

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

<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)

RULE CAPTION

Clarifying coverage of residential and commercial surety bonds.

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

<u>June 24, 2008</u> Hearing Date	<u>11:00 a.m.</u> Time	<u>West Salem Roth's IGA, Santiam Rm., 1130 Wallace Rd., Salem, OR</u> Location	<u>Tom Skaar</u> Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

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

AMEND:

812-003-0150 812-003-0152 812-003-0153 812-004-0600

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 670.310, 701.130 & 701.235

Stat. Auth.: ORS

Other Authority

ORS 701.068, 701.081, 701.084, 701.085(2005), 701.139, 701.145, 701.146, 701.150, 701.153 & 701.157

Stats. Implemented: ORS

RULE SUMMARY

OAD 812-003-0150 is amended to clarify its application to bonds issued before the issuance of residential or commercial surety bonds.

OAD 812-003-0152 is amended to clarify that residential bonds are available only for payment of Board orders relating to residential or small commercial structures or developments.

ORS 812-003-0153 is amended to clarify that residential bonds are available only for payment of Board orders relating to small or large commercial structures or developments.

ORS 812-004-0600 is amended to fill in the statutory scheme clarifying that residential surety bonds pay only for complaints arising from the construction of residential or small commercial structures or developments and that commercial surety bonds pay only for complaints arising from the construction of large or small commercial structures or developments.

ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

June 24, 2008 at 11:00 a.m.

Last Day for Public Comment

Last day to submit written comment to the Rules Coordinator

Signature

Catherine Dixon

Printed Name

May 6, 2008

Date

*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 OR 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 920-2005

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.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Construction Contractors Board

Agency and Division

OAR 812

Administrative Rules Chapter Number

In the Matter of: Amendments to OAR 812

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Clarifying coverage of residential and commercial surety bonds

Statutory Authority: ORS 670.310 & 701.235

Other Authority:

Stats. Implemented: 701.068, 701.081, 701.084, 701.085(2005), 701.139, 701.145, 701.146, 701.150, 701.153 & 701.157

Need for the Rule(s): (Explain how the rule is intended to meet the need).

- OAR 812-003-0150 is amended to clarify its application to bonds issued before the issuance of residential or commercial surety bonds. OAR 812-003-0152 is amended to clarify that residential bonds are available only for payment of Board orders relating to residential or small commercial structures or developments.
- ORS 812-003-0153 is amended to clarify that residential bonds are available only for payment of Board orders relating to small or large commercial structures or developments.
- ORS 812-004-0600 is amended to fill in the statutory scheme clarifying that residential surety bonds pay only for complaints arising from the construction of residential or small commercial structures or developments and that commercial surety bonds pay only for complaints arising from the construction of large or small commercial structures or developments. By these amendments, the new licensing scheme (beginning July 1, 2008) will dovetail with the new bonds (beginning July 1, 2008).

Documents Relied Upon, and where they are available: Oregon Department of Justice advice. The advice is privileged and not available for public inspection.

Fiscal and Economic Impact:

The rule changes have no negative fiscal impact on state agencies, units of local government or the public.

The rule changes have no negative economic impact on state agencies, units of local government or the public.

The rule changes do not increase the reporting, recordkeeping or other administrative activities for businesses. The rule changes will not increase costs of compliance for businesses.

The rule changes will not increase the cost of a new single-family dwelling.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
Business and Public: None
State Agency: None
2. Cost of compliance effect on small business (ORS 183.336):
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
This rule amendment does not have an impact on small businesses.
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
None.
 - c. Equipment, supplies, labor and increased administration required for compliance:
None.

How were small businesses involved in the development of this rule?
Six of the current nine Board members are business owners.

Administrative Rule Advisory Committee consulted? The Construction Contractors Board is made up of six contractors; one elected public official, and two public members. They serve as their own Administrative Rule Advisory Committee.

If not, why?:

Authorized Signer
Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Catherine Dixon
Printed Name

May 6, 2008
Date
ARC 925-2007

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534)
FOR ADMINISTRATIVE RULES

AGENCY NAME: Construction Contractors Board PERMANENT: HEARING DATE: June 24, 2008
ADDRESS: 700 Summer St. NE Ste 300
CITY/STATE: Salem OR 97309 TEMPORARY: EFFECTIVE DATE:
PHONE: (503) 378-4621

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

- OAR 812-003-0150 is amended to clarify its application to bonds issued before the issuance of residential or commercial surety bonds.
- OAR 812-003-0152 is amended to clarify that residential bonds are available only for payment of Board orders relating to residential or small commercial structures or developments.
- ORS 812-003-0153 is amended to clarify that residential bonds are available only for payment of Board orders relating to small or large commercial structures or developments.
- ORS 812-004-0600 is amended to fill in the statutory scheme clarifying that residential surety bonds pay only for complaints arising from the construction of residential or small commercial structures or developments and that commercial surety bonds pay only for complaints arising from the construction of large or small commercial structures or developments.

Description of the need for, and objectives of the rule:

Laws enacted in 2007 created new license endorsements, and corresponding bonds for those endorsements – one residential and the other commercial. While the agency anticipates that licensees holding residential endorsements will perform work on residential or small commercial structures and that licensees holding commercial endorsements will perform work on small or large commercial structures, there is always the possibility that a residential licensee will work on a large commercial structure or that a commercial licensee will work on a residential structure. The rules clarify the scope of the residential and commercial bonds so that, if a licensee works “out of endorsement,” it will be clear that there is no coverage under the bond for such work.

