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**Civil penalty matrix changes**

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**Opportunity for public input:**

Those who would like to provide public testimony may attend a public hearing on September 16, 2008 at 1:30 p.m. The hearing will be located at the Building Codes Division, Conference Room A. Written comments may also be submitted to the contact below. The last day to submit written comments is 5:00 p.m. September 19, 2008.

**Purpose of the rule:**

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

This rule would be effective October 1, 2008.

**Citation:**

Amend: OAR 918-001-0036

**History:**

The division, with the assistance of the Board Chair/Vice-chair work group, amended this rule and the Advisory Board Penalty Matrix with the goal of having a system in place that will better match a penalty with a violation. The current rule and penalty matrix do not provide the flexibility that the division and the various boards need to address common types of violations as compared to more serious types of violations.

These changes include the addition of 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. These changes are not substantive changes.

**Contact:**

If you have questions or need further information, please contact Hearing Officer Aeron Teverbaugh at 503-373-1354, or [Aeron.Teverbaugh@state.or.us](mailto:Aeron.Teverbaugh@state.or.us) .



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services, Building Codes Division	918
Agency and Division	Administrative Rules Chapter Number
Shauna M. Parker	PO Box 14470, Salem, OR 97309
Rules Coordinator	Address
	(503) 373-7438
	Telephone

**RULE CAPTION**

Clarifies guidelines and procedures for assessing civil penalties.

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

September 16, 2008	1:30 p.m.	1535 Edgewater Street NW, Salem, OR 97304	Aeron Teverbaugh
Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

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

**ADOPT:**

**AMEND:** OAR 918-001-0036

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 446.995 & 455.895

Other Auth.:

Stats. Implemented: ORS 446.995 & 455.895

**RULE SUMMARY**

This proposed rule clarifies the guidelines for assessing civil penalties. The division is adopting a new penalty matrix for use by the boards in assessing civil penalties for violations of the state building code, administrative directives or rules, etc. This rule was amended to clarify definitions and procedures governing civil penalties.

The Agency 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.

Friday, September 19, 2008 at 5:00 p.m.

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Mark Long	
Signature	Printed name
	Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15<sup>th</sup> day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services, Building Codes Division

918

Agency and Division

Administrative Rules Chapter Number

Clarifies guidelines and procedures for assessing civil penalties.

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

In the Matter of: Amending OAR 918-001-0036

Statutory Authority: ORS 446.995 & 455.895

Other Authority:

Stats. Implemented: ORS 446.995 & 455.895

Need for the Rule(s): The Building Codes Division is adopting a new penalty matrix to address the variety of circumstances under which civil penalties may be assessed. This rule reflects changes to the civil penalty matrix used by the boards, clarifying the guidelines for civil penalties.

Documents Relied Upon, and where they are available: Minutes from the Electrical and Elevator Board meeting of May 22, 2008; minutes from the Board of Boiler Rules meeting of June 3, 2008; minutes from the Oregon State Plumbing Board meeting of June 20, 2008; and draft rules are available from the division's rules coordinator located at 1535 Edgewater St. NW, Salem, Oregon, 97304 and are available on the division's web site: [www.bcd.oregon.gov](http://www.bcd.oregon.gov).

Fiscal and Economic Impact:

The department has determined these proposed rule changes will not have a fiscal or economic impact on state agencies, units of local government, members of the public or small businesses.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

There should be no impact on state agencies, local government or the public because the changes were mostly housekeeping and clarification amendments.

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: The department has determined these proposed rule changes will not have a fiscal or economic impact on small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

These proposed rules impose no reporting, recordkeeping, administrative, or other requirements on small businesses.

c. Equipment, supplies, labor and increased administration required for compliance:

These proposed rules impose no equipment, supplies, labor, administrative or other requirements on small businesses.

How were small businesses involved in the development of this rule? Small business were represented by members of the respective Building Code Divisions boards that reviewed the rules.

Administrative Rule Advisory Committee consulted?: No

If not, why?: The Electrical and Elevator Board, the Board of Boiler Rules and the Oregon State Plumbing Board reviewed the rules. The rules will also be reviewed by the Manufactured Structures and Parks Advisory Board prior to the hearing. The boards represent a wide segment of industry.

