

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on September 9, 2011 by the
(Date prior to or same as filing date.)

Construction Contractors Board OAR 812
(Agency and Division) (Administrative Rules Chapter Number)
Catherine Dixon 700 Summer St NE Suite 300, Salem OR 97301 (503) 934-2185
(Rules Coordinator) (Address) (Telephone)
to become effective September 9, 2011 through January 4, 2012
(Date upon filing or later) (A maximum of 180 days including the effective date.)

RULE CAPTION

Arbitration/Mediation of CCB DRS Complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:
812-004-1440

AMEND:

SUSPEND:
812-004-1440T

Stat. Auth.: ORS 670.310 & 701.235

Other Auth.: Ch. 630 OR Laws (2011)

Stats. Implemented: Ch. 630 OR Laws (2011)

RULE SUMMARY

This filing is made to correct the temporary rule that was filed on July 8, 2011. The temporary rule filed on July 8, 2011 is being suspended and this temporary rule is replacing that filing.

The newly adopted OAR 812-004-1440 (9/9/11) is adopted because under the CCB's current rules, a complainant may have to waive its contractual right to arbitration in order to obtain CCB mediation. After implementing the temporary DRS rules (7/8/11), CCB finds this is too onerous for complainants. Complainants should be able to obtain CCB mediation **and** retain their contractual right to arbitration. In addition, CCB can provide mediation to satisfy contractual mediation requirements. If the contractor is entitled to specific mediation and does not want to satisfy the requirement with CCB mediation, it must act affirmatively to initiate the contract mediation process. CCB proposes to suspend the previously adopted temporary rule OAR 812-004-1440T and replace it with this newly adopted temporary 812-004-1440 (9/9/11).

Signature Catherine Dixon September 9, 2011
Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules..

ARC 940-2005

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) 934-2185 for assistance in receiving a copy.

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules 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.)
Arbitration/Mediation of CCB DRS Complaints

Statutory Authority: ORS 670.310 & 701.235

Other Authority: Ch. 630 OR Laws (2011)

Stats. Implemented: Ch. 630 OR Laws (2011)

Need for the Temporary Rule(s):

This filing is made to correct the temporary rule that was filed on July 8, 2011. The temporary rule filed on July 8, 2011 is being suspended and this temporary rule is replacing that filing.

The newly adopted OAR 812-004-1440 (9/9/11) is adopted because under the CCB's current rules, a complainant may have to waive its contractual right to arbitration in order to obtain CCB mediation. After implementing the temporary DRS rules (7/8/11), CCB finds this is too onerous for complainants. Complainants should be able to obtain CCB mediation and retain their contractual right to arbitration. In addition, CCB can provide mediation to satisfy contractual mediation requirements. If the contractor is entitled to specific mediation and does not want to satisfy the requirement with CCB mediation, it must act affirmatively to initiate the contract mediation process. CCB proposes to suspend the previously adopted temporary rule OAR 812-004-1440T and replace it with this newly adopted temporary 812-004-1440 (9/9/11).

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.

Justification of Temporary Rule(s):

The CCB finds that following the permanent rulemaking process, instead of taking this temporary rulemaking action, would result in serious prejudice to the public interest. Failing to adopt the rule on an emergency basis will potentially result in undue prejudice to complainants who have arbitration or mediation clauses in their contracts. They will be forced to give up contractual rights in order to access CCB mediation. This would create an unwanted result for those complainants that file their complaints within the next 60 days. The rule adoption is needed immediately to implement SB 939, which became operative July 1, 2011.

Signature	Catherine Dixon Printed name	September 9, 2011 Date
-----------	---------------------------------	---------------------------

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

ARC 925-2005

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 Ste 300
CITY/STATE: Salem OR 97309
PHONE: (503) 378-4621

PERMANENT:

HEARING DATE:

TEMPORARY:

EFFECTIVE DATE: September 9, 2011

**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)

This filing is made to correct the temporary rule that was filed on July 8, 2011. The temporary rule filed on July 8, 2011 is being suspended and this temporary rule is replacing that filing.

