

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

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

**RULE CAPTION**

Increase the minimum civil penalty for limited contractor category and allows ALJ to withdraw and correct an order  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

June 26, 2007 Hearing Date	11:00 a.m. Time	West Salem Roth's IGA, Santiam Rm., 1130 Wallace Rd., Salem, OR Location	Tom Skaar 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:**  
812-005-0800                      812-009-0160

**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 183.500, 6701.310, 701.235 & 701.992  
Stat. Auth.: ORS

Other Authority  
ORS 87.093, 183.415, 183.450, 183.460, 183.464, 183.470, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100, 701.135, 701.145, 701.147,  
701.175, 701.227 & 701.992  
Stats. Implemented: ORS

**RULE SUMMARY**

812-005-0800 is amended to increase the minimum civil penalty for violation of ORS 701.075(4) (the limited contractor category) from \$1,000 to \$5,000 and to include language to clarify that the licensee is conforming to the terms of the application.

812-009-0160 is amended allow the administrative law judge to withdraw and correct an order under OAR 137-003-0655(1).

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 26, 2007 at 11:00 a.m.

**Last Day for Public Comment**

Last day to submit written comment to the Rules Coordinator

Signature	
Catherine Dixon	May 1, 2007
Printed Name	Date

\*The *Oregon Bulletin* is published on the 1<sup>st</sup> 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 15<sup>th</sup> 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](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

OAR 812

Agency and Division

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.)

Statutory Authority: ORS 87.093, 183.310 to 183.500, 293.445, 670.310, 701.055, 701.072, 701.147, 701.150, 701.235, 701.530, 701.992

Other Authority:

Stats. Implemented: ORS 87.093, 183.415, 183.450, 183.460, 183.464, 183.470, 192.430, 279C.590, 293.445, 701.005, 701.055, 701.072, 701.075, 701.078, 701.100, 701.135, 701.143, 701.145, 701.146, 701.147, 701.150, 701.175, 701.227, 701.235, 701.250, 701.530, 701.992

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

- 812-005-0800 is amended to increase the minimum civil penalty for violation of ORS 701.075(4) (the limited contractor category) from \$1,000 to \$5,000 and to include language to clarify that the licensee is conforming to the terms of the application. The intent of the amendment is to encourage contractors to become licensed in the proper license category and obtaining the proper bonding amount, which will help protect consumers.
- 812-009-0160 is amended allow the administrative law judge to withdraw and correct an order under OAR 137-003-0655(1). The intent of the amendment is to allow administrative law judges to withdraw and make corrections to orders they write.

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

Fiscal and Economic Impact, including a Statement of Cost of Compliance:

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

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

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

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.

There is a fiscal impact on parties that violate ORS 701.075(4) due to the minimum civil penalty increasing from \$1,000 to \$5,000 per violation.

How were small businesses involved in the development of this rule?

Five of the current eight 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

Catherine Dixon  
\_\_\_\_\_  
Printed Name

May 1, 2007  
\_\_\_\_\_  
Date

## 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  
**ADDRESS:** 700 Summer St NE Suite 300  
**CITY/STATE:** Salem OR 97301  
**PHONE:** (503) 378-4621

**PERMANENT:**

**HEARING DATE:** June 26, 2007

**TEMPORARY:**

**EFFECTIVE DATE:**

### 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)

- 812-005-0800 is amended to increase the minimum civil penalty for violation of ORS 701.075(4) (the limited contractor category) from \$1,000 to \$5,000 and to include language to clarify that the licensee is conforming to the terms of the application.
- 812-009-0160 is amended allow the administrative law judge to withdraw and correct an order under OAR 137-003-0655(1).

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

- 812-005-0800 is amended to increase the minimum civil penalty for violation of ORS 701.075(4) (the limited contractor category) from \$1,000 to \$5,000 and to include language to clarify that the licensee is conforming to the terms of the application. The intent of the amendment is to encourage contractors to become licensed in the proper license category and obtaining the proper bonding amount, which will help protect consumers.
- 812-009-0160 is amended allow the administrative law judge to withdraw and correct an order under OAR 137-003-0655(1). The intent of the amendment is to allow administrative law judges to withdraw and make corrections to orders they write.

