 is amended to eliminate dismissal for untimely filing from agency proposed default orders. Those orders are subject to contested case hearings. This is part of other changes to treat untimely claims as closures, subject to review as orders in other than contested cases.

- 812-005-0210 is amended to provide for greater protection when a residential general or residential specialty contractor with unpaid construction debts attempts to re-license as a residential limited contractor and thereby avoid the increased bond requirements. The rule is also amended to correct cite references.
- 812-007-0020 has the following amendments: 812-007-0020(2) is amended to separate the treatment of training providers for LBP activities from those for LBP renovation. The former are limited to providers accredited by the Health Division. The latter may include those accredited by the EPA. 812-007-0020 is amended to add new definition for the terms: "certified renovator", "component or building component", and "recognized test kit". These definitions parallel those used by the EPA in 40 CFR §745.83 and the DHS rules in 333-070-0085. The definitions are necessary because the terms are used in CCB's new rule, OAR 812-007-0302. OAR 812-007-0020 formerly (5) is amended to correct an error and is renumbered (6). Child-occupied facilities are those used by children "under age six" not "six years of age or under." The correct standard is taken from the federal regulation, 40 CFR §745.83, and is used in the Oregon Health Division's definition rule, OAR 333-070-0085(9). The correct language is also used in other parts of CCB's own rules (e.g., the remainder of the definition contains the language "under age six.").
- 812-007-0302 is adopted to parallel a similar rule in the EPA regulations, 40 CFR § 745.82, and the DHS rules, OAR 333-070-0075(3). The rule provides for two significant exceptions from compliance with the LBP renovation rules. The first is where a lead assessor lead inspector determines, in writing, that components affected by a renovation do not contain (except as allowed) lead-based paint. The second is where a certified renovator, using an approved test kit, determines that components affected by a renovation do not contain (except as allowed) lead-based paint.
- 812-008-0074 is amended revise the education provider requirements. If an education provider is "doing business" (for profit) in Oregon and is a business entity from another state (e.g., foreign corporation or LLC), it must file an application for authority with the Corporation Division to do business. All businesses need to register their ABNs. These rules require businesses follow these basic laws and demonstrate their compliance on the application form.
- 812-020-0055 is adopted to remove the definition of "key employee" from the chapter on commercial contractor continuing education. The definition should be inclusive for all laws and rules relating to commercial contractor key employees. See 812-002-0390.
- 812-021-0016 is adopted to "establish reasonable fees for courses and instruction provided by the board" as authorized in ORS 701.126(1). CCB has determined that \$35/hour is a reasonable fee. For persons that purchase three or more one-hour courses, CCB will reduce the fee to \$33/hour. CCB may charge for processing, shipping and handling
- 812-021-0025 is amended to require that BEST providers would post a \$20,000 surety bond as a requirement for becoming an approved provider. It was not contemplated that the bonding requirement would cover providers of training in building codes or "green" building practices. CCB proposes to amend the rule to reflect this intent.

Authorized Signer

Catherine Dixon
Printed Name

August 24, 2010
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.

812-002-0390

Key Employee

“Key employee” means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson, lead person or any other person who exercises management or supervisory authority over the construction activities of the business.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

(temp. rule 5/10, 8/10 eff. 9/1/10)

812-003-0175

Increased Bond, Letter of Credit or Cash Deposit Requirement, 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 or 812-003-0171, 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) A business, including an individual person, licensed as a residential general contractor or residential specialty contractor that applies to be licensed as, or seeks to change its endorsement to, a residential limited contractor must file a bond, letter or credit or cash deposit in an amount of five times the amount of the residential limited contractor bond, namely \$50,000, 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)~~] **(3)** For purposes of this rule, “owner” means an “owner” as defined in ORS 701.094 and OAR 812-002-0537.

[~~(3)~~] **(4)** For purposes of this rule, “officer” means an “officer” as defined in ORS 701.005(11).

[~~(4)~~] **(5)** 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, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.068, 701.088

(temp. 3/06, 9/06, 12/06, 12/07, 2/08, 6/08, 8/10 eff. 9/1/10)

812-003-0290

Effective Dates of Renewal or Reissue of License; License Term

(1) Except as provided in section (2) 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.

(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.

(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 a commercial and/or residential bond or letter of credit or cash deposit

coverage during the period of lapse, providing the contractor applies for renewal not more than [~~one year~~] **two years** after the license lapses.

(4) If the contractor applies for renewal less than [~~one year~~] **two years** after the license lapses and does not have proof of insurance coverage and a commercial and/or residential 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 renewal form, payment of the 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~~] **two years** 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 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.

