



October 1, 2008

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**Civil penalty matrix changes**

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**Purpose of the rule:**

This rule and the updated penalty matrix clarifies the guidelines used the various boards for assessing civil penalties for violations of the state building code, administrative directives, or rules.

This rule is effective October 1, 2008.

**Citation:**

Amend: OAR 918-001-0036

**Effect of the rule:**

This rule and penalty matrix puts into place a system that will better match a penalty with a violation by offering flexibility to both the division and the boards to address both common types of violations as well as more serious types of violations. This updated system includes a minimum penalty in addition to the maximum penalty, the ability for negotiating a civil penalty, and the ability to place conditions on a license.

**Contact:**

If you have questions or need further information, please contact Enforcement and Licensing Manager Jon Hills at 503-373-1367, or [Jon.Hills@state.or.us](mailto:Jon.Hills@state.or.us) .



## 918-001-0036

### Guidelines for Civil Penalties

(1) Scope and Authority. This rule sets guidelines for assessing a civil penalty under ORS 446.995 & 455.895.

(2) Definitions. For the purposes of this rule:

(a) “Continuing offense” or “continuing violation” means violation of a code, rule or law on one or more additional days after having been notified of the violation or ordered to correct the act, or the failure to act. A continuing violation is subject to a civil penalty each day the violation continues after notification.

(b) A “directive” includes, but is not limited to, a notice or warning, citation, order, consent decree or settlement agreement, rule, law, code requirement, or agency interpretation.

(c) “Pattern of violation” means two or more prior violations during a given period of any provision of ORS chapter 446, 447, 455, 460, 479, 480, or 693, or the state building code as defined in ORS 455.010, whether or not a penalty was assessed.

(A) For violations by volunteers performing unlicensed work, supervisor and business violations, and failures to comply with corrective orders, a pattern of violation is calculated within a three-year period from the date of the latest violation.

(B) For scope of license violations, violations concerning other unlicensed activities, failure to obtain license and permit, failure to comply with a previous directive, or violations resulting in unsafe installations or health and safety hazards, a pattern of violation is calculated within a five-year period from the date of the latest violation.

(3) A licensed person or contractor who performs an act resulting in an unsafe installation or a health and safety hazard, structural or financial damage, performs or allows another to perform work requiring a license without an appropriate license, violates a previous directive, or exhibits a pattern of violation may have their license, registration or certificate conditioned, suspended, or revoked.

(4) Civil penalties may be assessed by a board, the administrator, or a board’s designee acting as agent for a board. A board or the administrator may take into account any appropriate factors, including previous directives, in determining the penalty amount or conditions within an order. The statutorily defined maximum penalty may only be assessed upon a finding of a pattern of violation.

(5) Civil penalties may be assessed in addition to, or in lieu of, the conditioning, suspension, or revocation of a license, certificate of competency, or similar authority issued by the division.

(6) The division may, subject to approval of a board, develop a penalty matrix for the board’s use to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

(7) If a dispute concerning the application of the state building code as defined in ORS 455.010 is appealed to a local appeals board, to a board under ORS 455.690 or to the program chief under ORS 455.475:

(a) A civil penalty that is being appealed, may be stayed until after resolution of the appeal or interpretation. If corrections are necessary, a civil penalty may be stayed for 30 calendar days or the time frame established in the appeal or in the interpretation process.

(b) An administrative appeal will not stay civil penalties when they were assessed for failure to obtain a permit unless the appeal involves determining whether a permit was necessary.

(c) The person seeking the appeal or interpretation has the obligation to notify the division of the appeal for the purpose of granting a stay of the civil penalty.

(8) Violations of ORS chapters 446, 447, and 479 and ORS 455.020(2) and 455.610, wherein defects are noted by an inspector in an element of assembly or construction, shall not be considered a violation for the purposes of this section if the violation is corrected and an inspection request made in 20 calendar days unless extended in writing by the building official.

(9) The Building Codes Division shall forward a copy of final orders to the Construction Contractors Board.

Stat. Auth.: ORS 446.995 & 455.895

Stats. Implemented: ORS 446.995 & 455.895

Hist.: BCD 35-2002, f. 12-31-02, cert. ef. 1-1-03; BCD

10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 22-2008, f. 9-30-08, cert. ef. 10-1-08