

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

Clarification and housekeeping revisions, and close loophole in RMI experience.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

<u>June 26, 2007</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.
812-002-0673

AMEND:						
812-001-0200	812-001-0200	812-003-0130	812-004-0110	812-004-0520	812-004-0600	Division 9 title
812-001-0160	812-002-0220	Division 4 title	812-004-0500	812-004-0540	812-006-0450	

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 87.093, 293.445, 670.310, 701.055, 701.072, 701.150, 701.235, & 701.530
Stat. Auth.: ORS

Other Authority
ORS 87.093, 183.415, 183.460, 183.470, 192.430, 293.445, 701.005, 701.055, 701.058, 701.072, 701.078, 701.085, 701.143, 701.145, 701.146, 701.147, 701.150, 701.235, 701.250, & 701.530
Stats. Implemented: ORS

RULE SUMMARY

812-001-0160 is amended to change the words "tape recordings" to "recordings" since the agency does not record meetings on tape any more; and to clarify that the hourly charge for staff work on public records requests includes time spent on copying records as well as time spent on researching related to the request.

812-001-0200 is amended to implement Task Force on Construction Claims recommended revisions to use the full name of the "Information Notice to Owners About Construction Liens" and delete language allowing previous versions of the notice to be used and is amended by CCB to adopt the revised form "Information Notice to Property Owners About Construction Responsibilities.

812-002-0220, 812-004-0500, 812-004-0520, 812-004-0540, and 812-004-0600 and the titles in divisions 4 and 9 are amended to change the word "claim" to "complaint" to reflect the change in terms used by the agency.

812-002-0673 is adopted to define the term "signed by respondent" to clarify that it means a return receipt or letter indicating receipt of a notice of intent to file a complaint may be signed by the principals, employees or authorized agents of the respondent.

812-003-0130 amended to correct the category name from "special" contractor to properly read "specialty" contractor.

812-004-0110 is amended to adopt the January 24, 2007 version of the Department of Health and Human Services Poverty Guidelines used to establish eligibility for a waiver of the complaint processing fee.

812-006-0450 is amended to close an unintended loophole for those licenses that were grandfathered in. The amendment requires that the RMI must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI for not less than 24 consecutive months before the date of the a new application.

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

Printed Name

May 1, 2007

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

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.) Clarification and housekeeping revisions, and close loophole in RMI experience.

Statutory Authority: ORS 87.093, 293.445, 670.310, 701.055, 701.072, 701.150, 701.235, & 701.530

Other Authority:

Stats. Implemented: ORS 87.093, 183.415, 183.460, 183.470, 192.430, 293.445, 701.055, 701.072, 701.078, 701.143, 701.145, 701.146, 701.147, 701.150, 701.235, 701.250, & 701.530

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

- The following rule amendments are made to clarify the meaning of the rule, to update to make the rule current, or are amendments to make corrections for consistency:
 - 812-001-0160 is amended to change the words "tape recordings" to "recordings" since the agency does not record meetings on tape any more; and to clarify that the hourly charge for staff work on public records requests includes time spent on copying records as well as time spent on researching related to the request.
 - 812-002-0220, 812-004-0500, 812-004-0520, 812-004-0540, and 812-004-0600 and the titles in divisions 4 and 9 are amended to change the word "claim" to "complaint" to reflect the change in terms used by the agency.
 - 812-002-0673 is adopted to define the term "signed by respondent" to clarify that it means a return receipt or letter indicating receipt of a notice of intent to file a complaint may be signed by the principals, employees or authorized agents of the respondent.
 - 812-004-0110 is amended to adopt the January 24, 2007 version of the Department of Health and Human Services Poverty Guidelines used to establish eligibility for a waiver of the complaint processing fee.
 - 812-003-0130 amended to correct the category name from "special" contractor to properly read "specialty" contractor.
- 812-001-0200 is amended to implement Task Force on Construction Claims recommended revisions to use the full name of the "Information Notice to Owners About Construction Liens", deletes language allowing previous versions of the notice to be used, and is amended by CCB to adopt the revised form "Information Notice to Property Owners About Construction Responsibilities". The revisions are made to clarify the name of the form used and to adopt a revised form.
- 812-006-0450 is amended to close an unintended loophole for those licenses that were grandfathered in. The amendment requires that the RMI must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI for not less than 24 consecutive months before the date of the a new application.

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, 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.