(6) Notwithstanding sections (2) through (5) of this section, licenses that expire before July 1, 2008, may not renew on or after July 1, 2008, except by complying with the renewal requirements set forth in OAR 812-003-0280 and with the bond and insurance requirements set forth in OAR 812-003-0152, 812-003-0153, 812-003-0171, and 812-003-0221. The effective date of the renewal will be the date upon which all requirements for renewal are met, including but not limited to, proof of insurance coverage and bond or letter of credit or cash deposit. Such licenses will not be backdated to the previous expiration date.

(7) Licenses will be reissued or renewed for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

(12/04, 12/07, 2/08, temp. 6/4/10 eff. 6/4/10, 8/10 eff. 9/1/10)

812-003-0330

Inactive Status Generally

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2)(a) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(b) Subsection (a) of this section does not apply to members of the United States armed forces serving on active duty provided that they perform work as a contractor only as part of their military duties.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status a license must have:

(a) A current active license;

(b) A current suspended license; or

(c) A license that has expired no more than [~~one year~~] **two years**.

(5) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline in order to be eligible for the inactive status.

(6) The licensee must submit a request to convert to inactive status on forms provided by the agency; and

(7) The licensee must comply with OAR 812-003-0340, 812-003-0350, and 812-003-0360.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.056 & 701.063

(12/04, 6/08, 5/09, 9/09, temp. 6/4/10 eff. 6/4/10, 8/10 eff. 9/1/10)

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.~~] **The agency may close a complaint because:**

(a) The complainant did not act in response to a request from the agency;

(b) The complaint was not filed within the time allowed under ORS 701.143;

(c) The complainant failed to pay the complaint processing fee as required under OAR 812-004-0400(1)(f);

(d) The complaint contains a mediation or arbitration agreement as provided in OAR 812-004-0440;

(e) The complainant does not comply with the on-site meeting requirements as provided in OAR 812-004-0450;

(f) The complainant and respondent settle the complaint as provided in OAR 812-004-0500;

(g) The complainant fails to provide documents to the agency as required by OAR 812-004-0520; or

(h) The agency does not timely receive evidence of a stay or counter-suit on a construction lien complaint, as provided in OAR 812-004-0530(11).

(2) The agency may close a complaint under **section (1)(a) of** 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 **section (1)(a) of** 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) Except as provided in section (5), the agency's determination to close a complaint is an order in other than a contested case.

[~~(4)~~] **(5)** 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.

(6) An order to close a complaint is subject to judicial review under ORS 183.484.

[~~(5)~~] **(7)** 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, 701.146

(04/01, 9/01, 5/02, 8/03, 12/04, 12/05, 12/06, 12/07, 6/08, 8/10 eff. 9/1/10)

812-004-0400

Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

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

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

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

(e) **Except as provided in subsection (g), if** ~~[(f)]~~ the agency determines that the complaint should be dismissed based on the information submitted by complainant, the agency must issue a proposed order to dismiss under OAR 812-004-0550.

(f) If the complainant requests a hearing on the **proposed order of** dismissal and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee and may not transmit the complaint to the Office of Administrative Hearings for a hearing until the fee is paid.

(g) If the agency determines that the complaint should be closed for lack of jurisdiction due to failure to file the complaint within the time allowed under ORS 701.143, the agency will issue an order under OAR 812-004-0260 closing the complaint.

~~[(f)]~~ **(h)** If the complainant does not pay the fee required under OAR 812-004-0110 within 30 days of written notification that the fee is due, the agency may close the complaint. The request for payment and closure must comply with OAR 812-004-0260. The agency may extend the time for payment of the fee upon a showing of good cause by the complainant.

(2) The agency may initiate an investigation to determine the validity of the complaint. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a complaint even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.133, 701.140, 701.145 & 701.146

(10/98, 6/00, 12/01, 6/03, 12/03, 12/06, 6/08, 6/10, 8/10 eff. 9/1/10)

812-004-0550

Proposed Default Order to Dismiss, Other Resolution of Complaint by Proposed Default Order

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

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

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

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

~~[(d)]~~ **(c)** The complaint must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

~~[(e)]~~ **(d)** The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the complainant is less than an amount due to the respondent from the complainant under the terms of the contract.

~~[(f)]~~ **(e)** The complainant contends that the respondent did not fulfill the terms of a settlement that resolved the complaint but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a complaint if the agency investigates the complaint and finds that the record of the complaint supports dismissal under OAR 812-004-0535.

(3) If the complainant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the complaint for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the complainant file a statement of damages stating an amount the complainant alleges the respondent owes the complainant and refer the complaint for arbitration or a contested case hearing to determine if the complaint should be dismissed and if not, the validity of the complaint and whether the amount alleged, or some lesser amount is proper.

