

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

Home Inspector Rule Amendments to Implement SB 153 (2011)

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

In the Matter of: Amendments to OAR 812

Statutory Authority: ORS 670.310, 701.235, 701.350 & 701.355

Other Authority: OR Laws 2011, ch 79, § 1

Stats. Implemented: ORS 701.081, 701.084, 701.350 & 701.355

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

- 812-008-0000 is amended to implement Senate Bill 153, which authorizes the CCB to adopt rules to determine whether an inspection and report, which is limited to one or more specific systems or components of a residential structure or appurtenance, is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector. (Or Laws 2011, ch 79, § 1.) The new law took effect January 1, 2011.
- 812-008-0020, as amended, reflects three types of businesses that do not inspect the overall physical condition of homes but rather provide specialized services. These services include energy audits, forensic evaluation and home performance testing. Each term is defined. The term "home inspection" specifically excludes these services. The terms "component" and "system" are clarified with respect to home energy appliances – namely, hot water heaters, furnaces and air conditioners.
- 812-008-0030 is amended to do the following: (1) Clarify the "grandfather" exemption created under earlier law; and (2) Add new exemptions for: (a) energy audit; (b) forensic evaluation; and (c) home performance testing. The references to ORS 701.350(1) and 701.350(2) are removed from sections (1) and (2) of the rule. Those statutory provisions do not contain express exemptions. The only statutory exemption is for "grandfathered" contractors, in OAR 812-008-0030(3)(a).

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 known fiscal impact on state agencies, units of local government or the public; except the rule amendments do have a minimal fiscal impact on the CCB because less fees will be collected and contractors that qualify for the exemptions (contractors that perform: energy audit; forensic evaluation; and home performance testing) will save the following home inspector certification costs: \$50 initial application fee, \$50 testing fee and \$150 home inspector certification fee, plus an indeterminate cost savings from exemption from continuing education requirements for home inspectors).

Statement of Cost of Compliance:

The rule amendments have a minimal fiscal impact on the CCB because less fees will be collected. Contractors that qualify for the exemptions (contractors that perform: energy audit; forensic evaluation; and home performance testing) will save the following home inspector certification costs: \$50 initial application fee, \$50 testing fee and \$150 home inspector certification fee, plus an indeterminate cost savings from exemption from continuing education requirements for home inspectors.

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
The rule changes have no known fiscal impact on state agencies, units of local government or the public.
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:
Theses rule amendments do not have an impact on small businesses.

- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
These rule amendments do not impact reporting, recordkeeping or other administrative activities required for compliance.
- c. Equipment, supplies, labor and increased administration required for compliance:
These rule amendments do have an impact on equipment, supplies, labor or increased administration requirements.

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

The agency works with its Board to develop administrative rules. Six of the current nine Board members are business owners.

Administrative Rule Advisory Committee consulted? No

If not, why?: The agency uses its Board which is made up of six contractors; one elected public official, and two public members who review and approve agency's administrative rules. Some of the Board members are members of industry associations who discuss proposed rules with their associations.

Staff met and worked with home inspector associations to draft the proposed rule language.

Authorized Signer	<u>Catherine Dixon</u>	<u>October 12, 2011</u>
	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: **December 6, 2011**
ADDRESS: **700 Summer St. NE Ste 300**
CITY/STATE: **Salem OR 97309** TEMPORARY: EFFECTIVE DATE:
PHONE: **(503) 934-2185**

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)

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- 812-008-0020, as amended, reflects three types of businesses that do not inspect the overall physical condition of homes but rather provide specialized services. These services include energy audits, forensic evaluation and home performance testing. Each term is defined. The term "home inspection" specifically excludes these services. The terms "component" and "system" are clarified with respect to home energy appliances – namely, hot water heaters, furnaces and air conditioners.
- 812-008-0030 is amended to do the following: (1) Clarify the "grandfather" exemption created under earlier law; and (2) Add new exemptions for: (a) energy audit; (b) forensic evaluation; and (c) home performance testing. The references to ORS 701.350(1) and 701.350(2) are removed from sections (1) and (2) of the rule. Those statutory provisions do not contain express exemptions. The only statutory exemption is for "grandfathered" contractors, in OAR 812-008-0030(3)(a).

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

- 812-008-0000 is amended to implement Senate Bill 153, which authorizes the CCB to adopt rules to determine whether an inspection and report, which is limited to one or more specific systems or components of a residential structure or appurtenance, is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector. (Or Laws 2011, ch 79, § 1.) The new law took effect January 1, 2011.
- 812-008-0020, as amended, reflects three types of businesses that do not inspect the overall physical condition of homes but rather provide specialized services. These services include energy audits, forensic evaluation and home performance testing. Each term is defined. The term "home inspection" specifically excludes these services. The terms "component" and "system" are clarified with respect to home energy appliances – namely, hot water heaters, furnaces and air conditioners.
- 812-008-0030 is amended to do the following: (1) Clarify the "grandfather" exemption created under earlier law; and (2) Add new exemptions for: (a) energy audit; (b) forensic evaluation; and (c) home performance testing. The references to ORS 701.350(1) and 701.350(2) are removed from sections (1) and (2) of the rule. Those statutory provisions do not contain express exemptions. The only statutory exemption is for "grandfathered" contractors, in OAR 812-008-0030(3)(a).

