

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 January 2, 2008 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 378-4621 ext. 4077
(Rules Coordinator) (Address) (Telephone)

to become effective January 2, 2008 through June 29, 2008
(Date upon filing or later) (A maximum of 180 days including the effective date.)

RULE CAPTION

Schedule of Penalties

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.

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:
OAR 812-005-0800

SUSPEND:

ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stat. Auth.: ORS

Chapter 114, Oregon Laws 2007 (HB 2109) and chapter 648, Oregon Laws 2007 (HB 2654)

Other Authority

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

Stats. Implemented: ORS

RULE SUMMARY

The rule governs penalties that CCB may impose for violation of statutes and rules. CCB is amending the penalty rule to remove statutory provisions that the 2007 legislature repealed or modified and to insert statutory provisions that the 2007 legislature enacted. Similarly, CCB amends one provision to correspond to a substantive rule.

Authorized Signer

Catherine Dixon
Printed Name

January 2, 2008
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) 378-4621 ext. 4077 for assistance in receiving a copy.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Construction Contractors Board
Agency and Division

OAR 812
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.)
Schedule of Penalties

Statutory Authority: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Other Authority: Chapter 114, Oregon Laws 2007 (HB 2109) and chapter 648, Oregon Laws 2007 (HB 2654)

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

Need for the Temporary Rule(s):

In 2007, the Oregon legislature enacted or amended several statutes in the Construction Contractors Licensing Act (ORS chapter 701). These laws become effective January 1, 2008. The Schedule of Penalty Rule refers to statutes that are repealed or modified effective January 1, 2008. These amendments are adopted to correctly identify the violations to the new laws. (In one case, to correctly identify the violation to a substantive rule).

Documented Relied Upon, and where they are available: ORS 701 and OAR 812. These documents are available on agency's 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. The statutes enacted by the Oregon legislature in 2007 take effect on January 1, 2008. To continue the ability of the CCB to operate its enforcement program, it is necessary that the rules referencing existing statutes be updated to reflect the new laws. There is not adequate time to complete a permanent rulemaking process to accomplish this by January 1, 2008. Thus, because of the need to act immediately, CCB amends OAR 812-005-0800 as a temporary rule.

Authorized Signer

Catherine Dixon
Printed Name

January 2, 2008
Date

PROPOSED RULE	EXPLANATION
<p>812-005-0800 Schedule of Penalties</p> <p>The agency may assess penalties, not to exceed the amounts shown in the following guidelines:</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(6) \$500 per offense for failure to respond to the agency’s request for the list of subcontractors required in [ORS 701.055(14)] section 4, chapter 114, Oregon Laws 2007 (HB 2109); and</p> <p>(7) \$1,000 per offense for hiring a unlicensed subcontractor; and</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(11) Failure to use a written contract as required by [ORS 701.055(14)] section 7, chapter 648, Oregon Laws 2007 (HB 2654), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.</p> <p>(12) Violation of [ORS 701.055(13)] section 14, chapter 648, Oregon Laws 2007 (HB 2654), failure to provide a [Consumer Notification form] Consumer Protection Notice or Notice of Procedure, as provided for in OAR 812-001-0200; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for</p>	<p>Amended: CCB is amending the penalty rule to remove statutory provisions that the 2007 legislature repealed or modified and to insert statutory provisions that the 2007 legislature enacted. Similarly, CCB amends one provision to correspond to a substantive rule. (KD)</p> <p>Important housekeeping—designed to change cite references to comply with laws that went into effect Jan. 1. 2008. (CPS)</p>

PROPOSED RULE	EXPLANATION
<p>subsequent offenses. Civil penalties shall not be reduced unless 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.</p> <p>(13) Failure to conform to information provided on the application in violation of ORS 701.075(4), issuance of a \$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.</p> <p>(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.</p> <p>(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.</p> <p>(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.</p> <p>(15) [Failure] <u>Violating or failing</u> 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] <u>statute, or rule adopted under any statute, listed in section 14, chapter 114, Oregon Laws 2007 (HB 2109)</u>, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute <u>or rule</u>.</p> <p>(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.</p> <p>(17) Working without a construction permit in violation of ORS 701.135<u>(1)(f)</u>, \$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.</p> <p>(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.</p> <p>(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.</p> <p>(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:</p> <p>(a) Not paying prevailing wage on a public works job; or</p> <p>(b) Violating the federal Davis-Bacon Act; or</p> <p>(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or</p> <p>(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or</p> <p>(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.</p> <p>(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</p>	

PROPOSED RULE	EXPLANATION
<p>occurred: \$5,000 and revocation of the license.</p> <p>(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.</p> <p>(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.</p> <p>(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.</p> <p>(25) [Failure] <u>Except as provided in section (28), failure</u> to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.</p> <p>(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.</p> <p>(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.</p> <p>(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)] <u>812-008-0202(4)</u>: \$400 per offense.</p> <p>(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.</p> <p>(30) Violation of ORS 279C.590:</p> <p>(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</p> <p>(b) Imposition of a civil penalty on the contractor of up to \$1,000; and</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(32) Violation of [ORS 701.055(11)(a)] <u>section 4, chapter 114, Oregon Laws 2007 (HB 2109)</u>, 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.</p> <p>(33) Violation of 701.135(1)(e), knowingly providing false information to the</p>	

PROPOSED RULE	EXPLANATION
<p>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.</p> <p>Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992</p> <p>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> <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, 6/07, temp. 1/08)</p>	