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.133 & 701.145

(temp. 1/00, temp. 3/00, 5/00, 4/01, 5/02, 3/03, 8/03, 2/04, 12/06, 6/08, 6/10, 8/10 eff. 9/1/10)

812-005-0210

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

(1) Under ORS 701.085(8) (2005) or 701.068, 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 licensee or a current or previous owner, officer or responsible managing individual, 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 701.131 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)~~] **701.005(4)** that exceeds the amount of the bond, letter of credit or cash deposit.

(d) Board final orders issued in favor of one or more complainants under ORS 701.145 or 701.146 where the amount that must be paid exceeds the amount of the bond.

(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 (2005), 701.068 or 701.088.

(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 (2005), 701.068 or 701.088.

(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 (2005), 701.068 or 701.088.

(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 (~~2005~~), **701.068 or 701.088** 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 (2005), 701.068 or 701.088 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 (2005), 701.068 or 701.088 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, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088.

(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 (2005), 701.068 or 701.088.

(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 (2005), 701.068 or 701.088.

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

(a) If the amount of the board 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 bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088.

(b) If the amount of the board 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 (2005), 701.068 or 701.088.

(c) If the amount of the board 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 five times the bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088.

(6) Notwithstanding sections (2) through (5) of this rule, a business (including an individual person) licensed as a residential general contractor or residential specialty contractor that applies to be licensed as, or seeks to change its endorsement to, a residential limited contractor must file a bond, letter of credit or cash deposit in an amount of five times the amount of the residential limited contractor bond, namely \$50,000, if the business or its previous owner, officer or responsible managing individual 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 701.131 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.

(d) Board final orders issued in favor of one or more complainants under ORS 701.145 where the amount that must be paid exceeds the amount of the bond.

Stat. Auth.: ORS 670.310, 701.068, 701.085 (2005), 701.088 & 701.235

Stats. Implemented: ORS 701.005, 701.068, 701.085 (2005), 701.088 & 701.094

(12/04, 6/05, 12/05, 9/06, 12/06, 8/07, 12/07, 6/08, 9/08, 8/10 eff. 9/1/10)

812-007-0020

Definitions

The following definitions apply to division 7 of OAR chapter 812.

(1) "Abatement" means any measure or set of measures designed to permanently eliminate LBP hazards.

(2) “Accredited training program” means a training program provisionally accredited or accredited by the Department, either directly or **by** reciprocity, to provide training for individuals engaged in LBP activities [~~or renovation~~]. **For all other purposes, “accredited training program” means a training program provisionally accredited or accredited by the Environmental Protection Agency (EPA) or the Department, either directly or by reciprocity.**

(3) “Certified” means certified by the Department to perform LBP activities.

(4) “Certified lead-based paint renovation contractor” means a construction contractor that is licensed by the board to conduct LBP renovation under ORS 701.515.

(5) “Certified renovator” means an individual who has successfully completed a renovator course accredited by the Department, EPA, or EPA authorized program.

~~[(5)]~~ **(6) “Child-occupied facility” means a building, or portion of a building, constructed before 1978 and visited regularly by the same child, [six years of age or under] under age six, on at least two different days within any week (Sunday through Saturday), provided that each day’s visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.**

(7) “Component or building component” means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to: interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and tri (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

~~[(6)]~~ **(8) “Course completion certificate” means documentation issued by an accredited training program to an individual as proof of successful completion of an accredited renovator training program (initial or refresher).**

~~[(7)]~~ **(9) “Department” means the Oregon Department of Human Services.**

~~[(8)]~~ **(10) “Deteriorated lead-based paint (LBP)” means any interior or exterior paint or other covering that is peeling, chipping, chalking, cracking, flaking or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.**

~~[(9)]~~ **(11) “Dust-lead hazard” means surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft² on floors or 250 µg/ft² on interior windows or 400 µg/ft² in troughs based on wipe samples.**

~~[(10)]~~ **(12) “Inspection” means a surface-to-surface investigation to determine the presence of LBP and an accompanying report explaining the results of the investigation.**

~~[(11)]~~ **(13) “Lead abatement contractor” means a construction contractor that is licensed by the board to perform abatement.**

~~[(12)]~~ **(14) “Lead assessor” or “risk assessor” means an individual who has been trained by an accredited training program and certified by the Department to conduct risk assessments.**

~~[(13)]~~ **(15)** “Lead-based paint” or “LBP” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

~~[(14)]~~ **(16)** “Lead-based paint activities” means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

~~[(15)]~~ **(17)** “Lead-based paint (LBP) hazard” means deteriorated LBP, dust-lead hazard or soil-lead hazard.