List of rules adopted or amended:

812-008-0000
812-008-0020
812-008-0030

Materials and labor costs increase or savings:

The rule amendments have no known impact on materials and labor costs.

Estimated administrative construction or other costs increase or savings:

The rule amendments have no measurable impact on administrative construction or other cost increases or savings.

The rule amendments have a minimal fiscal impact on the CCB because less fees will be collected. Contractors that qualify for the exemptions (contractors that perform: energy audit; forensic evaluation; and home performance testing) will save the following home inspector certification costs: \$50 initial application fee, \$50 testing fee and \$150 home inspector certification fee, plus an indeterminate cost savings from exemption from continuing education requirements for home inspectors.

Land costs increase or savings:

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

Other costs increase or savings:

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

The rule amendments have a minimal fiscal impact on the CCB because less fees will be collected. Contractors that qualify for the exemptions (contractors that perform: energy audit; forensic evaluation; and home performance testing) will save the following home inspector certification costs: \$50 initial application fee, \$50 testing fee and \$150 home inspector certification fee, plus an indeterminate cost savings from exemption from continuing education requirements for home inspectors.

*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

Proposed Rule	Explanation
<p>812-008-0000 Authority, Purpose, Scope</p> <p>(1) Authority. These rules are promulgated in accordance with and under the authority of ORS chapter 701.</p> <p>(2) Purpose.</p> <p>(a) The purpose of these rules is to create a program to certify home inspectors.</p> <p>(b) These rules prescribe the requirements for certification and practices of individuals, and licensing of businesses engaged in home inspections.</p> <p>(c) These rules cover businesses and all individuals who offer to undertake, submit a bid to undertake or undertake a home inspection.</p> <p><u>(d) These rules identify when an inspection and report that is limited to one or more specific systems or components of a residential structure or appurtenance is not a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.</u></p> <p>(3) Scope.</p> <p>(a) These rules are limited to the establishment of certification for individuals and licensing of businesses that offer to undertake, submit a bid to undertake or undertake certified home inspections.</p> <p>(b) These rules prescribe the requirements for, and the manner of certifying applicants to be Oregon certified home inspectors and the licensing of businesses employing these individuals, to assure the protection of consumers.</p> <p>(c) These rules establish prescribed fees to the extent necessary to defray costs of those activities prescribed herein.</p> <p>Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355. Stats. Implemented: ORS 701.350 & 701.355 (2/98, 6/00)</p>	<p>Senate Bill 153 authorizes the board to adopt rules to determine whether an inspection and report, which is limited to one or more specific systems or components of a residential structure or appurtenance, is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector. (Or Laws 2011, ch 79, § 1.) The new law takes effect January 1, 2011.</p> <p>OAR 812-008-0000(2), as amended, adds language from SB 153 to the purpose section.</p>
<p>812-008-0020 Definitions</p> <p>The following definitions apply to Division 8 of OAR chapter 812:</p> <p>(1) “Administrator” means the Administrator of the agency.</p> <p>(2) “Agency” means the Oregon Construction Contractors Board.</p> <p>(3) “Automatic safety controls” means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.</p> <p>(4) “Central air conditioning” means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.</p> <p>(5) “Certified individual” means an individual who successfully passes a test accredited by the agency, completes the education required for renewal, and satisfies any other requirements established by OAR chapter 812.</p> <p>(6) “Component” means a readily accessible and observable aspect of</p>	<p>OAR 812-008-0020, as amended, reflects three types of businesses that do not inspect the overall physical condition of homes but rather provide specialized services. These services include energy audits, forensic evaluation and home performance testing. Each term is defined. The term “home inspection” specifically excludes these services.</p> <p>The terms “component” and “system” are clarified with respect to home energy appliances – namely, hot water heaters, furnaces and air</p>

