

Chapter 837 Department of Oregon State Police, Office of State Fire Marshal

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DIVISION 1

PROCEDURAL RULES

837-001-0000

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, the State Fire Marshal shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least fifteen (15) days prior to the effective date.

(2) By mailing a copy of the Notice of Proposed Rule to persons on the State Fire Marshal's mailing list established pursuant to ORS 183.335(6).

(3) By mailing a copy of the notice to the following persons, organizations, or publications:

- (a) United Press International and Associated Press;
- (b) League of Oregon Cities;
- (c) State Building code Division;
- (d) Fire standards and accreditation Board;
- (e) Accident Prevention Division, Workmen's Compensation Board;

- (f) Association of Oregon Counties;
- (g) Oregon Fire Chiefs Association;
- (h) Oregon Fire Marshals Association;
- (i) Associated General Contractors;
- (j) Oregon Council of AIA;
- (k) International Conference of Building Officials;
- (l) Housing Urban Development;
- (m) Oregon State Health Division;
- (n) Department of Commerce;
- (o) Professional Engineers of Oregon;
- (p) Oregon Association of Hospitals;
- (q) Northwest Natural Gas;
- (r) Capitol Press Room;
- (s) Oregon State Bar;
- (t) Department of Human Resources;
- (u) Oregon Labor Press;
- (v) Oregon States Association of PHCC;
- (w) Oregon Health Care Association;
- (x) Oregon State Home Builders Association.

Stat. Auth.: ORS Ch. 183

Hist.: FM 72, f. & ef. 1-26-76

837-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the State Fire Marshal adopts by reference the 1991 Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act effective November 4, 1991.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Fire Marshal.]

Stat. Auth.: ORS 183.341 & Ch. 476

Hist.: FM 14a, f. 2-2-60, ef. 3-10-60; FM 82, f. & ef. 6-7-76; FM 2-1978, f. 4-27-78, ef. 5-1-78; FM 1-1980, f. & ef. 2-20-80; FM 1-1982, f. 1-22-82, ef. 2-1-82; FM 3-1983, f. 10-18-83, ef. 11-1-83; FM 4-1986, f. & ef. 3-20-86; FM 6-1988, f. & cert. ef. 7-28-88; FM 3-1990, f. & cert. ef. 7-3-90; FM 1-1992, f. & cert. ef. 1-7-92

Refund of Moneys

837-001-0010

Purpose and Scope

(1) Pursuant to ORS 293.445, this rule provides for the refund of fees paid in excess of the amount legally due the State Fire Marshal pursuant to ORS Chapters 476 and 480.

(2) The State Fire Marshal shall not refund fees paid in excess of the amount legally due, if the amount is \$10 or less:

- (a) Unless a refund is requested in writing by the applicant or the applicant's legal representative; and
- (b) Unless the request is received within three years after the date payment is received by the State Fire Marshal.

Stat. Auth.: ORS Ch. 293, 476 & 480

Hist.: FM 2-1987, f. & ef. 6-16-87

DIVISION 12

PUBLIC DISPLAY OF FIREWORKS IN OREGON

837-012-0021

Special Effects

(1) "Special Effects" as used in this rule means the use of articles containing a pyrotechnic composition which are manufactured, assembled, designed, or discharged in connection with television, motion picture productions, stage shows or other entertainment events.

(2) Special Effects are exempt from the provisions of OAR 837-012-0020 under the following conditions:

(a) Each such Special Effects use is approved by and will be under the effective supervision of the local fire authority having jurisdiction;

(b) All Special Effects displays conducted indoors shall be in a room or area protected by an approved automatic sprinkler system, or providing equivalent safety.

(3) One permit may allow a series of Special Effects displays when in conjunction with repetitive performances at one location.

(4) Special Effect materials shall be stored in accordance with **National Fire Protection Association Standard No. 1124 "Code for the Manufacture, Transportation, and Storage of Fireworks"**.

(5) Any Special Effects, devices or materials not in use and designated as Class B explosives by the U.S. Department of Transportation, shall be stored in a TYPE 2 magazine constructed in accordance with the **National Fire Protection Association Standard No. 1124**.

(6) Quantities of Special Effect materials at the display site shall:

(a) Be stored in a safe manner as specified by the local fire authority having jurisdiction;

(b) Not exceed the maximum limits established by the local fire authority having jurisdiction, and stipulated on the permit application.

(7) Responsibility: Persons in charge of the use and handling of Special Effects materials shall be responsible for their safe use.

(8) Insurance: Persons responsible for the conduct of Special Effect displays shall provide evidence of public liability and property damage insurance as required by the local authority having jurisdiction.

(9) Qualifications: Persons in charge of the use and handling of Special Effect materials shall be qualified by experience and/or training acceptable to the local fire authority having jurisdiction, and shall follow recognized safety procedures for use within the industry. (Recommended **Safety Precautions for Special Effects Pyrotechnics** — Available at the Office of State Fire Marshal.)

(10) A test demonstration of the actual display shall be conducted prior to the public performance when required by the local fire authority having jurisdiction.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480

Hist.: FM 4-1988(Temp), cert. & ef. 3-31-88; FM 9-1988, f. & cert. ef. 9-19-88

837-002-0120 [Renumbered to 837-012-0525]

837-012-0125 [Renumbered to 837-012-0515]

837-012-0127 [Renumbered to 837-012-0550]

Agricultural Use of Fireworks in Oregon

837-012-0305

Application for Permit

Applications for a permit for agricultural use of fireworks shall be made on forms furnished by the State Fire Marshal. Such application forms shall be completed in full and signed by the sheriff or State or Federal Game Management Agent, and certified by the County Extension Agent as to the agricultural need for the use of fireworks. The application shall set forth:

- (1) Name and address of applicant.
- (2) Type and size in acres of crop to be protected.
- (3) Location of crop.
- (4) Distance from firing site to nearest building.
- (5) Number and kind of fireworks to be discharged.
- (6) Manner and place of storage of such agriculture fireworks.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-31-005

837-012-0310

Receipt of Application and Issuance of Permit

(1) The completed and approved application shall be sent to the Office of State Fire Marshal.

(2) Upon receipt of a properly completed and approved application, the Office of State Fire Marshal shall issue a nontransferable permit to the applicant or persons designated to discharge the fireworks. The State Fire Marshal may deny any application for a permit to discharge agriculture fireworks upon showing just cause for such denial.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-31-010

837-012-0315

Qualification of Operators

The person in actual charge of the firing of agriculture fireworks shall be at least 18 years of age and qualified for the task. He shall be the owner, lessee, employee, or immediate relative of the applicant.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-31-015

837-012-0320

Storage of Agriculture Fireworks

(1) Permission shall not be granted for possession of agriculture fireworks in excess of 50 pounds gross weight.

(2) Agriculture fireworks shall be stored in a locked, uninhabited building in a box constructed of not less than two inch lumber, covered on the outside with not less than No. 26 gauge sheet metal, and provided with a lid with strong hinge, hasp, staple, and lock at least the equivalent of a five tumbler jarproof lock. All hasps, staples, and hinges shall be attached so that they cannot be removed when the box is locked. The interior shall be smooth with no metal exposed. The exterior of the box shall be painted red and conspicuously labeled "**Explosives**" on at least three sides with lettering at least three inches high.

(3) Any fireworks that have failed to fire when used shall be promptly disposed of in a safe manner and unused fireworks and fuses shall be returned each night to the storage box, which shall be kept locked.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-31-020

837-012-0325

Revocation of Permit

A permit shall continue in force from date of issue to January 1 of the succeeding year unless revoked or suspended by the State Fire Marshal or approving signatory official for cause. Lack of due consideration for safety of life and property in the use and storage of agriculture fireworks shall be considered adequate cause for revocation of permit.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-31-025

837-012-0330

Contested Cases

All disputes arising as a result of the administration of these rules and regulations shall be referred to the State Fire Marshal, who shall be the final authority in all cases.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-31-030

Wholesale Sales and Storage of Pyrotechnics in Oregon

837-012-0500

Purpose and Scope

(1) These rules establish permit and other requirements for

those persons, otherwise known as wholesalers, who sell fireworks, allowed fireworks, and exempted items to holders of public display permits; holders of retail sales permits; other permitted wholesalers; persons other than the public-at-large who meet the requirements of ORS 480.120 and 480.156; and to those persons covered by ORS 480.122 and 480.124.

(2) A wholesale permit allows the possessor to engage in those activities including the purchase, transportation, possession, storage and sales of fireworks and allowed fireworks when those activities are otherwise in conformance with the requirements of these rules.

(3) A wholesale permit does not allow the sale of fireworks or allowed fireworks to the public-at-large.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0505

Effective Dates

OAR 837-012-0500 through 837-012-0570 are effective upon date of filing.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0510

Definitions

For the purposes of these rules the following definitions apply:

(1) "Allowed Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.127(4) and is equivalent and interchangeable with the term exempt fireworks.

(2) "Broker" shall mean any person engaged in wholesale sales of fireworks and allowed fireworks and who does not have either a storage site or sales location in Oregon. Brokers who act for and are employed by a wholesaler with a valid Oregon permit are not required to have a separate permit. Brokers who are not employed by a wholesaler with a valid Oregon permit shall comply with all applicable rules in this section including the requirement for a Valid Oregon Wholesale Permit.

(3) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other thing that is used to contain fireworks and allowed fireworks during transportation and/or storage. The term does not include the wrapping and small packaging used to contain individual or small numbers of pyrotechnic devices nor to truck trailer containers used to transport pyrotechnic devices.