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Signature	Mark Long	Date
	Printed name	

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

**Board Penalty Matrix Rules  
Draft- 8-8-08**

**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 ~~that~~ **of the violation or ordered to correct the act, or the failure to act.** in question, or failure to act, is a violation. An additional day is any day, other than the first day, an offense takes place. **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.**

~~(b)~~**(c) “Pattern of violation” means two or more prior violations during any three-year 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.**

~~(c)~~ “Egregious Act,” for purposes other than plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard; structural or financial damage;

(B) A violation of a previous order;

~~(C) Directly employing, allowing or permitting an unlicensed individual to perform work;~~

or

~~(D) Performing or engaging in work that requires a license.~~

~~(d) “Egregious Act,” for the purposes of plumbing violations found by the State~~

~~Plumbing Board, means:~~

~~(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;~~

~~(B) A violation of a previous order;~~

~~(C) Allowing or permitting an unlicensed individual to perform work; or~~

~~(D) Performing or engaging in work that requires a license.~~

~~(e)~~**(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** has committed an egregious act may have their license, registration or certificate **conditioned,** suspended or revoked. For the purposes of civil penalty assessments, there is no time limit on egregious acts.

**(3)(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.**

~~(4)~~**(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.

~~(5) Procedures:~~

~~(a) Civil penalties shall be assessed by a board, the administrator or a board’s designee acting as agent for a board.~~

~~(b)~~**(6)** The division shall **may,** subject to approval of a board, ~~adopt~~ **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.

~~(e)~~**(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)** No ~~A~~ civil penalty shall be sought or assessed for violation of the code provision that **is being** ~~was~~ appealed, **may be stayed** until after **resolution of** the appeal or interpretation is resolved, and ~~if~~ **if** corrections are necessary, **a civil penalty may be stayed for** they are made ~~within~~ 30 calendar days or the time frame established in the appeal or in the interpretation process.

~~(B)~~ **(b)** Notwithstanding a ~~An~~ administrative appeal, **will not stay** civil penalties can be brought or **when they were** assessed for failure to obtain a permit ~~if the issues on~~ **unless the** appeal ~~do not~~ involves the question of **determining** whether a permit was necessary.

~~(C)~~**(c)** The obligation is on the person charged **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.** ~~or about to be charged, with a violation to advise of an appeal under this subsection.~~

~~(D)~~ The division shall adopt and review the division's operating procedures with a board 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.

~~(6)~~**(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 of **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.

~~(7)~~**(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

**ADVISORY BOARD PENALTY MATRIX**

\*\*\*DRAFT\*\*\*

Maximum Penalty/ Minimum Penalty  
April 24, 2008

<b>Violation Type</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>Length of Time</b>
<b>Volunteer (not in business)</b>	<b>\$1000/\$100</b>	<b>\$2000/\$1000</b>	<b>\$5000/\$4000</b>	<b>3 years from last violation</b>
<b>Unlicensed Activities</b>	<b>\$2000/\$750</b>	<b>\$2500/\$1500</b>	<b>\$5000/\$4000 and/or injunction</b>	<b>5 years from last violation</b>
<b>Scope of License Violations</b>	<b>\$2000/\$750</b>	<b>\$3000/\$2000</b>	<b>\$5000/\$4000 and/or condition/denial/suspension/revocation</b>	<b>5 years from last violation</b>
<b>Scope of License Violations (apprentice)</b>	<b>\$2000/0</b>	<b>\$3000/\$2000</b>	<b>\$5000/\$4000 and/or condition/denial/suspension/revocation</b>	<b>5 years from last violation</b>
<b>Combo – License and Permit</b>	<b>\$2500/\$1500</b>	<b>\$3500/\$2500</b>	<b>\$5000/\$4000 and/or condition/denial/suspension/revocation</b>	<b>5 years from last violation</b>
<b>Supervisor</b>	<b>\$3000/\$1000</b>	<b>\$4000/\$2000</b>	<b>\$5000/\$4000 and/or condition/denial/suspension/revocation</b>	<b>3 years from last violation</b>

<b>Violation Type</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>Length of Time</b>
<b>Business</b>	<b>\$3000/\$2000</b>	<b>\$4000/\$3000</b>	<b>\$5000/\$4000 and/or condition/denial/suspension/revocation</b>	<b>3 years from last violation</b>
<b>Failure to Comply with Order of Corrective Action</b>	<b>Not more than \$1000 per day and/or suspension/revocation</b>			<b>3 years from last violation</b>
<b>Unsafe Installations/ Health and Safety Hazard/Failure to Comply with Directive</b>	<b>\$3000/\$500</b>	<b>\$5000/\$2000 and/or condition/denial/suspension/revocation</b>		<b>5 years from last violation</b>
<b>Failure to Comply with Directive + aggravating factors</b>	<b>\$4500/\$3000</b>	<b>\$5000/\$4000 and/or condition/denial/suspension/revocation</b>		<b>5 years from last violation</b>