

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>OAR 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

Establishes penalty for failing to provide a written contract with contractual terms provided by 701.305 and establishes unfit or not fit for licensure.
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.
812-005-0280

AMEND:
812-005-0800

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 183.310 to 183.506, 670.310, 701.235 & 701.992

Stat. Auth.: ORS

Other Authority

ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.091, 701.098, 701.102, 701.106, 701.227, 701.305, 701.315, 701.330, 701.345 & 701.992

Stats. Implemented: ORS

RULE SUMMARY

812-005-0280 is adopted to implement ORS 701.098(2) and 701.102. These provisions allow the board to develop rules to sanction a contractor if the contractor is "unfit" or "not fit" for licensure and to define the meaning of these terms. The rule address two problems: (1) where license applicants fail to pay obligations that arose in a company for which they were the owner or officer; or (2) where there is poorly performed construction that causes consumer harm. The rule reaches matters not expressly covered by the "construction debt" statutes. Although CCB may issue an emergency suspension for nonpayment of "construction debts" (see ORS 701.098(4)(a)(E)), there are other unpaid obligations that also evidence a lack of financial responsibility. The rule adopts express standards to discipline a contractor that performs substandard work that causes harm to consumers. The rule adopts the state building codes (especially the structural code) or accepted building standards as the measure of the work quality.

812-005-0500 is amended to establish penalties for violation of ORS 701.305 and OAR 812-012-0110 for failing to provide a written contract with contractual terms provided by ORS 701.305 and OAR 812-012-0110.

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.)

Establishes penalty for failing to provide a written contract with contractual terms provided by 701.305 & OAR 812-012-0110

Statutory Authority: ORS 183.310 to 183.506, 670.310, 701.235 & 701.992

Other Authority:

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.091, 701.098, 701.102, 701.106, 701.227, 701.305, 701.315, 701.330, 701.345 & 701.992

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

- 812-005-0280 is adopted to implement ORS 701.098(2) and 701.102. These provisions allow the board to develop rules to sanction a contractor if the contractor is "unfit" or "not fit" for licensure and to define the meaning of these terms. The rule address two problems: (1) where license applicants fail to pay obligations that arose in a company for which they were the owner or officer; or (2) where there is poorly performed construction that causes consumer harm. The rule reaches matters not expressly covered by the "construction debt" statutes. Although CCB may issue an emergency suspension for nonpayment of "construction debts" (see ORS 701.098(4)(a)(E)), there are other unpaid obligations that also evidence a lack of financial responsibility. The rule adopts express standards to discipline a contractor that performs substandard work that causes harm to consumers. The rule adopts the state building codes (especially the structural code) or accepted building standards as the measure of the work quality.
- 812-005-0500 is amended to establish penalties for violation of ORS 701.305 and OAR 812-012-0110 for failing to provide a written contract with contractual terms provided by ORS 701.305 and OAR 812-012-0110. The objective of the amendments are to enforce the provisions established by HB 2654 (2007), section 7.

Documents Relied Upon, and where they are available: ORS 701 and OAR 812. Documents are on the agency website at www.oregon.gov/ccb or a paper copy is available upon request.

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)): 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. This rule does not impact reporting, recordkeeping or other administrative activities required for compliance.
 - c. Equipment, supplies, labor and increased administration required for compliance. No impact.

The adoption of OAR 812-005-0280 may have a negative fiscal impact on contractors the agency determines to be unfit or not fit for licensure when the agency decides not to issue, to suspend or revoke a license.

The amendment to OAR 812-005-0800 has a fiscal impact on parties who violate ORS 701.305 or OAR 812-012-0110, with the civil penalty imposed ranging from a warning letter to up to \$5,000 civil penalty depending on the circumstances.

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?:

_____	<u>Catherine Dixon</u>	<u>May 6, 2008</u>
Authorized Signer	Printed Name	Date
Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.		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)

- 812-005-0280 is adopted to implement ORS 701.098(2) and 701.102. These provisions allow the board to develop rules to sanction a contractor if the contractor is “unfit” or “not fit” for licensure and to define the meaning of these terms. The rule address two problems: (1) where license applicants fail to pay obligations that arose in a company for which they were the owner or officer; or (2) where there is poorly performed construction that causes consumer harm. The rule reaches matters not expressly covered by the “construction debt” statutes. Although CCB may issue an emergency suspension for nonpayment of “construction debts” (see ORS 701.098(4)(a)(E)), there are other unpaid obligations that also evidence a lack of financial responsibility. The rule adopts express standards to discipline a contractor that performs substandard work that causes harm to consumers. The rule adopts the state building codes (especially the structural code) or accepted building standards as the measure of the work quality.
- 812-005-0500 is amended to establish penalties for violation of ORS 701.305 and OAR 812-012-0110 for failing to provide a written contract with contractual terms provided by ORS 701.305 and OAR 812-012-0110.