(4) "Exempt Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.127(4) and is equivalent and interchangeable with the term allowed fireworks.

(5) "Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.110(1).

(6) "Laws of State of Residency" shall mean laws enacted by the State legislature and any rules adopted thereunder, but does not include laws or regulations enacted by a governmental subdivision.

(7) "Novelty and Trick Noisemakers" shall mean those items described in ORS 480.110(1)(a) through (c) and **National Fire Protection Association Pamphlet 1124, Section 1.4, 1988 Edition**.

(8) "Permit" shall mean the official written permission granted by the Office of State Fire Marshal for the purpose of establishing and maintaining operations or activities to manufacture, construct, produce, package, store, sell at wholesale or retail, exchange, discharge or use fireworks and allowed fireworks in Oregon.

NOTE: Local jurisdictions may also require and issue permits in addition to those required by the Office of State Fire Marshal.

(9) "Permit Application" shall mean the form(s) required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a permit.

(10) "Person" shall mean one or more individuals, legal

representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions.

(11) "Public-at-Large" shall mean any person other than a wholesaler, manufacturer, importer, retailer, public displayer, agricultural user or other than a person required to hold a valid permit.

(12) "Pyrotechnic(s), Pyrotechnic Device(s), or Pyrotechnic Item(s)" shall mean any combination of materials, which, by the agency of fire, produce an audible, visual, mechanical or thermal effect designed and intended to be used for industrial, agricultural, personal, educational, entertainment or recreational purposes. The term includes, but is not limited to agricultural and wildlife fireworks, fireworks, exempt and allowed fireworks, novelty and trick noisemakers, model rockets, emergency signaling devices, public display fireworks and special effect fireworks.

(13) "Residence" shall mean the particular place where a person has a fixed habitation or abode and that place is where the person intends to remain permanently or indefinitely. Each person has a residence and no person may have more than one residence. A business or corporation residence is the site or place where it is incorporated or it is the office location in the State of Oregon from which it engages in the fireworks business and for which it has a business permit as required by law or rule.

(14) "Resident" shall mean a person who has a permanent or indefinite residency in a place.

(15) "Retailer" shall mean any person who, at a fixed place of business, sells, transfers, or gives allowed fireworks or novelty and trick noisemakers to the public-at-large. A retailer shall not engage in pyrotechnic activities contrary to the provisions of ORS 480.120(1) except as allowed by law.

(16) "Sell" shall mean any arrangement between two or more persons as a result of which there is a transfer of property for a consideration.

(17) "Site/Location" shall mean the place where the wholesale sales and storage is found. This does not include a place, approved by the local authority having jurisdiction, where the secondary distribution of fireworks and allowed fireworks to retailers is permitted and no sales are made at that place.

(18) "Wholesaler" shall mean any person, other than an importer, exporter, manufacturer or retailer, who has a valid permit from the Office of State Fire Marshal to sell pyrotechnics to wholesalers and retailers for resale, or any person who sells fireworks to holders of public display, predator, agricultural, manufacturer, special effect, emergency or illumination device permits. It also means any person holding a valid Bureau of Alcohol, Tobacco and Firearms license to engage in fireworks activities not involving sale or resale. Wholesalers shall not sell pyrotechnics to any other person notwithstanding the state in which the person resides.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0515

General

(1) Wholesalers desiring to engage in other types of pyrotechnic activities including retail sales or public displays must meet all the applicable requirements in ORS 480.110 to 480.160 and the rules adopted pursuant thereto, including those pertaining to obtaining permits for such activities from local and state authorities.

(2) It is unlawful for a wholesaler to sell pyrotechnics at wholesale or retail for shipment or transport into or out of the State of Oregon, or delivery into another state, to any person who does not possess and present to the wholesaler for inspection at the time of sale, a valid license and/or permit, when such a license and/or permit is required to purchase, possess, transport, store,

distribute, sell or otherwise deal with or use pyrotechnics by the laws of such other state which prohibit or regulate the use of pyrotechnics.

(3) The burden of ascertaining whether the laws of another state require a license and/or permit and whether the purchaser possesses such a valid license and/or permit shall be entirely on the wholesaler.

(4) The issuance of a wholesale permit does not in any way constitute an approval of the pyrotechnics purchased or sold.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Amended and renumbered from 837-12-125

837-012-0520

Investigations and Approvals

(1) As part of the permit application process the applicant shall obtain all required Oregon local and state investigations, approvals, and permits for zoning, building codes, fire, and business licensing.

NOTE: Class B, Special Fireworks shall be stored in accordance with Bureau of Alcohol, Tobacco and Firearms requirement P5400.7 (11/82).

(2) The applicant shall obtain, in writing, land use and zoning approvals for the wholesale site from the Oregon local government official(s) responsible for certifying land and zoning uses. A copy of the land use and zoning approval(s) shall be attached to the permit application and submitted to the local fire official for review and approval prior to submission to the Office of State Fire Marshal. The applicant shall also submit a copy of the local business license, if one is required, to the local fire official.

NOTE: If the wholesale operations are continuous during each preceding year and no changes in operations occur, the land use, zoning and business license approvals do not have to be resubmitted when renewing the permit in each subsequent year.

(3) Approvals shall not be granted by local Oregon fire officials when a wholesale site does not meet minimum safety and fire control requirements or the permit application is incomplete or otherwise not in conformance with the application requirements in OAR 837-012-0520 through 837-012-0530.

(4) The Office of State Fire Marshal shall not grant approval of permit applications without the approval of the local Oregon fire official having jurisdiction.

(5) The Office of State Fire Marshal shall either grant or deny permit applications within 90 days following receipt of a properly completed and submitted application.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0525

Permits

(1) Those persons engaged in or intending to engage in the wholesale sales of fireworks or allowed fireworks at locations within Oregon shall have a separate current permit from the Office of State Fire Marshal for each wholesale site.

(2) Those persons residing out-of-state who engage in or intend to engage in wholesale sales, shipments or transportation in or into Oregon shall have a current wholesale sales permit issued by the Office of State Fire Marshal and follow all laws and rules of the State of Oregon.

(3) The permit application for each wholesale site shall be made on forms provided by the Office of State Fire Marshal and all of the required additions along with the annual permit fee shall accompany each application submission.

(4) The permit application shall be completed in full and shall include:

(a) The name, address, home and business phone of the person(s) or firm making the application;

(b) The signature of the applicant, who may be a corporation officer;

(c) A list of all names including those of other businesses used by the applicant(s);

(d) The name, address, and phone number of the person and their official designee responsible for direction and supervision of sales;

(e) The signature of the person responsible for sales;

(f) The address of the fireworks storage and sales site;

(g) The applicant(s) identification including social security number, driver's license number, date of birth, home address and mailing address if different, sex, race, height, weight, hair color, eye color, and any identifying marks or scars;

(h) A recent color photograph of the applicant(s);

(i) The signatures of approval from Oregon local zoning, building and fire officials having jurisdiction over the wholesale site;

(j) The names, addresses, and phone numbers of manufacturers, importers, and wholesalers from which the applicant intends to purchase pyrotechnics.

(5) In addition to completion of the application form, applicants shall submit:

(a) A sketch and/or plot plan of the wholesale site depicting along with distances, adjacent structures, buildings, highways, property lines and the sales and storage areas;

(b) A description of the major types and maximum quantities, by total weight of pyrotechnics, anticipated to be stored at each site;

(c) Copies of all local business licenses, permits or zoning approvals required by local officials.

NOTE: It is the responsibility of the wholesale permit applicants to investigate and secure all local permits, licenses or approvals prior to submission of applications to the local fire official and the Office of State Fire Marshal.

(d) A copy of any lease or sub-lease agreements for the wholesale storage and sales site.

(6) A list of all employees involved in the wholesale operations, including their names, ages, addresses (both home and mailing), phone numbers (including home), social security numbers, driver's license numbers, and birth dates shall be kept on the premises at all times and a legible copy sent, if requested, to the Office of State Fire Marshal by December 31 of the current year. That information shall also be provided immediately when requested by a representative of the Office of State Fire Marshal at other times.

(7) A list of all vehicles used to transport fireworks including year, make, model, license number and lease agreement, if applicable, shall be kept on the premises at all times and a legible copy sent, if requested, to the Office of State Fire Marshal by December 31 of the current year. That information shall also be provided immediately when requested by a representative of the Office of State Fire Marshal at other times.

(8) The wholesale permit is not transferable to another person or business nor can another person or business perform any acts allowed by the permit unless that person or business is listed in the permit application.

(9) Changes in the site location or the person in charge of sales shall require the submission of a new application, attendant materials, approvals by local officials and the annual permit fee.

(10) Applicants requesting a permit to sell pyrotechnics classifiable as Class A or B must be properly licensed by the Federal Bureau of Alcohol, Tobacco and Firearms and submit a copy of such license along with their application.

(11) The application for a permit shall be signed by the applicant in the presence of either the local fire official having authority over the wholesale site or an authorized representative of the Office of State Fire Marshal. If the application is made by a partnership, it shall be signed by each partner of the partnership. If the application is made by a corporation, it shall be signed by an officer of the corporation and bear the corporation's seal. If the application is made by persons residing outside of the state, it shall be signed by the applicant and the person conducting sales and both signatures shall be notarized.