<p>a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.</p> <p><u>“Component” also includes, but is not limited to, the separate parts of an installed appliance or an electric or gas-powered system, including, but not limited to, a water heater, furnace or air conditioning unit.</u></p> <p>(7) “Conspicuous” as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or other contrasting type or color. But in a telegram any stated term is “conspicuous.” Whether a term or clause is “conspicuous” or not is for decision by the court.</p> <p>(8) “Cross connection” means any physical connection or arrangement between potable water and any source of contamination.</p> <p>(9) “Dangerous or adverse situations” means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.</p> <p>(10) “Describe” means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.</p> <p>(11) “Dismantle” means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.</p> <p><u>(12) “Energy audit” means evaluation or testing of components or systems with a focus on energy efficiency, which may lead to recommendations that improve energy efficiency. “Energy audit” also includes quality assurance review or verification of installed or retrofitted components or systems impacting energy efficiency.</u></p> <p>[(42)] <u>(13) “Enter” means to go into an area and observe all visible components.</u></p> <p><u>(14) “Forensic evaluation” means evaluation or testing of components or systems for purposes of envelope analysis, materials testing or failure due to water intrusion or other external causes.</u></p> <p>[(43)] <u>(15) “Functional drainage” means a drain is functional when it empties in a reasonable amount of time.</u></p> <p>[(44)] <u>(16) “Functional flow” means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.</u></p> <p><u>(17) “Home performance testing” means evaluation or testing of components or systems for purposes of comfort, energy efficiency, safety or indoor air quality.</u></p> <p>[(45)] <u>(18) “Home inspection” means an inspection of [more than one inspection category] substantially all of the components or systems as set forth in 812-008-0205 through 812-008-0214 for the purpose of determining the overall physical condition and habitability of the inspected structure at the time of inspection.</u> A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction. <u>A home inspection does not include energy audit, forensic evaluation or home performance testing.</u></p> <p>[(46)] <u>(19) “Installed” means attached or connected such that the</u></p>	<p>conditioners.</p>
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installed item requires tools for removal.

[(17)] **(20)** “Normal operating controls” means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.

[(18)] **(21)** “Observe” means the act of making a visual examination.

[(19)] **(22)** “On-site water supply quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water.

[(20)] **(23)** “On-site water supply quantity” means the water quantity based on the rate of flow of water.

[(21)] **(24)** “Operate” means to cause systems or equipment to function.

[(22)] **(25)** “Oregon certified home inspector” means a person certified pursuant to **ORS chapter 701**, chapter 814, 1997 Oregon Laws and OAR chapter 812.

[(23)] **(26)** “Readily accessible panel” means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

[(24)] **(27)** “Representative number” for multiple identical components such as windows and electrical outlets means one such component per room; for multiple identical exterior components, one such component on each side of the building.

[(25)] **(28)** “Roof drainage systems” means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

[(26)] **(29)** “Shut down” means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the “off” position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

[(27)] **(30)** “Solid fuel heating device” means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

[(28)] **(31)** “Structural component” means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

[(29)] **(32)** “System” means a combination of interacting or interdependent components, assembled to carry out one or more functions.

“System” also includes, but is not limited to, an installed appliance or an electric or gas-powered system, including but not limited to, a water heater, furnace or air conditioning unit.

[(30)] **(33)** “Technically exhaustive” means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

[(31)] **(34)** “Test” means a test administered by the agency.

[(32)] **(35)** “Underfloor crawl space” means the area within the

<p>confines of the foundation and between the ground and the underside of the lowest floor structural component.</p> <p>Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355 Stats. Implemented: ORS 701.350 & 701.355 (2/98, 12/04, 6/06)</p>	
<p>812-008-0030 Certification and License Required</p> <p>(1) Except as provided in [ORS 701.350(1) and] section (3) of this rule, no individual shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first receiving certification to do same from the agency and without being an owner or employee of a business that is licensed with the agency.</p> <p>(2) Except as provided in [ORS 701.350(2) and] section (3) of this rule, no business shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first becoming licensed with the agency as a residential general contractor or residential specialty contractor, and without having an owner or employee who is an Oregon certified home inspector by the agency.</p> <p>(3) <u>The following persons are exempt from the requirements of this rule.</u></p> <p><u>(a) Persons registered each year as a general contractor under ORS chapter 701 during the period from January 1, 1991, though August 11, 1997, as provided in</u> [No person, including persons listed in section (3)(b) of chapter 814, 1997 Oregon Laws [as being exempt from ORS 701.350(1) and (2), shall use the title Oregon certified home inspector without receiving such certification from the agency].]</p> <p><u>(b) Persons performing an energy audit or issuing a report on an energy audit.</u></p> <p><u>(c) Persons performing a forensic evaluation or issuing a report on a forensic evaluation.</u></p> <p><u>(d) Persons performing home performance testing or issuing a report on a home performance testing.</u></p> <p><u>(4) No person, including persons covered by section (3) of this rule, shall use the title Oregon certified home inspector without receiving such certification from the agency.</u></p> <p>[(4)] (5) Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.</p> <p>[(5)] (6) All certificates to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.</p> <p>Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355 Stats. Implemented: ORS 701.081, 701.084, 701.350 & 355 (2/98, 10/98, temp. 6/99, 9/99, 6/00, 5/02, 2/08)</p>	<p>OAR 812-008-0030 is amended to do the following.</p> <p>(1) Clarify the “grandfather” exemption created under earlier law.</p> <p>(2) Add new exemptions for: (a) energy audit; (b) forensic evaluation; and (c) home performance testing.</p> <p>The references to ORS 701.350(1) and 701.350(2) are removed from sections (1) and (2) of the rule. Those statutory provisions do not contain express exemptions. The only statutory exemption is for “grandfathered” contractors, in OAR 812-008-0030(3)(a).</p>