~~[(16)]~~ **(18)** “Lead inspection contractor” means a construction contractor that is licensed by the board to perform inspections or risk assessments.

~~[(17)]~~ **(19)** “Lead inspector” means an individual who has been trained by an accredited training program and certified by the Department to conduct inspections.

~~[(18)]~~ **(20)** “Lead supervisor” means an individual who has been trained by an accredited training program and certified by the Department to supervise and conduct abatements and prepare abatement reports.

~~[(19)]~~ **(21)** “Lead worker” or “lead abatement worker” means an individual who has been trained by an accredited training program and certified by the Department to perform abatements.

~~[(20)]~~ **(22)** “Minor repair and maintenance” means activities, (including minor heating, ventilation, air conditioning work, electrical work, or plumbing) that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities, that do not involve prohibited or restricted work activities and do not involve window replacement or painted surface demolition. Jobs, other than emergency renovations, performed within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

~~[(21)]~~ **(23)** “Prohibited or restricted work activities” include:

- (a) Open flame burning or torching;
- (b) Machines to remove paint through high-speed operation without HEPA exhaust control; and
- (c) Operating a heat gun at temperatures at or above 750 degrees Fahrenheit.

(24) “Recognized test kit” means a commercially available kit recognized by EPA under 40 CFR § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.

~~[(22)]~~ **(25)** “Renovation” means the modification of any existing structure, or portion thereof, which results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term renovation includes, but is not limited to:

- (a) Removal, modification or repair of painted surfaces or painted components, such as modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping or other such activities that may generate paint dust);
- (b) The removal of building components, such as walls, ceilings, plumbing and windows;
- (c) Window replacement;
- (d) Weatherization projects, such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, or planing thresholds to install weather-stripping;
- (e) Interim controls that disturb painted surfaces.

A renovation for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation. The term “renovation” does not include minor repair and maintenance.

~~[(23)]~~ **(26)** “Renovation Right Pamphlet” means the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* or any pamphlet approved by the Environmental Protection Agency (EPA) for the same purpose.

~~[(24)]~~ **(27)** “Risk assessment” means an on-site investigation to determine the existence, nature, severity, and location of a LBP hazard and an accompanying report explaining the results of the investigation and options for reducing LBP hazards.

~~[(25)]~~ **(28)** “Soil lead hazard” means 400 ppm of lead in child play areas or 1200 ppm in non-child play areas.

~~[(26)]~~ **(29)** “Target housing” means any housing constructed before 1978, except housing for the elderly or persons with disabilities or any housing with no bedrooms.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.505-701.520

(6/96, 11/96, 1/97, 5/97, 11/97, 10/98, 3/99, 6/00, 12/06, 2/10, temp. 3/11/10 eff. 3/11/10, temp. 6/1/10 eff. 6/1/10, 8/10 eff. 9/1/10)

812-007-0302

Applicability of and Exceptions to Rules Relating to Lead-Based Paint Renovation

OAR 812-007-0300 to OAR 812-007-0374 apply to all renovations performed for compensation in target housing and child-occupied facilities, except for renovations in target housing or child-occupied facilities in which:

(1) A lead assessor or lead inspector has made a written determination that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5 percent by weight. The person performing the renovation must obtain a copy of the written determination.

(2) A certified renovator, using a recognized test kit, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5 percent by weight. The certified renovator must follow the kit manufacturer’s instructions.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.505-701.520

(8/10 eff. 9/1/10)

812-008-0074

Approved Course Subjects and Education Providers

(1) The following subject areas are approved for continuing education units: Report writing, communication skills, business practices, legal issues, ethics, home inspector study guide items, building codes, and home inspector standards of practice.

(2) If applicable, a foreign company applying to be an education provider must be authorized by the Oregon Corporation Division to do business in Oregon. All education provider applicants must register their assumed business name(s) used in Oregon with the Oregon Corporation Division.

~~[(2)]~~ **(3)** Education provider applicants shall complete an application form prescribed by the agency that shall include but is not limited to the following information:

(a) Evidence that the education provider applicant complies with section (2) of this rule.

~~[(a)]~~ **(b)** An outline that demonstrates the goals and objectives of the education program are appropriate for Oregon Home Inspectors;

~~[(b)]~~ **(c)** Certification that the courses intended for Oregon Home Inspectors are in the approved subject matter stated in OAR 812-008-0074(1).

~~[(c)]~~ **(d)** Certification that the instructors are qualified and have:

(A) Experience in subject matter.