(12) The application must be received by the Office of State Fire Marshal not less than 90 days prior to the date of any proposed sales or other activities allowed under the permit.

(13) The Office of State Fire Marshal shall assign a number to each Wholesale Fireworks Permit issued.

(14) The wholesale permit holder's name, mailing address and permit number shall be imprinted or affixed by the permit holder to all sales forms, orders, invoices, inventory sheets and other such documents issued, used or completed by the permit holder. It shall also be imprinted on the outside of all cartons of pyrotechnics.

(15) All shipments by wholesalers of pyro-technics or items described in ORS 480.127 must show the appropriate permit number of the addressee on the outside of each carton or case as per ORS 480.154(2).

(16) The wholesale permit and permit number issued by the Office of State Fire Marshal expires on December 31 of the year in which they are issued. A firm will be provided the same permit number if the permit is renewed two years in a row.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85, FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Amended and renumbered from 837-12-120

837-012-0530

Permit Fees

(1) Every permit fee shall be paid to the Office of State Fire Marshal. No permit shall be issued until personal checks have cleared the bank.

(2) Every required permit fee shall be paid at or mailed to the Salem office of the Office of State Fire Marshal and shall accompany the permit application.

(3) The permit fee shall be for the calendar year beginning January 1 and ending December 31, or portion thereof, of the year for which the application is made.

(4) Permits may be applied for only after October 1 of the year prior to the year for which the permit is sought.

(5) The permit fee for each location or change of location shall be as follows:

(a) In-State Wholesaler — \$1,000;

(b) Out-of-State Wholesaler — \$1,500.

(6) Permit fees shall not be refunded if the wholesale permit is revoked, suspended, or denied for good cause.

(7) If the permit application is returned to the applicant based upon the fraudulent or sub-stancially incorrect completion and submission of the application, or if the permit is denied, the application fee will be retained by the Office of State Fire Marshal.

NOTE: Applicants are advised not to submit applications that are substantially incorrect as their fees will not be returned.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0535

Permit Denial, Suspension and/or Revocation

(1) Valid cause exists for the denial, suspension and/or revocation of the permit for a wholesale permit holder or applicant when:

(a) There is a failure to comply with applicable federal, state, or local laws, rules, ordinances or regulations pertaining to the manufacture, sale, use, discharge, transportation, storage or possession of pyrotechnics;

(b) The Office of State Fire Marshal is presented with evidence and a recommendation to deny, suspend and/or revoke by the fire authority having jurisdiction. For purposes of administrative law enforcement, the evidence shall provide sufficient basis to conclude that the permit holder or applicant has violated applicable rules and/or statutes;

(c) There is employment of or direct business ties with any person whose wholesale, retail or public display permit has been revoked, denied or suspended within the last three years;

(d) There has been a failure to obtain and maintain the required Oregon zoning, building, fire or business licenses, permits or approvals;

(e) Fireworks or allowed fireworks are sold or otherwise provided, including donation by a wholesaler, to any person, including an out-of-state resident; who does not have a valid permit or who is not otherwise permitted to buy, use, discharge, store, transport, sell or possess such devices.

NOTE: This rule does not apply to donations made as part of otherwise permitted sales or to donations to tax exempt organizations provided the recipient has a permit and the donated fireworks are allowed under the permit.

(f) A wholesale permit or permit number that has expired or that does not exist, or which has not been issued, is used to support the purchase, use, discharge, transportation, storage, possession or sale of pyrotechnics.

NOTE: An exception of this exists when the Office of State Fire Marshal specifically allows the continued use, in writing, of wholesale permits during the period following their normal expiration date and before the issuance of new permits, to those who have applied.

(g) Failure to conduct sales to out-of-state residents in accordance with these rules; or

(h) Any other violation of fireworks statutes or rules.

(2) The period of denial, revocation and/or suspension shall be as follows:

(a) Not to exceed three years if the circumstances of the permit holder's or applicant's failure to comply with applicable rules pertaining to the manufacture, sale, use, discharge, storage or possession of pyrotechnics presented a significant fire hazard or other public danger;

(b) Not to exceed three years for the citation, arrest, or conviction for violation of these rules.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0540

Storage and Sales Sites in Oregon

(1) The location of wholesale storage and sales sites shall not present a significant risk to surrounding life and property nor to the ability of local emergency response agencies to respond.

(2) An in-state wholesaler shall have both storage and sales facilities.

(3) The wholesale storage and sales operations shall be located at the same site. An in-state wholesaler's facilities shall be located in Oregon.

NOTE: This rule does not prohibit separate approved temporary storage facilities for the distribution of allowed fireworks to existing valid retail permit holders so long as there is one site having both storage and sales operations.

(4) The wholesale site and sales facilities shall be designed, operated, maintained and separated in conformance with the requirements of:

(a) **National Fire Protection Association Standard No. 1124, 1984 adopted Edition, Code for the Manufacture, Transportation, and Storage of Fireworks;**

(b) **National Fire Protection Association Standard No. 68, 1978 Edition, Guide for Explosion Venting;**

(c) **State of Oregon 1985 Structural Specialty Code and 1988 Uniform Fire Code;**

(d) The occupancy designation for the storage area which shall be H-1;

(e) The occupancy designation for the sales area which shall be B-2;

(f) Any local ordinances or regulations;

(g) The Alcohol Tobacco and Firearms requirements ATFP 5400.7 (11/82) for Class B fireworks storage.

NOTE: In most cases, those wholesale fireworks storage and/or sales

sites which are currently approved are not required by these standards to be upgraded unless their presently approved use changes.

(5) Any wholesaler storing, distributing or secondarily distributing pyrotechnics shall have a permit from the Office of State Fire Marshal and, if required, the permits, licenses and approvals of local authorities having jurisdiction over the storage facilities.

NOTE: The approval of the local fire authority having jurisdiction is required in every case.

(6) Temporary structures, including tents, vehicles and/or trailers of less than 10,000 pound gross carrying capacity, and non-approved buildings, vehicles, or trailers shall not be used as wholesale storage and/or sales facilities.

(7) Security for H-1 wholesale storage areas shall be provided by a solid or chain-link fence with locking gates at least six feet high or alternative protection as approved by the local fire authority having jurisdiction.

(8) Smoking, other ignition sources, or the use of pyrotechnics shall not be allowed within 50 feet of the storage or sales areas.

(9) No smoking signs shall be posted and readily visible to all employees, customers and others entering or near the storage or sales areas.

(10) Fire extinguishers shall be provided in numbers and placement throughout the wholesale site in accordance with the standards cited in section (4) of this rule and local ordinances or rules.

(11) Electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the **National Electrical Code, 1987 Edition.**

(12) Fire protection and safe handling procedures, prepared in cooperation with the local fire authority, shall be posted and followed by all those on site.

(13) The distances required by **NFPA 1124, Tables 2-6.1, 2-6.2, 2-6.3 and 2-6.4** shall be determined by the total weight of the fireworks and allowed fireworks including any packaging materials.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0545

Sales and Records — General

(1) All persons involved in wholesale fireworks and allowed fireworks sales in Oregon shall be at least 18 years of age and listed as required by OAR 837-012-0525(5).

(2) The manager of wholesale sales, or his official designee, who is also an employee of the wholesaler, shall be on site during all sales hours.

(3) The manager, as well as any other person engaged in sales, shall be knowledgeable concerning the pyrotechnics sold; the limits on sales to persons who do not have valid permits or licenses; and the restrictions and requirements for sales to out-of-state residents.

(4) Every person who knows of, engages in, allows, or is otherwise a party to wholesale sales not in conformance with these rules shall be subject

to the denial, revocation, suspension and penalty provisions of these rules.

(5) No person shall publish or cause to be published:

(a) Any advertisement, for distribution to the general public, concerning the sale of pyrotechnics which have been declared unlawful by ORS 480.110 to 480.160, or these rules, for residents to purchase, use, store, transport, sell, discharge, or possess;

(b) Any advertisement for the sale of items described in ORS 480.127 in any county, municipality or fire protection district that by law or ordinance has declared the sale or use of such items to be prohibited.

NOTE: The rules in this section concerning advertisements do not apply to any advertising medium which accepts such advertising in good faith,

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without knowledge of the violation of law or these rules.

(6) A copy of the wholesaler's permit, issued by the Office of State Fire Marshal, shall be posted in an area readily visible to buyers and others entering the sales area.

(7) The fireworks items on display in the sales area shall be kept to a minimum and in accordance with local fire authority requirements.

(8) All records shall be clear, legible, and accurate.

(9) Records of sales to out-of-state residents, using the form provided by or an alternative approved in writing by the Oregon Office of State Fire Marshal or the Bureau of Alcohol, Tobacco and Firearms, shall be maintained at the sales site. They shall be made immediately available to local fire and police authorities and representatives of the Office of State Fire Marshal.

(10) For five years, following the year during which sales are made, complete records, either original or legible copies of all sales, whether in or out-of-state, shall be retained and made readily available, as requested, to the Office of State Fire Marshal and local fire authority having jurisdiction.

(11) The records shall include, at a minimum, the name and address of the purchaser, the state of destination, license and permit numbers, the state and date of permit issuance and a list of the type and quantity of pyrotechnics sold.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0550

Sales to Out-of-State Residents by Wholesalers Located in Oregon

(1) Sales of pyrotechnics to out-of-state residents who are not retailers, wholesalers or public display persons, and who do not have a valid fireworks permit, are not allowed.