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

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

Catherine Dixon

Printed Name

May 1, 2007

Date

ARC 925-2005

Rule Amendments for June 26, 2007

812-001-0160

Requests for Information; Charges for Records

(1) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:

- (a) License numbers.
- (b) Name of licensed entity and any assumed business names on file with the agency.
- (c) Type of business entity.
- (d) Category of license.
- (e) Class of independent contractor license status.
- (f) Personal names of owner, partners, joint venturers, members, corporate officers, or trustees.
- (g) The dates in the license history and the action that took place on those dates.

(2) The agency may make the following charges for records:

- (a) \$20 for each certification that an entity has or has not been licensed with the Construction Contractors Board.
- (b) \$20 for certified copies of documents.
- (c) \$5 for the first 20 copies made and 25 cents per page thereafter.
- (d) \$20 for duplicate [~~tape~~] recordings of, Board meetings and Appeal Committee meetings.
- (e) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for duplicate [~~tape~~] recordings of each additional 90 minutes or fraction thereof of the hearing or arbitration.
- (f) Charge as determined by preparation time and production cost for mailing labels of licensees.
- (g) \$10 per half-hour unit or portion of a half-hour unit for research or copying of records for each request from a person beginning with the 31st minute of research or copying time.

Stat. Auth.: ORS 293.445, 670.310 & 701.235
 Stats. Implemented: ORS 192.430, 293.445, 701.235 & 701.250
 (1/83, 3/83, 3/84, 5/84, 3/85, 4/85, 3/87, 12/87, 1/88, 2/88, 6/88, 1/89, 2/89, 6/89, 7/89, 11/89, 2/90, 5/90, 6/90, 2/92, 4/92, 2/95, 9/95, 5/96, 5/97, 4/98, 9/98, 3/99, temp. 6/99, 9/99, 6/00, 12/00, 12/01, 5/02, 2/04, 12/04, 8/05, 12/05, 5/06)
 (Amended and renumbered from 812-001-0015, 12/05)

Housekeeping: Amended to:

1. Change “tape recordings” to “recordings.” We do not record meetings on tape any more.
2. Clarify that the hourly charge for staff work on a public records request includes time spent on copying records as well as time spent on researching related to the request.

(WJB)

812-001-0200

Consumer Protection Notices

(1) The Construction Contractors Board adopts the form entitled “Information Notice to Owner About Construction Liens,” as revised February 3, 2006. This form may be obtained from the agency. [~~Previously adopted versions of the Information Notice may also be used.~~]

(2) The Construction Contractors Board adopts the form “Information Notice to Property Owners About Construction Responsibilities” as revised [~~June 1, 2004~~] **June 26, 2007**.

(3) The Construction Contractors Board adopts the form “Notice of Compliance with Homebuyer Protection Act (HPA) as revised December 16, 2003.

Housekeeping: (1) is amended to implement Task Force on Construction Claims recommended revisions to include the full name of the form. (CPS)

(2) Is amended to adopt the revised form. (GF)

<p>(4) The Construction Contractors Board adopts the form “Model Features for Accessible Homes” dated December 6, 2005. Stat. Auth.: ORS 87.093, 670.310, 701.055, 701.235 & 701.530 Stats. Implemented: ORS 87.093, 701.055, 701.235 & 701.530 (4/81, 11/81, 1/82, 3/82, 6/82, 1/83, 1/83, 3/83, 3/83, 10/83, 2/87, 7/87, 1/89, 11/89, 5/92, 7/92, 8/92, 3/99, 9/99, temp. 5/00, 8/00, 6/02, 12/02, temp. 3/03, 6/03, 12/03, temp. 12/03, temp. 12/03, 2/04, 5/04, temp. 6/04, 8/04, 12/05, temp. 1/06, 3/06) (Amended and renumbered from 812-001-0020, 12/05)</p>	
<p>812-002-0220 Date Contractor Incurred Indebtedness “Date the contractor incurred the indebtedness” as used in ORS 701.143, has the following meanings: (1) For a material [claim] complaint, this date is the date of delivery or the date the purchaser takes possession of the materials that are the subject of the [claim] complaint. If the delivery date is unknown, the date of the invoice applies except in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness. (2) For an employee [claim] complaint or employee trust [claim] complaint, this date is the date the employee performed the work that is the subject of the [claim] complaint. (3) For a subcontractor [claim] complaint, this date is the date the subcontractor ceases to perform the work at issue in the [claim] complaint, substantially completes the work or submits a request for payment for the work, whichever occurs first. Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS 701.143 & 701.145 (4/98, 12/01, 6/05)</p>	<p>Housekeeping: Amended to change the word “claim” to “complaint” to reflect the change in terms used by the agency (CD)</p>
<p>812-002-0673 Signed by Respondent <u>“Signed by respondent,” as used in OAR 812-004-0340, means signed by the respondent, if the respondent is a sole proprietorship, or an owner, officer, employee or authorized agent of the respondent.</u> Stat. Auth.: ORS 670.310, 701.147 & 701.235 Stats. Implemented: ORS 701.147</p>	<p>Adopted to define term to clarify that a return receipt or letter indicating receipt of a notice of intent to file a complaint may be signed by the principals, employees or authorized agents of the respondent. (WJB)</p>
<p>812-003-0130 License Categories The following are license categories as provided in ORS 701.005: (1) General Contractor – All structures. A person licensed in this category may: (a) Bid or perform work on three or more unrelated building trades or crafts on all types of structures, and (b) Bid or perform the work of a Specialty Contractor--All-Structures. (2) General Contractor – Residential Only. A person licensed in this category may: (a) Bid or perform work on three or more unrelated building trades or crafts on residential structures or small commercial properties only; and (b) Bid or perform the work of a Specialty Contractor--Residential-Only.</p>	<p>Housekeeping: 812-003-0130(3) is amended to correct the category name to properly read “specialty” contractor. (CD)</p>