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

- 812-005-0280 is adopted to implement ORS 701.098(2) and 701.102. These provisions allow the board to develop rules to sanction a contractor if the contractor is “unfit” or “not fit” for licensure and to define the meaning of these terms. The rule address two problems: (1) where license applicants fail to pay obligations that arose in a company for which they were the owner or officer; or (2) where there is poorly performed construction that causes consumer harm. The rule reaches matters not expressly covered by the “construction debt” statutes. Although CCB may issue an emergency suspension for nonpayment of “construction debts” (see ORS 701.098(4)(a)(E)), there are other unpaid obligations that also evidence a lack of financial responsibility. The rule adopts express standards to discipline a contractor that performs substandard work that causes harm to consumers. The rule adopts the state building codes (especially the structural code) or accepted building standards as the measure of the work quality.
- 812-005-0500 is amended to establish penalties for violation of ORS 701.305 and OAR 812-012-0110 for failing to provide a written contract with contractual terms provided by ORS 701.305 and OAR 812-012-0110. The objective of the amendments are to enforce the provisions established by HB 2654 (2007), section 7.

List of rules adopted or amended:

812-005-0280 812-005-0800

Materials and labor costs increase or savings:

None

Estimated administrative, construction or other costs increase or savings:

None

Land costs increase or savings:

The rule amendments have no measurable impact the cost of a new home or a building lot.

Other costs increase or savings:

The adoption of OAR 812-005-0280 may have a negative fiscal impact on contractors the agency determines to be unfit or not fit for licensure when the agency decides not to issue, to suspend or revoke a license.

The amendment to OAR 812-005-0800 has a fiscal impact on parties who violate ORS 701.305 or OAR 812-012-0110, with the civil penalty imposed ranging from a warning letter to up to \$5,000 civil penalty depending on the circumstances.

*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

EMAIL ADDRESS: catherine.a.dixon@state.or.us

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

PROPOSED RULE	EXPLANATION
<p><u>ORS 812-005-0280</u> <u>Unfit or Not Fit for Licensure</u> <u>(1) Pursuant to ORS 701.098(2) and ORS 701.102(2)(d), 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. 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:</u> <u>(a) The applicant or licensee; or</u> <u>(b) 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.</u> <u>(2) As used in subsection (1) of this rule, "officer" includes any person listed in ORS 701.005(11) or OAR 812-002-0533.</u> <u>(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to reissue a license if a contractor engages in conduct that harms a consumer by:</u> <u>(a) Arranging for or undertaking work as a contractor that:</u> <u>(A) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;</u> <u>(B) The work causes damage to the consumer or to the consumer's property; and</u> <u>(C) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.</u> <u>Stat. Auth.: ORS 670.310 & 701.235</u> <u>Stats. Implemented: ORS 701.098 & 701.102</u></p>	<p>Adopt: This rule addresses two problems: (1) where license applicants fail to pay obligations that arose in a company for which they were the owner or officer; and (2) where there is poorly performed construction that causes consumer harm.</p> <p>The rule reaches matters not expressly covered by the "construction debt" statutes. Although CCB may issue an emergency suspension for nonpayment of "construction debts" (see ORS 701.098(4)(a)(E)), there are other unpaid obligations that also evidence a lack of financial responsibility.</p> <p>The rule adopts express standards to discipline a contractor that performs substandard work that causes harm to consumers. The rule adopts the state building codes (especially the structural code) or accepted building standards as the measure of the work quality. (KD)</p>
<p>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</p>	<p>Amend to set penalties for violation of ORS 701.305 and OAR 812-012-0110 for failing to provide a written contract with contractual terms provided by ORS 701.305 or OAR 812-012-0110. (RB)</p>

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; 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 use a written contract as required by ORS 701.305, \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.330, failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(30) Violation of ORS 279C.590:

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

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

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

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

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

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

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

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

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

(b) After December 31, 2008: first offense, \$500 civil penalty; second offense, \$2,000 civil penalty; and third offense, up to \$5,000 civil penalty.

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

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