(2) In addition to any other requirements in these rules, wholesale fireworks sales may be made to out-of-state residents only if all of the following provisions are met:

(a) Such purchases are made by a person who is 18 years or over;

(b) An original or certified copy of a valid license or permit, from the person's state of residency or domicile, if required by that state for purchase of the fireworks, is presented and inspected at the time of sale;

(c) Proof of the person's identity is presented and inspected at the time of sale. Such proof shall be an official, signed and sealed photo-identification card such as a driver's license issued by the person's state of residency or domicile; and

(d) The sale is recorded on a form provided by or an alternative approved in writing by the Office of State Fire Marshal or for Class B explosives on Bureau of Alcohol, Firearms and Tobacco Form P5400.4. The form shall be completed in full by the wholesaler and signed by the purchaser.

(3) The wholesaler shall verify and enter on the form provided by or approved in writing by the Office of State Fire Marshal or for Class B explosives on Bureau of Alcohol, Firearms and Tobacco Form 5400.4 for recording sales to out-of-state residents the following:

(a) The person's name, complete address of residency, destination address including street number, city and state, and phone number;

(b) The complete identification of the types, trade names and quantities of pyrotechnics purchased;

(c) The state issuing the license or permit to purchase the fireworks; the permit number or other identification description of the permit or license; the date of issuance of the permit or license; the valid date of the permit or license; and the date of expiration of the permit or license;

(d) The wholesale fireworks permit number assigned to the wholesaler by the Office of State Fire Marshal.

(4) Failure to use the forms provided by or approved in writing by the Office of State Fire Marshal or to complete them accurately, legibly, and completely as prescribed shall be the basis for revocation or suspension of the wholesale permit.

(5) Those wholesalers, with storage and sales sites within ten driving miles or less of Oregon's borders, shall make a good faith effort to determine if purchasers are Oregon or out-of-state residents.

(6) The wholesaler shall make a good faith effort to determine whether an out-of-state resident requires a license or permit for purchase of pyrotechnics; the validity of the resident's identification and proof of residency; and whether the purchaser possesses a valid license or permit to purchase the fireworks devices. Failure to do so shall be the basis for revocation or suspension of the wholesale permit.

(7) Sales of fireworks, allowed fireworks or other pyrotechnic devices shall not be made to out-of-state residents whose state of residency prohibits the sale, possession, or use of such devices.

(8) Sales of fireworks, allowed fireworks or other pyrotechnic devices shall not be made to residents traveling to other states which allow such devices unless the state of residency of that resident also allows such devices.

(9) The wholesaler shall maintain the original or legible copies of all forms used to record sales to out-of-state residents for three years from date of sale and make such records available to the Office of State Fire Marshal upon request.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Amended and renumbered from 837-12-127

837-012-0555

Prohibited Acts and Limitations

(1) No person shall maintain or allow the existence of a fire hazard at any location under their control where pyrotechnics are stored, transported, sold, or used.

(2) No person shall sell or provide by any other means:

(a) Fireworks to any person who is less than 18 years of age;

(b) Special effects fireworks, fireworks, aerial display fireworks and public display fireworks to any person who does not have a valid permit for such devices issued by the Office of State Fire Marshal, or if required, by the equivalent agency in the state of residency;

(c) Pyrotechnics which have been altered or manufactured by other than a licensed manufacturer.

(3) No person who has been cited or arrested for pyrotechnic violations or who has had a pyrotechnic's permit suspended, denied or revoked in any jurisdiction shall participate in any manner in the wholesale storage, distribution, transportation or sales of pyrotechnics for a period not to exceed three years.

(4) The wholesale permit does not authorize the manufacture, sale, use, discharge or possession of pyrotechnics in any city or county in which such devices are prohibited by law or ordinance.

(5) No person under 18 years of age shall participate in any manner in the wholesale storage, distribution, transport or sales of pyrotechnics.

(6) A wholesaler shall not fill or complete a display permit previously filled or partially filled by another wholesaler without the specific approval of the Office of State Fire Marshal.

(7) Wholesalers shall not sell, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any pyrotechnic device that has not been approved, certified or listed for transport by the U.S. Department of Transportation or has a U.S. Bureau of Explosives Temporary Transfer Permit.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0560

Civil and Criminal Enforcement Actions

(1) In addition to denying, revoking and/or suspending permits pursuant to administrative hearing and appeals procedures as specified in law, the Office of State Fire Marshal and local enforcement officials may:

(a) Confiscate, remove or have removed at the owner's expense all pyrotechnics offered for sale, transported, stored, or possessed in violation of these rules; and

(b) Destroy seized pyrotechnics when it has been determined that destruction is necessary for the preservation of public safety or health that the sale, transport, storage or possession of the seized fireworks was in violation of the laws and rules of the State of Oregon or the ordinances of local municipalities.

(2) All civil disputes arising as a result of the administration and enforcement of these rules and regulations shall be referred to the State Fire Marshal who shall be the final administrative authority in all cases.

(3) Violation of any provision of ORS 480.110 through 480.160 and the administrative rules adopted thereto is a Class B misdemeanor. Violations thereof may be prosecuted in state or municipal courts when violations occur within the municipality served thereby. Justice and district courts shall have concurrent jurisdiction with circuit courts in all proceedings arising within ORS 480.110 to 480.160:

(a) The sentence for a Class B misdemeanor shall be for a definite term and within the maximum limitation of six months or as otherwise provided by ORS 161.615;

(b) The sentence to pay a fine for a Class B misdemeanor shall be to pay an amount not exceeding \$1,000 or \$2,500, as appropriate, and in accordance with ORS 161.635 and 161.655.

(4) If a person has gained money or property through commission of a misdemeanor or violation, then upon conviction thereof, the court, instead of imposing the fine authorized by these rules, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense in accordance with ORS 161.635 and 161.655.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0565 Transportation

(1) Wholesalers who make direct shipment of fireworks or allowed fireworks from Oregon to any other state or area must do so by DOT or PUC licensed public carrier or by the wholesaler in vehicles owned, leased, or rented by the wholesaler.

(2) Persons engaged in the transportation of pyrotechnics shall verify that shipping containers and the documentation for pyrotechnic shipments into or out of Oregon are marked with the whole-saler's permit number.

(3) Wholesalers shall not provide or transfer shipments of pyrotechnic devices to other persons when it is obvious the other persons cannot or will not transport them in accordance with DOT or PUC requirements.

(4) Common carriers shall immediately notify local Oregon fire service officials of any pyrotechnic shipments to be delivered in Oregon.

(5) Common carriers of pyrotechnic shipments shall hold for at least 24 hours, or until released by the Office of State Fire Marshal, all shipments of pyrotechnics to be delivered to persons in Oregon. Such pyrotechnics shall be subject to examination by local fire service and/or State Fire Marshal personnel to determine their compliance with local and state fireworks laws, rules, and regulations.

NOTE: The Office of State Fire Marshal will develop criteria for the release of shipments. This criteria will include guidelines to allow continued transport of shipments to and from firms designated by the Office of State Fire Marshal.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

837-012-0570 Hazardous Materials Reporting for Whole-salers with Oregon Storage Sites

(1) Persons possessing more than ten pounds of Class A, B or C explosives must annually complete the Hazardous Substance Survey required by ORS 453.307 to 453.372 and OAR Chapter 837, Division 90.

(2) If not otherwise received from the Office of State Fire Marshal, it is the responsibility of the wholesaler to request a copy of the survey, complete it and file it by March 1 of each year and to update it within 180 days as specified in the survey form instructions when there are significant changes in the amount or types of pyrotechnics stored.

(3) Failure to submit the survey to the Office of State Fire Marshal may result in penalties of up to \$1,000 per day for each violation.

Stat. Auth.: ORS Ch. 476, 478 & 480

Stats. Implemented: ORS

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89

Retail Sales and Storage of Pyrotechnics (Allowed Fireworks) in Oregon

837-012-0600

Purpose and Scope

(1) These rules establish permit and other requirements for those persons, otherwise known as retailers, who sell "allowed fireworks", and "exempted fireworks" to the public-at-large.

(2) A retail permit allows the permittee and/or designated agent or agents to engage only in those activities including the purchase, transportation, possession, storage and sales of "allowed fireworks" and "exempted fireworks" when those activities are otherwise in conformance with the requirements of these rules.

(3) A retail permit does not allow the permit holder to purchase, possess or sell "illegal fireworks" to other retailers, public displayers, wholesalers or the public-at-large. See OAR 837-012-0610(14) for the definition of "illegal fireworks".

(4) A retail permit does not allow the permit holder to sell "allowed" fireworks to other retail permit holders.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0605

Effective Dates

OAR 837-012-0600 through 837-012-0675 are effective upon date of filing.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0610

Definitions

For the purposes of these rules the following definitions apply:

(1) "Allowed Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.127(4) and is equivalent and interchangeable with the term exempt fireworks. These include cone fountains, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches, wheels and combination items.

(2) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other package that is used to contain fireworks and allowed fireworks during transportation and/or storage. The term does not include the wrapping and small packaging used to contain individual or small numbers of pyrotechnic devices nor to truck trailer containers used to transport pyrotechnic devices.

(3) "Combination Item" shall mean a device that contains combinations of two or more of the effects described by definitions for the items listed in section (1) of this rule.

(4) "Cone Fountain" shall mean a cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition. The effect upon ignition is the same as that of a

cylindrical fountain.