<p>(3) [Special] Specialty Contractor – All structures. A person licensed in this category may:</p> <p>(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all types of structures.</p> <p>(b) If three or more unrelated trades or crafts are performed or subcontracted out, the entire contract price cannot exceed \$2,500.</p> <p>(4) Specialty Contractor – Residential Only. A person licensed in this category may:</p> <p>(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all residential structures or small commercial properties only.</p> <p>(b) If three or more unrelated trades or crafts are performed or subcontracted out, the entire contract price cannot exceed \$2,500.</p> <p>(5) Limited Contractor. A person licensed in this category may:</p> <p>(a) Bid or perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, as long as all of the following conditions are met:</p> <p>(A) The licensee’s annual gross business sales do not exceed \$40,000.</p> <p>(B) The licensee does not enter into a contract in which the contract price exceeds \$5,000.</p> <p>(C) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000.</p> <p>(D) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (5)(a)(A) of this rule.</p> <p>(E) For purposes of this section, “contract” includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.</p> <p>(6) Inspector. A person licensed in this category may:</p> <p>(a) Bid or perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.</p> <p>(7) Licensed Developer. A person licensed in this category may arrange for construction work on property they own or have an interest in as long as they meet the conditions in ORS 701.005(8).</p> <p>Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS 701.005, 701.055, 701.058, & 701.085 (12/04, 5/06)</p>	
<p style="text-align: center;">DIVISION 4</p> <p style="text-align: center;">[CLAIMS] <u>COMPLAINTS</u></p> <p style="text-align: center;">General</p>	<p>Housekeeping: Amended to change the word “claim” to “complaint” to reflect the change in terms used by the agency (CD)</p>
<p>812-004-0110 Complaint Processing Fee; Waiver of Fee (1) The complaint processing fee authorized under ORS 701.147 is \$50 for a</p>	<p>Housekeeping: Amended to update reference document used to establish eligibility for</p>

<p>complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.</p> <p>(2) The agency must collect the processing fee under OAR 812-004-0400.</p> <p>(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.</p> <p>(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:</p> <p>(a) The complainant is an individual;</p> <p>(b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and</p> <p>(c) The complainant’s gross income does not exceed the [2003] 2007 Department of Health and Human Services Poverty Guidelines published in the Federal Register, [Vol. 68, No. 26, February 7, 2003, pp. 6456-6458] Vol. 72, No. 15, January 24, 2007, pp. 3147-3148.</p> <p>(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.</p> <p>(6) The agency may require that the complainant pay a complaint processing fee of \$97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.</p> <p>Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS 701.146 & 701.147 (12/03, temp. 12/03, 2/04, 5/04, 12/06)</p>	<p>a waiver of the complaint processing fee. (WJB)</p>
<p>812-004-0500 Closure of Complaint After Settlement</p> <p>If the complainant and respondent agree to a settlement, the following apply:</p> <p>(1) The agency must notify the complainant that the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days from the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 812-004-0260.</p> <p>(2) If the complainant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency must close the [claim] complaint.</p> <p>(3) If the complainant does not notify the agency as required under section (1) of this rule, the agency may close the complaint under OAR 812-004-0260.</p> <p>Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS 701.145 (10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 12/05, 12/06)</p>	<p>Housekeeping: Amended to change the word “claim” to “complaint” to reflect the change in terms used by the agency (CD)</p>
<p>812-004-0520 Processing of Complaint Submitted to Court, Arbitrator or Other Entity</p> <p>(1) “Court, arbitrator or other entity” has the meaning given that phrase in division 2 of this chapter.</p> <p>(2) The agency may suspend processing a complaint if:</p> <p>(a) The respondent submits a complaint against the complainant to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against the respondent, including but not limited to a breach of contract [claim] complaint or a suit to foreclose a lien involving the same</p>	<p>Housekeeping: Amended to change the word “claim” to “complaint” to reflect the change in terms used by the agency (CD)</p>

contract at issue in the complaint;

(b) The complainant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against respondent; or

(c) The agency requires the complainant to submit the complaint to a court because the agency determined that a court is the appropriate forum for the adjudication of the complaint because of the nature or complexity of the complaint.

