

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

Allow agency to restrict hearing to a contested case without arbitration option.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

<u>December 4, 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.

AMEND:
812-004-0590

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 & 701.235
Stat. Auth.: ORS

Other Authority

ORS 701.145 & 701.147
Stats. Implemented: ORS

RULE SUMMARY

812-004-0590 is amended to allow the agency to refer a complaint to the Office of Administrative Hearings for a contested case without an option for an arbitration where the agency finds that would provide a better resolution to the complaint.

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.

December 4, 2007 at 11:00 a.m.

Last Day for Public Comment

Last day to submit written comment to the Rules Coordinator

<u>Signature</u> <u>Catherine Dixon</u> Printed Name	<u>10-12-07</u> Date
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*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.) Adoption or Amendment of OAR Chapter 812 to Implement 2007 Legislative Changes Effective 1/1/08 or Clarify Rule Language

Statutory Authority: ORS 670.310 & 701.235

Other Authority:

Stats. Implemented: ORS 701.145 & 701.147

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

812-004-0590 is amended to allow the agency to refer a complaint to the Office of Administrative Hearings for a contested case without an option for an arbitration where the agency finds that would provide a better resolution to the complaint.

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 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.

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

10-12-07

Date

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

ARC 925-2005

Rule Amendments for December 4, 2007 Rule Hearing

812-004-0590

Referral of Complaint to Arbitration or Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings conducts a hearing on a complaint:

(a) The hearing must be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing must be held as a contested case hearing under OAR 137-003-0501 to OAR 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the complaint makes a timely written request under section (4) of this rule that the complaint be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the complaint be heard as a contested case.

(2) Subject to section (3) of this rule, a complaint must be decided in court if:

(a) The complainant files a complaint in court that alleges the elements of the complaint in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the complaint and that allows the complainant to file a response alleging the elements of the complaint.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limit in this rule constitutes waiver of the right to have the complaint decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a complaint be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a complaint to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the complaint be heard as a contested case under subsection (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the complaint.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the complaint being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the complainant in a complaint does not seek \$1,000 or more, a hearing on the complaint may not be conducted as a contested case hearing.

Amends Section 7 to allow the agency to refer a complaint to the Office of Administrative Hearings for a contested case without an option for arbitration where the agency finds that would provide a better resolution to the complaint.

(WJB)

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the complaint under ORS 701.139 to 701.180 is at issue; ~~or~~

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the complaint; **or**

(c) The agency determines, in its discretion, that a contested case hearing is in the interest of one or more of the parties or of the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

(9/99, temp. 1/00, 5/00, 6/02, 9/02, 8/03, 12/04, 8/05, 12/05, 12/06)