The newly adopted OAR 812-004-1440 (9/9/11) is adopted because under the CCB's current rules, a complainant may have to waive its contractual right to arbitration in order to obtain CCB mediation. After implementing the temporary DRS rules (7/8/11), CCB finds this is too onerous for complainants. Complainants should be able to obtain CCB mediation and retain their contractual right to arbitration. In addition, CCB can provide mediation to satisfy contractual mediation requirements. If the contractor is entitled to specific mediation and does not want to satisfy the requirement with CCB mediation, it must act affirmatively to initiate the contract mediation process. CCB proposes to suspend the previously adopted temporary rule OAR 812-004-1440T and replace it with this newly adopted temporary 812-004-1440 (9/9/11).

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

This filing is made to correct the temporary rule that was filed on July 8, 2011. The temporary rule filed on July 8, 2011 is being suspended and this temporary rule is replacing that filing.

The newly adopted OAR 812-004-1440 (9/9/11) is adopted because under the CCB's current rules, a complainant may have to waive its contractual right to arbitration in order to obtain CCB mediation. After implementing the temporary DRS rules (7/8/11), CCB finds this is too onerous for complainants. Complainants should be able to obtain CCB mediation and retain their contractual right to arbitration. In addition, CCB can provide mediation to satisfy contractual mediation requirements. If the contractor is entitled to specific mediation and does not want to satisfy the requirement with CCB mediation, it must act affirmatively to initiate the contract mediation process. CCB proposes to suspend the previously adopted temporary rule OAR 812-004-1440T and replace it with this newly adopted temporary 812-004-1440 (9/9/11).

List of rules adopted or amended:

Adopt:

812-004-1440

Amend:

Suspend:

812-004-1440T

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 the following impact on administrative construction or other cost increases or savings. Currently, a complainant pays \$50 to file a CCB complaint. There is no additional cost to complainant or respondent, if the complainant requests an administrative hearing. Under the new rules (and SB 939), complainants that do not settle may go to arbitration or court. The following indicates those costs:

Action/Fee	Arbitration	Small Claims Court	Circuit Court
Complainant/Plaintiff:			
• Filing/processing fee	½ of \$975 - \$8,700	\$46.50 - \$86.50	\$197 - \$527
• Civil service		\$36.00	\$36.00
• Atty. Fees	Unknown	\$0	Unknown
Respondent/Defendant:			
• Filing/processing fee	½ of \$975 - \$8,700	\$74 - \$143, plus \$150 for jury trial	\$197 - \$527
• Atty. Fees	Unknown	\$0	Unknown

Where there is a range, the amount of filing and processing fees are usually determined by the amount of damages sought.

The Construction Contractors Board (CCB) budget (HB 5012 (2011)) eliminated Dispute Resolution Services (DRS) hearings held at the Office of Administrative Hearings (OAH), saving CCB \$1,025,000. The resulting changes necessary to implement the elimination of CCB’s DRS hearings and move to the mediation only process are contained in SB 939 (2011).

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 the following fiscal impact on state agencies, units of local government or the public. The Construction Contractors Board (CCB) budget (HB 5012 (2011)) eliminated Dispute Resolution Services (DRS) hearings held at the Office of Administrative Hearings (OAH) saving CCB \$1,025,000. Presumably, an equal amount of revenue is eliminated for OAH. The resulting changes necessary to implement the elimination of CCB’s DRS hearings and move to the mediation only process are contained in SB 939 (2011). See other costs in the chart above.

*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

812-004-1440**Contracts With Arbitration Agreements**

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate disputes arising out of the contract, the specific terms of the mediation agreement supersede agency rules except as set forth in ORS 701.180.

(2) If the contract requires mediation, the agency will be the mediator unless the contract requires mediation by a specific mediator other than the agency.

(3) If the contract requires mediation by a specific mediator other than the agency, the agency must inform the respondent by written notice that, if the respondent wants to mediate under the terms of the contract, the respondent must initiate the contractual mediation process within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that respondent initiated mediation under the terms of the contract.

(4) If mediation under the contract is timely commenced under ORS 701.180, the agency must suspend processing the complaint until the mediation is complete.

(5) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.133 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: Ch. 630 OR Laws 2011

(temp. 7/8/11, temp. 9/9/11)