(d) The complainant in an owner ~~[claim]~~ **complaint** involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(3) If the agency suspends processing a complaint under section (2) of this rule, the agency must notify the complainant on the date it suspends processing the complaint that processing has been suspended. The following provisions apply to the agency and the complainant if processing is suspended:

(a) The notice of suspension of processing must include notice of the requirements contained in subsections (3)(b) and (d) of this rule and must comply with the requirements of OAR 812-004-0260.

(b) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect.

(c) The agency may, at any time, demand from the complainant a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect. The demand must be in writing and must comply with the requirements of OAR 812-004-0260. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(d) Within 30 days from the date of final action by the court, arbitrator or other entity, the complainant must deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If the complainant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the complaint. If the complainant does not comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the complaint under OAR 812-004-0260.

(4) If the agency suspends processing a complaint under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant that the complainant must file the complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the complainant has done so within 30 days from mailing of the notice. The notice must comply with the requirements of OAR 812-004-0260.

(b) If the complainant does not submit the evidence as required under subsection (4)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(5) If the agency suspends processing a complaint under subsection (2)(c) of

<p>this rule, the following provisions apply in addition to the provisions in section (3) of this rule:</p> <p>(a) The agency must notify the complainant, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the complaint and that the complainant must:</p> <p>(A) File the complaint as a complaint in a court of competent jurisdiction within 90 days from notice that the agency has suspended processing the complaint; and</p> <p>(B) Submit evidence, including a copy of the complaint, to the agency that the complainant complied with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.</p> <p>(b) If the complainant does not submit the evidence as required under subsection (5)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.</p> <p>(6) If the agency resumes processing a complaint under section (3) of this rule:</p> <p>(a) The agency must accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the complaint.</p> <p>(b) Based on the judgment, award or decision, the agency must issue a proposed default order to pay damages or to dismiss or refer the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(b) of this rule:</p> <p>(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.</p> <p>(B) A proposed default order to pay damages issued under section (6) of this rule must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.</p> <p>(C) If the agency refers the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge must determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.</p> <p>(7) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-0450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.</p> <p>Stat. Auth.: ORS 670.310 & 701.235 Stats. Implemented: ORS 183.415, 183.460, 701.145, 701.146 & 701.147 (10/98, 6/00, 4/01, 5/02, 3/03, 8/03, 10/04, 8/05, 12/06)</p>	
<p>812-004-0540 Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing</p> <p>(1) A complainant may seek monetary damages if the agency has not closed the complaint and:</p> <p>(a) The complainant disagrees with the resolution recommended by the agency;</p> <p>(b) The respondent cannot or will not comply with the recommended resolution; or</p> <p>(c) The parties signed a settlement agreement but, through no fault of the complainant, the respondent failed to satisfy one or more terms of the settlement</p>	<p>Housekeeping: Amended to change the word “claim” to “complaint” to reflect the change in terms used by the agency (CD)</p>

agreement, and the complainant so advises the agency in writing within 30 days from the date the settlement agreement was to have been completed.

(2) If the complainant seeks monetary damages or the agency so requests, the complainant must file a statement of damages stating the amount the complainant alleges the respondent owes the complainant, limited to complaint items listed in the Breach of Contract Complaint and those complaint items added up to and through any initial on-site meeting. The agency may require the complainant to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost to correct the ~~claim~~ **complaint** items; or

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the complaint for an arbitration or contested case hearing under section (4) of this rule after each party to the complaint has had an opportunity to provide evidence supporting its position with regard to the complaint. The agency may require that the complainant file a statement of damages and supporting evidence described under section (2) of this rule, except that the statement of damages must be limited to complaint items listed in the Breach of Contract Complaint.

(4) After the agency receives documents required under sections (2) or (3) of this rule, the agency may:

(a) Issue a proposed default order proposing dismissal of the complaint under OAR 812-004-0550(2) or payment of an amount by the respondent to the complainant; or

(b) Refer the complaint to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the complaint and whether the amount of damages alleged, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to the complainant only if the record of the complaint supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the complaint contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6)(a) If the record of a complaint supports an award of damages to the complainant under OAR 812-004-0535 and the respondent pays the complainant the amount of those damages after the complainant submits to the agency the complaint processing fee required under OAR 812-004-0110, the agency may issue a proposed default order proposing that the respondent reimburse the complainant the amount of the processing fee paid.