(5) "Cylindrical Fountain" shall mean a cylindrical tube not more than three-fourths inch (19 mm) inside diameter and containing not more than 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held.

(6) "Exempt Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.127(4) and is equivalent and interchangeable with the term "allowed fireworks".

(7) "Exit" shall mean an opening or way out of an enclosed space or area, including a checkstand exit, if it's the **Uniform Building Code, Chapter 33** required exit from an enclosed area.

(8) "Fire Authority" shall mean either the local fire official having jurisdiction over the retail site and operations or an authorized representative of the Office of State Fire Marshal.

(9) "Fire Protection District" shall mean any district created under the laws of Oregon or the United States, including rural fire protection districts and any federal, state or private forest patrol areas.

(10) "Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.110(1);

(11) "Fireworks Stand" shall mean a retail sales outlet, usually temporary, that is erected or placed at a site and from which retail sales of allowed fireworks, novelties and trick noisemakers, to the public-at-large are conducted.

(12) "Flitter Sparkler" shall mean a narrow paper tube containing not more than 100 grams of pyrotechnic composition that produces colored sparks upon ignition. The paper at one end of the tube is ignited to make the device function.

(13) "Ground Spinner" shall mean a small device similar to a wheel in design and effect and containing not more than 60 grams of pyrotechnic composition. When placed on the ground and ignited, a shower of colored sparks is produced by the rapidly spinning device.

NOTE: "Crazy Jacks", "Jumping Jacks," and similar spinning devices that do not have a means to prevent uncontrolled and unpredictable movement during discharge are not similar to a wheel in design and effect, and therefore are not "ground spinners" as defined in ORS 480.127(4)(e). Due to uncontrolled and unpredictable behavior, these devices present a severe hazard of fire and injury and sale is therefore prohibited.

(14) "Illegal Fireworks" shall mean, for these rules only, those pyrotechnic devices and items described in ORS 480.110(1) and includes any item which flies into the air, explodes or behaves in an uncontrolled and unpredictable manner.

(15) "Illuminating Torch" shall mean a cylindrical tube containing not more than 100 grams of pyrotechnic composition. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held.

(16) "Individual Responsible for Sales" shall mean the individual who is responsible for the operation of the sales location listed on the Retail Sales Permit Application and who is frequently on site during the selling hours and who, when not on site, can be contacted day or night by telephone or other reliable means;

(17) "Inside Sales" shall mean sales of allowed and/or exempted fireworks, novelties and trick noisemakers, when the public-at-large is inside a permanent or temporary retail sales outlet having a roof and three or more enclosing sides.

(18) "Novelty and Trick Noisemakers" shall mean those items described in ORS 480.110(1)(a) through 480.110(1)(c) and **National Fire Protection Association Pamphlet 1124, 1988 Section 1.4 E, rules (1), (2), (3), (4)(a), (b), (c), (e) and (f), 1988 Edition**, and is equivalent and interchangeable with the term unclassified fireworks in these rules.

NOTE: These items can be sold at any time without a permit to anyone regardless of age or height.

(19) "Outside Sales" shall mean sales of allowed and/or exempted fireworks, novelties and trick noisemakers, when the

public-at-large is not inside a permanent or temporary retail sales outlet having a roof and three or more enclosing sides.

(20) "Permanent Structure" shall mean a retail sales outlet constructed, located and attached to the fixed site as covered by the **Uniform Building Code**.

(21) "Permit" shall mean the official written permission granted by the Office of State Fire Marshal for the purpose of establishing and maintaining operations or activities to sell allowed fireworks to the public-at-large.

NOTE: Local jurisdictions may also require and issue permits in addition to those required by the Office of State Fire Marshal.

(22) "Permit Application" shall mean the form(s) required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a permit.

(23) "Person" shall mean one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions.

(24) "Public-at-Large" shall mean any person other than a wholesaler, manufacturer, importer, retailer, public displayer, agricultural user or other than a person required to hold a valid permit.

(25) "Pyrotechnic(s), Pyrotechnic Device(s), or Pyrotechnic Item(s)" shall mean any combination of materials, which, by the agency of fire, produce an audible, visual, mechanical or thermal effect designed and intended to be used for industrial, agricultural, personal, educational, entertainment or recreational purposes. The term includes, but is not limited to agricultural and wildlife fireworks, fireworks, exempt and allowed fireworks, novelty and trick noisemakers, model rockets, emergency signaling devices, public display fireworks and special effect fireworks.

(26) "Retail Sales Outlet" shall mean a structure or site, whether permanent or temporary, where sales of allowed fireworks, novelties and trick noisemakers to the public-at-large are conducted and for which a retail sales permit has been issued by the Office of State Fire Marshal.

(27) "Required Exit" shall mean the exit(s) required by **Uniform Building Code, Chapter 33**.

(28) "Retailer" shall mean any person who sells, transfers, or gives allowed fireworks or novelty and trick noisemakers to the public-at-large. A retailer shall not engage in pyrotechnic activities contrary to the provisions of ORS 480.120(1) except as allowed by law.

(29) "Sales Display" shall mean the placement of allowed and/or exempted fireworks for the purpose of merchandising the product and view by the public-at-large at retail sales outlet.

(30) "Sell" shall mean any arrangement between two or more persons as a result of which there is a transfer of property for consideration;

(31) "Site/Location" shall mean the place where retail sales are conducted. This does not include a place, approved by the local authority having jurisdiction, where the secondary storage of excess allowed fireworks is permitted and no sales are made at that place.

(32) "Temporary Structure" shall mean a structure used as a retail sales outlet and located at a site for only a short time, including the two week period during which retail sales of allowed fireworks may be conducted.

(33) "Unclassified Fireworks" shall mean and includes only sparklers, toy pistol caps, snakes, glow worms, pulling strings (booby traps), devices which primarily produce smoke, cigarette loads, auto alarms without a report, pulling trucks, model rockets and model rocket engines and is equivalent and interchangeable with the term Novelty and Trick Noisemakers in these rules.

(34) "Uncontrolled and Unpredictable Behavior" shall mean movement of a major portion of a device more than six feet horizontally and/or twelve inches vertically from point of ignition. Testing of fireworks devices to determine conformance with this criteria shall be conducted in accordance with the manufacturer's instructions for use.

NOTE: If a pyrotechnic device is equipped with a means to roll and

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stays on the ground, it is permitted to travel 12 feet horizontally on smooth surfaces.

(35) "Wheel" shall mean a pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain not more than six driver units or tubes not exceeding one-half inch (12.5mm) inside diameter and containing not more than 60 grams of pyrotechnic composition. Upon ignition, the wheel revolves and produces a shower of colored sparks, and sometimes a whistling effect.

(36) "Wholesaler" shall mean any person, other than an importer or manufacturer, who has a valid permit issued by the Office of State Fire Marshal to sell pyrotechnics to retailers and other wholesalers for resale, or who sell fireworks to holders of public display, predator, agricultural, manufacturer, special effect, emergency or illumination device permits. Wholesalers are not permitted to sell pyrotechnics to any other persons notwithstanding the state(s) in which they reside.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0615

General

(1) Retailers desiring to engage in other types of pyrotechnic activities, including but not limited to wholesale sales or public displays, must meet all the applicable requirements in ORS 480.110 to 480.160 and the rules adopted pursuant thereto, including those requiring permits to be obtained from local and state authorities.

(2) Retailers shall purchase allowed fireworks only from wholesalers having the necessary and current permits required by ORS 480.110 to 480.160 and OAR 837-012-0500 through 837-012-0570.

(3) In addition to the laws and rules adopted and referenced herein, retailers shall also comply with all local rules and requirements applicable to retail pyrotechnic sales.

(4) The issuance of a retail pyrotechnics permit does not in any way constitute an endorsement of the pyrotechnics purchased or sold.

(5) No person, including a retailer, may provide to the public-at-large any pyrotechnic devices except those classified as allowed fireworks, novelties or trick noisemakers.

(6) Allowed fireworks may be sold only at retail sales outlets having applicable and current permits issued by the Office of State Fire Marshal.

(7) Retail sales shall not be permitted from trucks, vans, autos or similar mobile equipment.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0620

Permits-General

(1) Those persons engaged in or intending to engage in retail sales of allowed fireworks shall have a separate, current permit from the Office of State Fire Marshal for each retail sales outlet.

(2) Only one retail sales permit may be applied for or issued for each specific sales site:

(a) This does not restrict the placement of more than one retail sales outlet at any given location, whether indoors or outdoors, where there is sufficient space, such as in shopping centers, vacant lots, parking lots, etc.;

(b) Retail sales permits may be issued for both inside sales and outdoor sales, at the same address, if sufficient space is available.

NOTE: The final decision as to what constitutes and is acceptable as a retail sales site rests with local fire authority having jurisdiction and the Office of State Fire Marshal. See OAR 837-12-650 and 837-12-655.

(3) Prior to acceptance of pyrotechnics from a wholesaler,

the retailer shall confirm that all cartons, containers, cases and associated paperwork are imprinted and/or affixed with the wholesaler's permit number.

(4) The full name of the person to whom the retail permit was issued shall appear on all pyrotechnic cartons, containers, cases and associated paperwork:

(a) If the name has been provided by the wholesaler, it shall be maintained;

(b) If the name is not present, it shall be added by the retailer.

(5) A retail permit is not transferable from the person to which it was issued to another person or business nor can another person or business perform any acts allowed by the permit unless that person or business is listed on the permit application and/or is the designated agent or agents for the permittee.