(B) Licenses, certificates, and/or degrees in subject matter.

(C) Background in training or adult education; and

(D) Knowledge of home inspection industry.

~~[(d)]~~ **(e)** Certification that the criteria used by the education provider to approve and evaluate instructors and courses are stringent and ongoing.

~~[(3)]~~ **(4)** Education providers offering continuing education units as defined in 812-008-0072(1) shall provide completion certificates to course attendees within 30 days from the date of course completion. Course completion certificates shall include but are not limited to the following:

- (a) Education provider's name;
- (b) Attendee's name;
- (c) Date of course;
- (d) Subject areas covered in course;
- (e) Number of clock hours or continuing education units; and
- (f) Signature of education program designee.

~~[(4)]~~ **(5)** Education providers' programs approved by the agency shall be granted retroactive credit for certified home inspectors for two years.

~~[(5)]~~ **(6)** The agency may terminate a provider's program if they do not meet the agency's approved criteria.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(9/99, 6/03, 5/06, 12/06, 8/10 eff. 9/1/10)

812-020-0055

Definitions – Continuing Education for Commercial Contractors

The following definitions apply to OAR 812-020-0050 to 812-020-0073:

(1) "Building code" means a specialty code as defined in ORS 455.010(7).

(2) "Commercial contractor" means a licensed contractor as defined under ORS 701.005(2).

(3) "Inactive commercial contractor" means a commercial contractor that has voluntarily placed its license in inactive status in accordance with OAR 812-003-0330 to 812-003-0370 and has not converted the license back to active status in accordance with ORS 812-003-0380.

~~[(4)] "Key employee" means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson, lead person or any other person who exercises management or supervisory authority over the construction activities of the business.]~~

~~[(5)]~~ **(4)** "Lapse in license" has the meaning given that term by OAR 812-002-0420.

~~[(6)]~~ **(5)** "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

(11/08, temp. 5/10, 8/10 eff. 9/1/10)

812-021-0016

Fees for Agency Courses – Continuing Education for Residential Contractors

(1) The agency will charge a fee of \$35 per course hour for the following courses:

(a) BEST, offered by the agency as provided in OAR 812-021-0015(3)(a)(A).

(b) Education on laws, regulations, and business practices, offered by the agency as provided in OAR 812-021-0015(3)(a)(C) and 812-021-0015(4)(a)(B).

(2) If a person purchases three or more one-hour courses from CCB in a single transaction, CCB will charge a fee of \$33 per course hour.

(3) In addition to the fee for the course, CCB may charge for processing, shipping and handling course materials made available other than online.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(8/10 eff. 9/1/10)

812-021-0025

Provider Approval, Standards, Fees and Renewal for Core – Continuing Education for Residential Contractors

- (1) The agency will review and approve providers offering core continuing education.
 - (2) Providers will apply for approval on a form prescribed by the agency. Providers may, but need not, apply for approval at the same time they apply for course approval.
 - (3) Providers seeking approval to offer training in BEST, building codes or “green” or sustainable building practices must submit the following to the agency:
 - (a) Name, address and contact information of the provider;
 - (b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;
 - (c) Description of provider business plan;
 - (d) Description of the core subject area(s) provider intends to offer; and
 - (e) Such other information or documentation as the agency may request.
 - (4) Providers must remit to the agency together with their application:
 - (a) A non-refundable fee of \$2,000 if applying to offer BEST;
 - (b) A non-refundable fee of \$500 if applying to offer building codes or “green” or sustainable building practices; or
 - (c) A non-refundable fee of \$2,500 if applying to offer both BEST and building codes or “green” or sustainable building practices.
 - (5) To qualify for approval, providers must:
 - (a) Certify the programs offered meet the minimum standards and content objectives established by the Board;
 - (b) Employ or contract with educators who have at least two years work experience or two years of education, or any combination of both, in the subject that they instruct;
 - (c) Be capable of entering and transmitting electronic data to the agency;
 - (d) Describe a process for prompt resolution of complaints by registrants;
 - (e) Describe a process for cancellations and refunding registrant payments; and
 - (f) **If applying to offer BEST, provide** ~~Provide~~ a surety bond in an amount of \$20,000 obligating the surety to pay registrants to whom the provider owes money for cancellation or other refunds that the provider fails to pay. The bond must be in the form adopted by the board as the “Continuing Education Provider Surety Bond” dated December 1, 2009.
 - (6) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.
 - (7) Providers must re-submit application and fees required under sections (3) and (4) of this rule for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.
- Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
(6/09, 12/09 (eff. 1/1/2010), 8/10 eff. 9/1/10)