(b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the complainant to satisfy a written settlement agreement that the complainant signed.

(c) Before issuing a proposed default order under subsection (6)(a) of this rule, the agency must notify the respondent of the agency's intent to issue the proposed order and allow the respondent 30 days to submit written evidence that the respondent reimbursed the complaint processing fee to the complainant.

(7) 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, 701.145 & 701.147
(10/98, temp. 1/00, 5/00, 4/01, 5/02, 11/02, 3/03, 8/03, 2/04, 12/04, 8/05,

12/06)	
<p>812-004-0600 Payment From Surety Bonds</p> <p>(1) The agency may notify the surety company of complaints pending.</p> <p>(2) The agency must notify the surety company of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A [complaints] complaint is ready for payment when all of the following have occurred:</p> <p>(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</p> <p>(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;</p> <p>(b) The agency has received no evidence that the respondent has complied with the award or final order;</p> <p>(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</p> <p>(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.</p> <p>(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond must be paid as follows:</p> <p>(a) If a surety bond was in effect when the work period began, payment must be made from that surety bond.</p> <p>(b) If no surety bond was in effect when the work period began, but a surety bond subsequently became effective during the work period of the contract, payment must be made from the first surety bond to become effective after the beginning of the work period.</p> <p>(c) A surety bond 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 have no liability for any complaint related to the job.</p> <p>(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond up to the amount in effect at the time the contract was entered into.</p> <p>(5) If the respondent maintains multiple surety bonds, the following apply:</p> <p>(a) If multiple surety bonds were in effect when the work period began, payment must be made from all surety bonds in effect.</p> <p>(b) If no surety bond was in effect when the work period began, but multiple surety bonds subsequently became effective during the work period of the contract and the effective dates of the surety bonds are substantially the same, payment must be made from multiple surety bonds.</p> <p>(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond must be in the same proportion that the penal sum of the surety bond bears to the total of the penal sums of the multiple surety bonds.</p> <p>(6) If more than one complaint must be paid from a surety bond under section (3) of this rule or multiple surety bonds under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, 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.</p>	<p>Housekeeping: Amended to correct grammar. (CD)</p>

<p>(7) The full penal sum of a bond must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170.</p> <p>(8) 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 of the respondents, payment must be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment must be made from the remaining bond or in equal amounts from the remaining bonds. 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 under this section by an amount equal to the payment made by the respondent.</p> <p>(9) A surety company may not condition payment of a complaint on the execution of a release by the complainant.</p> <p>(10) Inactive status of the license of the respondent does not excuse payment by a surety company required under this rule.</p> <p>Stat. Auth.: ORS 670.310, 701.150 & 701.235 Stats. Implemented: ORS 701.150 (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)</p>	
<p>812-006-0450 Experience</p> <p>In order for an RMI to qualify for experience as provided in ORS 701.078(1)(b)(B)BU:</p> <p>(a) [-an] The RMI must be listed on the agency's current license records as having been a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI of a licensed business before July 1, 2000[.]</p> <p>(b) The RMI must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI for not less than 24 consecutive months before the date of application; and</p> <p>(c) [that] The business license on which the RMI was listed on as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI has not lapsed, or if lapsed, has lapsed for not more than 24 months.</p> <p>Stat. Auth.: ORS 670.310, 701.072 & 701.235 Stats. Implemented: ORS 701.072 & 701.078 (1/92, 2/92, 5/92, 7/92, 8/92, 3/93, 4/93, 5/93, 6/93, 8/93, 12/93, 1/94, 6/94, 7/94, 1/95, 6/95, 10/97, 2/98, 3/99, 5/00, 6/00, 8/00, temp. 5/01, 12/01, 5/02, 6/02, 12/03, 12/04, 5/06, 9/06) (Amended and renumbered from 812-006-0020, 9/06)</p>	<p>Amended to close a loophole and require that the RMI must have been on the record within 24 months from the date of the new application. (GF and KP).</p>
<p style="text-align: center;">DIVISION 9</p> <p style="text-align: center;">CONTESTED CASE HEARINGS AND APPEAL COMMITTEE</p> <p style="text-align: center;">Contested Case Hearings, [Claims] <u>Complaints</u></p>	<p>Housekeeping: Amended to correct name to "complainants". Housekeeping. (CD)</p>