(6) Retail sales permits are valid only for the specific site listed on the permit application.

(7) Changes in the permit site or the individual responsible for sales may be made if, as appropriate:

(a) The new site is located in the same fire jurisdiction as the site listed in the permit;

(b) The local fire authority having jurisdiction approves; and

(c) The change is registered with the local fire authority having jurisdiction and the Office of State Fire Marshal at least 24 hours prior to the commencement of sales.

(8) The sales permit issued by the Office of State Fire Marshal does not require property owners or others to allow retail sale of pyrotechnics. The Office of State Fire Marshal will not intercede, on the behalf of permit holders, with property owners who deny pyrotechnic sales.

(9) The retail sales permits and permit numbers issued by the Office of State Fire Marshal expire on December 31 of the year in which they are issued.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0625

Permits-Investigations and Approvals

(1) As part of the permit application process, the applicant shall obtain, where required, the necessary Oregon local or state on-site inspections, approvals, proof of liability insurance, and permits for zoning, building codes, fire, and business licensing.

(2) Approvals shall not be granted by local Oregon fire officials when a retail site does not meet minimum safety and fire control requirements or the permit application is incomplete or otherwise not in conformance with the application requirements in OAR 837-012-0630.

(3) The Office of State Fire Marshal shall not grant approval of permit applications without the approval of the local Oregon fire official having jurisdiction.

(4) The Office of State Fire Marshal shall either grant or deny permit applications within 30 days following receipt of a properly completed and submitted application.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0630

Permits-Applications

(1) Retail permit applications for each retail sales outlet shall be made on forms provided by the Office of State Fire Marshal and all of the required additions along with the annual permit fee shall accompany each application submitted.

(2) Applications must be postmarked and/or received in the Salem office of the Office of State Fire Marshal not later than May 15 of the year for which the permit is desired:

(a) Applications postmarked and received after May 15 will be returned unprocessed;

(b) Completed applications should be submitted to local fire authorities at least ten days in advance of the May 15 deadline to provide sufficient time for local review and processing.

NOTE: Local fire authorities should make every effort to process permits within 10 days of their receipt.

(c) If a completed application is provided to the local fire authority at least ten days in advance of the May 15 deadline and the application is delayed in its submission to the Office of State Fire Marshal solely because of the time taken for local review and processing, the application shall not be deemed late.

(3) Applications may be submitted only after January 1 of the year for which the permit is desired.

(4) The permit application shall be completed in full and shall include:

(a) Name, signature, address, age, and telephone number of the person completing the permit application;

(b) Name, address, age, and telephone numbers or other reliable means for emergency contact, day or night of the individual responsible for retail sales at the retail site;

(c) Company, organization, or person to whom the retail sales permit is to be issued;

(d) The name of the Oregon licensed wholesaler from whom the applicant intends to purchase their pyrotechnics.

NOTE: Intention does not constitute a requirement of purchase from a specific wholesaler.

(e) The retail permit applicant shall notify the Office of State Fire Marshal in writing of any change in the intended wholesaler prior to the date of pyrotechnic purchase;

(f) A sketch or diagram and description for each retail sales outlet;

(g) The signature of the local fire authority or their designee having jurisdiction.

(5) The applicant shall obtain the signature of the local fire authority prior to submitting an application to the Office of State Fire Marshal for final approval.

NOTE: The Office of State Fire Marshal will not grant approval of a permit application without approval of the local fire authority having jurisdiction.

(6) The required local fire authority signatures are:

(a) For retail sales inside the city limits, the permit application must be signed by the city Fire Chief or his authorized representative;

(b) For retail sales outside the city limits but inside the rural fire protection district, the application must be signed by the district Fire Chief or his authorized representative;

(c) For retail sales outside the city limits and the rural fire protection district, the application must be signed by the District Deputy State Fire Marshal.

(7) Proof of identification of the Individual Responsible for Outside Sales shall be provided, upon request to the local fire authority having jurisdiction. It is recommended this be done prior to June 23. This identification shall be made by:

(a) The Individual Responsible for Sales meeting with the local fire authority; or

(b) Providing the local fire authority upon request a current and recognizable photo identification of the Individual Responsible for Sales; or

(c) Another method acceptable to the local fire authority.

NOTE: If the requested identification is not provided, the retail sales permit is not valid.

(8) The local fire authority may also request identification of the Individual Responsible for Indoor Sales. Such identification will be provided in accordance with section (7) of this rule.

(9) The sketch of the retail sales outlet may be completed on either the retail application form or on a separate piece of paper which shall be attached to and submitted with the application.

(10) The sketch of the retail sales outlet shall include, in addition to a diagram of the sales area and its relationship to outside exits and adjacent areas, the following:

(a) For outdoor sales, temporary structures and fireworks stands, the location and distances of the outlet within 50 feet of structures, buildings, highways or streets, and trees;

(b) For indoor sales, the location where the pyrotechnics will be displayed and the distances, within a 20-foot radius, of the pyrotechnics to highly combustible materials;

(c) For indoor sales, located in structures of less than 1,000

square feet, all required exits must be shown;

(d) For indoor sales, located in structures of greater than 1,000 square feet, all required exits, in the same portion of the structure where sales are located, must be shown;

(e) The location of any open flames, exposed heating elements or other direct source of ignition such as coffee makers, food warmers, cookers, broilers, etc., when located within a structure and within 20 feet of indoor pyrotechnic sales.

NOTE: Decisions as to the location of pyrotechnics within 20 feet of direct sources of ignition are subject to the approval of the local fire authority having jurisdiction and the Office of the State Fire Marshal.

(f) A list of the general types of merchandise located within 20 feet of the indoor pyrotechnics sales areas.

(11) Applicants shall also provide a complete and detailed description of how and where they will store pyrotechnics in their possession before, during and after retail pyrotechnic sales period. The description shall include:

(a) The address and location of the storage area(s);

(b) The approximate dates the pyrotechnics will be at each storage area or site;

(c) The locations of pyrotechnics with respect to open flames, exposed heating elements, or other direct sources of ignition such as heating systems and operable motor vehicles;

(d) The fire extinguishing equipment available at or near each storage area or site.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0635

Permits-Fees, Payment and Action

(1) Every permit fee shall be paid at or mailed to the Office of State Fire Marshal and shall accompany the permit application.

(2) Every permit fee shall be paid to the Office of State Fire Marshal. No permit shall be issued until personal checks clear the bank.

(3) The permit fee shall be for the period from May 1 to August 1.

NOTE: The retail permit is not valid during any other part of the year.

(4) The permit fee for each site shall be \$25.

(5) Permit fees shall not be refunded if the retail permit is revoked, suspended or denied according to OAR 837-012-0640.

(6) If the permit application is returned to the applicant based upon the fraudulent or substantially incorrect completion and submission of the application, or if the permit is denied, the application fee will be retained by the Office of State Fire Marshal.

(7) The Office of State Fire Marshal shall either grant or deny permit applications within 30 days following receipt of a properly completed and submitted application.

(8) The Office of State Fire Marshal shall assign a unique number to each retail pyrotechnics permit approved and issued.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0640

Permits-Denial, Suspension and/or Revocation

(1) Valid cause exists for the denial, suspension and/or revocation of the permit for a retail permit holder or applicant when:

(a) There is failure to comply with applicable federal, state, or local laws, rules, ordinances or regulations pertaining to the manufacture, sale, use, discharge, transportation, storage or possession of pyrotechnics;

(b) The Office of State Fire Marshal is presented with evidence and a recommendation to deny, suspend and/or revoke by the fire authority having jurisdiction. For purposes of administrative law enforcement, the evidence shall provide sufficient basis to conclude that the permit holder or applicant has violated applicable rules and/or statutes;

(c) There is knowing employment of or direct business ties

with any person whose wholesale, retail or public display permit has been revoked, denied or suspended within the last three years;

(d) There has been a failure to obtain and maintain any required local zoning, building, fire or business licenses, permits, or approvals;

(e) Illegal fireworks are sold or otherwise provided, including donation, by a retailer to any person;

(f) A retail permit or permit number that has expired or that does not exist, or which has not been issued, is used to support the purchase, use, discharge, transportation, storage, possession or sale of pyrotechnics;

(g) The applicant submitted a fraudulent permit application;

(h) The retail permit holder has failed to maintain required purchase and sales records and/or these records were not provided for review, within 24 hours of a request, by either the fire request, by either the fire authority having jurisdiction or the Office of State Fire Marshal;

(i) Any other violation of the fireworks and pyrotechnics statutes or rules.

(2) The period of denial, revocation and/or suspension shall be as follows:

(a) Not to exceed three years if the circumstances of the permit holder's or applicant's failure to comply with applicable laws and rules pertaining to the manufacture, sale, use, discharge, storage or possession of pyrotechnics presented a significant fire hazard or other public danger;

(b) Not to exceed three years for the citation, arrest, or conviction for violation of laws and rules pertaining to the manufacture, sale, use, discharge, storage or possession of pyrotechnics.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0645

General

(1) Retail sales permits allow the sale of allowed pyrotechnics only during the 14 day period beginning June 23 and ending July 6.

(2) At least one individual, 18 years of age or older, shall be directly responsible for and in charge of the retail sales location and shall be in the retail sales site at all times.

(3) The individual(s) responsible for and/or in charge of sales shall be knowledgeable about pyrotechnic laws and rules and shall comply with the retail rules, particularly as these relate to the kinds of devices that can be sold and sales to children.