List of rules adopted or amended:

OAR 812-003-0150 812-003-0152 812-003-0153 812-004-0600

Materials and labor costs increase or savings:

None

Estimated administrative construction or other costs increase or savings:

None.

Land costs increase or savings:

None.

Other costs increase or savings:

None.

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: Catherine Dixon

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**Rule Amendments for June 24, 2008 Rule Hearing
Rules Effective 7/1/08**

PROPOSED RULE	EXPLANATION
<p>812-003-0150 Bonds, Generally (1) A properly executed bond must: (a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form. (b) <u>If issued before July 1, 2008,</u> [F]include the following: "NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect. This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701. This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond. This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 701, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation. This bond shall not be valid for purposes of licensing in accordance with ORS chapter 701 unless filed with the Construction Contractors Board within sixty (60) days of the date shown below." (2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 is in effect, the security must be held until final disposition of the complaint. (3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request. Stat. Auth.: ORS 670.310, 701.085 (2005) & 701.235 Stats. Implemented: ORS 701.085 (2005) [& section 2, chapter 203, Oregon Laws 2007 (HB 2309)] 701.068 & 701.088</p>	<p>Amended to clarify its application to bonds issued before the issuance of residential or commercial surety bonds. (KD)</p>

(12/04, 12/06, 12/07)	
<p>812-003-0152 Residential Bonds Generally</p> <p>(1) For all new applications or renewals for residential contractor endorsements on or after July 1, 2008, a properly executed residential bond must:</p> <p>(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.</p> <p>(b) Be in the form adopted by the Construction Contractors Board as the “Construction Contractors Board Residential Surety Bond” dated November 1, 2007.</p> <p>(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 (2005) or 701.068 or 701.088 is in effect, the security must be held until final disposition of the complaint.</p> <p>(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.</p> <p><u>(4) A residential bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.</u></p> <p>Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS [701.085 (2005);] 701.068 & 701.081 (2/08)</p>	<p>Amended to comply with statutes effective 7/1/08. Clarifies that residential bonds are available only for payments involving residential or small commercial structures only. (KD)</p>
<p>812-003-0153 Commercial Bonds Generally</p> <p>(1) For all new applications or renewals for commercial contractor endorsements on or after July 1, 2008, a properly executed commercial bond must:</p> <p>(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.</p> <p>(b) Be in the form adopted by the Construction Contractors Board as the “Construction Contractors Board Commercial Surety Bond” dated November 1, 2007.</p> <p>(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 (2005) or 701.068 is in effect, the security must be held until final disposition of the complaint.</p> <p>(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.</p> <p><u>(4) A commercial bond is available only for payments ordered by the agency involving small or large commercial structures or for the</u></p>	<p>Amended to comply with statutes effective 7/1/08. Clarifies that commercial bonds are available for payments involving small or large commercial structures only. (KD)</p>

<p><u>development of property zoned or intended for use compatible with large or small commercial structures.</u> Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS [701.085 (2005);] 701.068 & 701.084 (2/08)</p>	
<p>812-004-0600 Payment From Surety Bond, Letter of Credit or Cash Deposit (1) The agency may notify the surety company or financial institution of complaints pending. (2) The agency must notify the surety company or financial institution of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred: (a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or (B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award; (b) The agency has received no evidence that the respondent has complied with the award or final order; (c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and (d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint. (3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows: (a) If a surety bond, letter of credit or cash deposit was in effect when the work period began, payment must be made from that surety bond, letter of credit or cash deposit. (b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period. (c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job. (4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into. (5) If the respondent maintains multiple surety bonds, letters of credit or cash deposits, the following apply:</p>	<p>Amended to fill in the statutory scheme, evidenced by legislative intent, clarifying that residential surety bonds pay only for complaints arising from the construction of residential or small commercial structures and that commercial surety bonds pay only for complaints arising from the construction of large or small commercial structures. (KD)</p>

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

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

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

(d) For purposes of this rule, where the contractor holds an endorsement as a residential or commercial contractor, "multiple surety bonds" refers to either multiple residential surety bonds or multiple commercial surety bonds. "Multiple surety bonds" does not mean a combination of residential surety bonds and commercial surety bonds.

(6) If the contractor holds a residential surety bond, that bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

(7) If the contractor holds a commercial surety bond, that bond is available only for payments ordered by the agency involving small or large commercial structures or for development of property zoned or intended for use compatible with small or large commercial structures.

~~[(6)]~~ **(8)** If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (3) of this rule or multiple surety bonds, letters of credit or cash deposits under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, letters of credit or cash deposits payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

~~[(7)]~~ **(9)** The full penal sum of a bond, letter of credit or cash deposit must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond, letter of credit or cash deposit amount required under OAR 812-003-0170 or 812-003-0171.

~~[(8)]~~ **(10)** Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that

payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

[~~(9)~~] **(11)** A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

[~~(10)~~] **(12)** Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150, 701.081, 701.084 & 701.088

(6/80, 11/80, 3/81, 10/81, 11/81, 1/83, 3/83, 6/84, 9/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 11/89, 11/97, 2/98, 10/98, 3/99, 6/00, 4/01, 12/01, temp. 5/02, 9/02, 6/04, 10/04, 12/04, 6/05, 12/06, 6/07, 12/07, 2/08)