#### **List of rules adopted or amended:**

OAR 812-005-0800 and 812-009-0160

#### **Materials and labor costs increase or savings:**

The rule amendments have no measurable cost for construction materials or labor costs.

#### **Estimated administrative construction or other costs increase or savings:**

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.

#### **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 amendment to OAR 812-005-0800 has a fiscal impact on parties who violate ORS 701.075(4) due to the minimum civil penalty increasing from \$1,000 to \$5,000.

\*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](mailto:catherine.a.dixon@state.or.us)

**Rule Amendments for June 26, 2007**

**Penalties**

**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 701.055(1) 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 701.055(1) 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 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), 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 701.055(1), 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 701.055(11); and

(7) \$1,000 per offense for hiring an 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 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055 (13), 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

Amend to increase the minimum civil penalty for violation of the limited contractor license category. (RB)

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 701.075(4), issuance of a [~~\$1,000~~] **\$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 working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(8), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(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, 701.075 or 701.078, as authorized by ORS 701.100, \$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 701.135, \$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 701.135(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 701.135(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 701.135(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 701.175, 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 701.055(11)(a), 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 ORS 701.135(1)(f), 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.

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

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100, 701.135, 701.175, 701.227, & 701.992

<p>(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)</p>	
<p><b>812-009-0160</b>  <b>Order Based on Hearing, Limitation on Order</b></p> <p>(1) “Order” as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.</p> <p>(2) Subject to sections (7) and (8) of this rule, if a complaint is referred for a hearing to determine the amount, if any, that a respondent owes a complainant, the administrative law judge may not issue an order in an amount greater than the total amount the complainant alleges the respondent owes the complainant in:</p> <p>(a) The most recent statement of damages or amended statement of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or</p> <p>(b) The Breach of Contract Complaint filed under OAR 812-004-0340, if no statement of damages was filed.</p> <p>(3) If a complaint is referred for a hearing to determine whether any portion of a judgment is within the agency’s jurisdiction, the administrative law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.</p> <p>(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the complainant or dismiss the complaint.</p> <p>(5) An administrative law judge must consider any amounts due to the respondent from the complainant under the terms of the contract and reduce the amount of an order by that amount.</p> <p>(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge must issue a proposed and final order under OAR 137-003-0645(4) that must automatically become a final order 21 days after the date of issue without further notice unless:</p> <p>(a) A party files timely exceptions under OAR 812-009-0400;</p> <p>(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-033-0655 (1);</p> <p><b><u>(c) The administrative law judge withdraws and corrects the order under OAR 137-003-0655(1);</u></b></p> <p><del>(d)</del> <b><u>(d)</u></b> The agency issues an amended proposed order under OAR 137-003-0655 (3); or</p> <p><del>(d)</del> <b><u>(e)</u></b> The agency notifies the parties and the administrative law judge that the agency will issue the final order.</p> <p>(7) If a limitation on damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.</p> <p>(8) If a limitation of damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that does not include a</p>	<p>Amended to allow administrative law judge to withdraw and correct an order under OAR 137-003-0655(1). (WJB)</p>

request for an award of the complaint processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the complaint processing fee paid by the complainant under OAR 812-004-0110 and 812-004-0400.

(9) If a complaint is referred for a hearing solely to determine if the Board has jurisdiction over the complaint and the administrative law judge finds that the Board has jurisdiction over the complaint, the administrative law judge must issue an intermediate order that the Board resume processing the complaint. The Board may accept the order to resume processing or issue a proposed and final order under OAR 137-003-0060 to dismiss the complaint for lack of jurisdiction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147

(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 8/00, 5/02, 11/02, 8/03, 10/04, 12/05, 12/06)

Authorized by Attorney General order dated 07/11/00