(4) The person listed on the application permit, or his designated representative, approved by the Office of State Fire Marshal, as the individual responsible for sales shall frequently be on-site during sales hours. When not on-site, this individual or his designated representative shall be able to be contacted day or night by telephone or other reliable means from the date the sales outlet opens until the date it closes.

(5) The sale of pyrotechnics to persons who are less than 54 inches tall is prohibited:

(a) This rule is not applicable to persons who are less than 54 inches but older than 12 years of age;

(b) The sale of novelties, including smoke items, sparklers and trick noisemakers are not subject to this limitation.

(6) By August 1 of the year during which the permit was issued, unsold pyrotechnics shall be returned to the wholesaler who provided them.

(7) Storage of pyrotechnics outside the retail sales period in residential locations, mini-storage units or other structures is prohibited unless such storage is in accordance with the **Uniform Fire Code**, the **Uniform Building Code**, these rules or requirements of the local authority having jurisdiction.

(8) Those who store pyrotechnics before May 1 or after August 1 shall notify local fire authorities of their presence, amount, type and location(s).

(9) Those who store ten or more pounds of pyrotechnics for 30 days or more shall complete and yearly submit the Hazardous

Substance Survey required by ORS 453.307 to 435.414. Contact the Office of State Fire Marshal for survey forms and instructions.

(10) During the times retail sales outlets are open for sales, exits shall not be locked or blocked and shall be passable.

(11) Pyrotechnics shall not be discharged within 50 feet of any retail sales outlet.

(12) The permit applicant, individual responsible for sales, person to which the permit is issued and all others engaged in retail pyrotechnic sales are responsible to ensure the items they provide, possess or offer for sale are allowed and in conformance with applicable statutes and rules.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0650

Outside Sales

(1) All outside sales structures, whether permanent or temporary, shall be constructed and maintained not to be a hazard to those conducting sales and to minimize the dangers of fire.

(2) Each outside sales structure shall have at least one exit opening or outward swinging exit door for each 1,000 square feet of area covered or each 20 feet of structure length. The exit opening shall be at least two feet wide and five feet high or as required by the local authority having jurisdiction.

(3) If trailers are used for retail sales, their wheels must be blocked, or removed, or the tongue locked and the trailer disconnected from any power source which can move it. All fuel tanks, including those for propane, shall be empty or removed.

(4) Tents, canopies and/or tables may be used for outside sales provided they comply with applicable fire and building codes and approvals:

(a) Tent and canopy fabrics and any materials used on the ground, such as sawdust, shall be treated to be fire retardant;

(b) Tents or canopies having three or more enclosing sides and where the public is under the tent or canopy are considered indoor sales structures and subject to the requirements of **Article 32 of the Uniform Fire Code** and OAR 837-012-0655.

(5) Fire extinguishers shall be provided at each retail sales outlet by at least one minimum 2A rated water type extinguisher or the equivalent water type extinguishing system, or as determined by the local fire authority having jurisdiction.

(6) Electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the **National Electrical Code (NEC), 1987 Edition** and local approvals.

(7) Outdoor sales structures operating at night shall have sufficient light to see. Standard electrical installations, battery powered lanterns, street or parking lot lighting or nearby building interior and exterior lighting may be used for this purpose.

(8) Outdoor sales structures shall be located:

(a) At least 50 feet from any dispensary of flammable liquids or gases;

(b) At least 15 feet, or as otherwise specified by the local fire authority having jurisdiction, from any street or public right-of-way;

(c) At least 10 feet from combustible structures and the exits and openings of these structures and other buildings;

(d) At least 20 feet from exposed heating elements or any other such sources of ignition including fuel-powered electrical generators.

(9) A temporary outdoor sales structure, including vertical extensions, shall not be more than one story in height unless it has sufficient size, weight or tie-downs to prevent toppling in the wind.

(10) "No Smoking" signs shall be posted on all outside walls of the stand. The signs shall be readily visible to all engaged in retail sales, customers or others near the sales outlet. Sign lettering shall be red and at least 2-1/2 inches high and on a white background.

(11) Smoking, open flames, or other such ignition sources

and the use of pyrotechnics shall not be allowed within 50 feet of the sales outlet.

NOTE: Smoking at sales site by any person engaged in retail sales shall be grounds for suspension and/or revocation of the retail sales permit.

(12) Fuel used to power electrical generators shall be stored in Underwriter's Laboratories (UL) approved containers.

(13) Heaters having exposed electrical elements or open flames shall not be used at any outside sales outlet.

(14) Outdoor sales outlets and customer parking shall not impede or endanger the normal flow of traffic on public streets or highways.

(15) The grounds surrounding and within 20 feet of the sales outlet must be maintained clean and orderly.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0655

Inside Sales

(1) A distinct area shall be provided for retail sales of pyrotechnics within permanent or temporary structures.

(2) Pyrotechnic sales areas shall not be located in a manner such that during a fire situation, they would hinder and/or block any exit, including a required checkstand exit.

(3) The individual responsible for indoor retail sales shall regularly monitor and oversee operations to ensure pyrotechnics display, sales and storage areas are orderly and maintained in accordance with these rules.

(4) If the individual responsible for sales does not directly handle the pyrotechnics, then at least one other individual on each shift shall be assigned that task. These individuals shall be knowledgeable about the pyrotechnics laws and rules and readily available when pyrotechnics are on sale.

(5) Pyrotechnics, in excess of that needed for display, shall be stored inside structures only if separated from display areas, exits, flammable and highly combustible materials, access by customers, and in accordance with local fire authority requirements and these rules.

(6) Fire extinguishers shall be provided in numbers and locations throughout the indoor retail sales Site as required by **National Fire Protection Association (NFPA), Standard 10** and local ordinances and rules.

NOTE: At a minimum, at least one 2A rated water type extinguisher, an equivalent water type extinguishing system, or an alternative determined by the local authority having jurisdiction shall be provided.

(7) Indoor sales are not permitted in alcoholic drinking establishments, single or multi-family residential structures or motor homes.

(8) "No Smoking" signs shall be posted and readily visible to customers, those engaged in pyrotechnic sales, and others entering or near the display and storage areas.

NOTE: Smoking at the indoor sales site by any person engaged in retail sales shall be the basis for suspension and/or revocation of the retail sales permit.

(9) Trash, rubbish, empty boxes and removed wrapping materials shall be removed daily or as often as needed to maintain the display, sales and storage areas neat and clean.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0660

Records and Postings

(1) The retail permit, approved and issued by the Office of State Fire Marshal, shall be posted at the sales area and readily available for viewing, throughout the sales period, by customers, local fire authorities and representatives of the Office of State Fire

Marshal:

(a) A copy of the original permit may be posted instead of the original so long as the original is maintained and immediately available at the site for inspection by local fire authorities and representatives of the Office of State Fire Marshal;

(b) For inside sales, the permit need not be posted in the display area, but it must be immediately available for viewing upon request by customers, local fire authorities or representatives of the Office of State Fire Marshal.

(2) Retail permit holders shall keep a record of each shipment of pyrotechnic received. The record shall include the wholesalers name, address permit number and the retailer's name and permit number along with a complete listing of the names and quantities of each item received.

(3) Upon request the records for each shipment received shall be readily available for review and inspection by the local fire authority and representatives of the Office of State Fire Marshal.

(4) All records shall be clear, legible, accurate and maintained for three years from the date of receipt of the pyrotechnics. The records shall be made available to the Office of State Fire Marshal.

NOTE: The wholesaler from whom the pyrotechnics were purchased may maintain the records.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0665

Advertisements

(1) No person shall publish or cause to be published:

(a) Any advertisement, for distribution to the general public, concerning the sale of pyrotechnics which have been declared unlawful by ORS 480.110 to 480.160, or these rules, for residents to purchase, use, store, transport, sell, discharge, or possess;

(b) Any advertisement for the sale of items described in ORS 480.127 in any county, municipality or fire protection district that by law or ordinance has declared the sale, use, or possession of such items to be prohibited.

NOTE: The rules in this section concerning advertisements do not apply to any advertising medium which accepts such advertising in good faith, without knowledge of the violation of law or these rules.

(2) Section (1) of this rule does not apply to advertisements placed in media when the primary distribution of that media is into areas which allow the pyrotechnics even though some secondary distributions of that media may occur into areas which prohibit these items.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

827-012-0670

Prohibited Acts and Limitations

(1) No person shall maintain or allow the existence of a fire hazard at any location under their control where pyrotechnics are stored, transported, sold, or used.

(2) No retailer shall sell or provide by any other means:

(a) Allowed and/or exempted fireworks to any person who is less than 54 inches tall.

NOTE: This rule is not applicable to persons who are less than 54 inches tall but older than 12 years of age.

(b) Special effects fireworks, illegal fireworks, aerial display fireworks or public display fireworks to any person;

(c) Any pyrotechnics that have been altered;

(d) Any pyrotechnics other than those supplied and/or distributed by a person with a current Oregon wholesale pyrotechnics permit.

(3) No person who has been cited or arrested for pyrotechnic violations or who has had a pyrotechnic's permit suspended, denied or revoked in any jurisdiction shall participate in any manner in the retail storage, distribution, transportation or sales of pyrotechnics for a period not to exceed three years.

(4) The retail permit does not authorize the manufacture, sale, use, discharge or possession of pyrotechnics in any city or county in which such devices are prohibited by law or ordinance.

(5) No person under 12 years of age shall actively participate in any manner in the retail storage, distribution, transport or sales of pyrotechnics.

(6) Retailers shall not sell, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any pyrotechnic device that has not been approved, certified or listed for transport by the U.S. Department of Transportation or has a U.S. Bureau of Explosives Temporary Transfer Permit.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90

837-012-0675

Civil and Criminal Enforcement Actions

(1) In addition to denying, revoking and/or suspending permits pursuant to administrative hearing and appeals procedures as specified in law, the Office of State Fire Marshal and local enforcement officials may:

(a) Confiscate, remove or have removed at the violator(s) expense all pyrotechnics offered for sale, transported, stored, or possessed in violation of these rules; and

(b) Destroy seized pyrotechnics when it has been determined that destruction is necessary for the preservation of public safety or health that the sale, transport, storage or possession of the seized fireworks was in violation of the laws and rules of the State of Oregon or the ordinances of local municipalities.

NOTE: Upon the confiscation and/or prior to the destruction of any seized pyrotechnics from a retail sales outlet, the person responsible for the confiscation and/or destruction, shall contact the Oregon licensed wholesaler listed on the retail permit application.

(2) All civil disputes arising as a result of the administration and enforcement of these rules and regulations shall be referred to the State Fire Marshal who shall be the final administrative authority in all cases.

(3) Violation of any provision of ORS 480.110 through 480.160 and the administrative rules adopted thereto is a Class B misdemeanor. Violations thereof may be prosecuted in state or municipal courts when violations occur within the municipality served thereby. Justice and district courts shall have concurrent jurisdiction with circuit courts in all proceedings arising within ORS 480.110 to 480.160:

(a) The sentence for a Class B misdemeanor shall be for a definite term and within the maximum limitation of six months or as otherwise provided by ORS 161.615;

(b) The sentence to pay a fine for a Class B misdemeanor shall be to pay an amount not exceeding \$1,000 or \$2,500, as appropriate, and in accordance with ORS 161.635 and 161.655.

(4) If a person has gained money or property through commission of a misdemeanor or violation, then upon conviction thereof, the court, instead of imposing the fine authorized by these rules, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense in accordance with ORS 161.635 and 161.655.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f.

& cert. ef. 7-10-90

837-012-0700

Purpose and Scope

(1) The purpose of OAR 837-012-0700 through 837-012-0970 is to adopt rules to implement the standards, policies and procedures for public fireworks displays.

(2) The scope of these rules apply to the implementation of the statutes in ORS 480.110 through 480.165 relating to fireworks.

(3) These rules establish application, permit and other requirements for public fireworks displays, certification require-

ments for public fireworks display operators and qualifications for public fireworks display assistants.

Stat. Auth.: ORS Ch. 476 & 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0710

Effective Dates

OAR 837-012-0700 through 837-012-0970 are effective upon date of filing after adoption.

EXCEPTION: Certification requirements will be effective 1-1-93 to allow sufficient time for operators to obtain certification.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0720

Definitions

For the purpose of these rules, the following definitions apply to OAR 837-012-0700 through 837-012-0970:

(1) "Aerial Fireworks" means fireworks that function in the air.

(2) "Approved Applicant" means any person that meets the requirements of OAR Chapter 837, Division 12.

(3) "Assistant" means a person as set forth by OAR 837-012-0810(2) who works under the direction of an operator to put on an outdoor display, whose duties include tasks such as loading mortars, spotting the bursting location of aerial shells, tending a ready box, setting up and cleaning the discharge site, and igniting fireworks.

(4) "Barrage" means a rapid fire sequence of aerial fireworks. Motors are loaded prior to the display and the aerial shells are chain fused to fire in rapid sequence.

(5) "Black Match" means fuse made from string impregnated with black powder and used for igniting fireworks devices.

(6) "Break" means an individual burst from an aerial shell, generally either producing a visual effect (stars) or noise (salute). Aerial shells can be either single-break (having only one burst) or multi-break (having two or more bursts).

(7) "Certification" means meeting the requirements of OAR 837-012-0790 or 837-012-0800.

(8) "Chain Fusing" means a series of two or more aerial shells used to fire in sequence from a single ignition. Finales and barrages typically are chain fused.

(9) "Common Fireworks" means all Class C fireworks.

(10) "Designated Agent" means the person designated by the permit holder to pick up the fireworks authorized by the permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the fireworks. The designated agent must have the permit authorized by the State Fire Marshal in their possession at the time the fireworks are picked up from the wholesaler. The designated agent can pick up the fireworks from the wholesaler and transport only to the approved storage site *or* directly to the display site. Designated agents are required to meet all federal and state laws relating to Department of Transportation requirements.

(11) "Discharge Site" means the area immediately surrounding the area where fireworks are ignited for an outdoor display.

(12) "Display" means an outdoor general or limited public fireworks display using common or special fireworks as entertainment.

(13) "Electric Match" means a device consisting of wires terminating at a relatively high resistance element surrounded with a small quantity of heat-sensitive fireworks composition. When a sufficient electric current is passed through the wire circuit, the heat that is generated ignites the fireworks composition, producing a small burst of flame.

(14) "Electrical Firing Unit" means the source of electrical current used to ignite electric matches. Generally, the firing unit will have switches to control the firing order and shall have test circuits and warning indicator, etc.

(15) "Electrical Ignition" means a technique used to discharge fireworks in which an electric match and source of electric current are used to ignite fuses or lift charges.

(16) "Fall-Out Area" means the area over which aerial shells are fired. The shells burst over this area, and unsafe debris and malfunctioning aerial shells fall into this area. The fallout area is the location where a typical aerial shell dud will fall to the ground considering wind and the angle of mortar placement.

(17) "Finale" means a rapid fire sequence (barrage) of aerial fireworks, typically fired at the end of a display. The mortars are loaded prior to the display, and the aerial shells are chain fused to fire in rapid sequence.

(18) "Fire Authority" means any fire official having jurisdiction over the display site and operations.

(19) "Fireworks" means any combustible or explosive composition or substance, or any combination of such compositions or substances, or any article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, sky-rockets, Roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction or any article containing any explosive or inflammable compound, or any tables or other device containing any explosive substances or inflammable compound and includes the following:

(a) Ground and Hand-Held Sparkling Devices:

(A) Dipped Stick Sparkler. Stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed 5 g of pyrotechnic composition per item;

NOTE: Wire sparklers that contain no magnesium, less than 100 g of composition per and are less than 10" in length item are not included in this category.

(B) Cylindrical Fountain. Cylindrical tube not more than 3/4 inch (19mm) inside diameter, containing up to 75 g of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain);

(C) Cone Fountain. Cardboard or heavy paper cone containing up to 50 g of pyrotechnic composition. The effect is the same as that of a cylindrical fountain;

(D) Illuminating Torch. Cylindrical tube containing up to 100 g of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base or hand-held;

(E) Wheel. Pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain up to 6" driver units: Tubes not exceeding 1/2 inch (12.7 mm) inside diameter and containing up to 60 g of pyrotechnic composition. Upon ignition, the wheel revolves, producing a shower of color and sparks and sometimes a whistling effect;

(F) Ground Spinner. Small device similar to a wheel in design and effect and placed on a ground and ignited. A shower of sparks and color is produced by the rapidly spinning device;

(G) Flitter Sparkler. Narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. This device does not have a fuse for ignition. The paper at one end of the tube is ignited to make the device function.

(b) Aerial Devices:

(A) Sky Rocket. (Stick Rockets) Tube not exceeding 1/2 inch (12.7 mm) inside diameter that may contain up to 20 g of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of the light;

(B) Missile-Type Rocket. A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability;

(C) Helicopter, Aerial Spinner. A tube not more than 1/2 inch (12.7 mm) inside diameter and containing up to 20 g of pyrotechnic composition. A propeller or blade is attached, which upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight;

(D) Roman Candles. Heavy paper or cardboard tube not exceeding 3/8 inch (9.5 mm) inside diameter and containing up to 20 g of pyrotechnic composition. Upon ignition, up to 10 "star" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several-second intervals;

(E) Mine Shell. Heavy cardboard or paper tube up to 2-1/2 inch (63.5 mm) inside diameter attached to a wood or plastic base and containing up to 40 g of pyrotechnic composition. Upon ignition, "stars", firecrackers, or other devices are propelled into the air. The tube remains on the ground.

(c) Audible Ground Devices:

(A) Firecracker. Small paper-wrapped or cardboard tube containing not more than 130 mg of pyrotechnic composition. Upon ignition, noise and flash of light are produced;

(B) Chaser. Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect, or other noise, often is produced. The explosive composition used to create the noise may not exceed 50 mg.

(d) Combination Items. Fireworks devices containing combinations of two or more of the effects described in subsections (a), (b) and (c) of this section;

(e) Novelties and Trick Noisemakers (*are not* included as fireworks):

(A) Snake, Glow Worm. Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate;

(B) Smoke Device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect;

(C) Trick Noisemaker. Item that produces a small report intended to surprise the user. These devices include:

(i) Party Popper. Small plastic or paper item containing not more than 16 mg of explosive composition that is friction-sensitive. A string protruding from the device is pulled to ignite it, expelling paper streams and producing a small report;

(ii) Booby Trap. Small tube with string protruding from both ends, similar to party popper in design. The ends of the string are pulled to ignite the friction-sensitive composition, producing a small report;

(iii) Trick Match. Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced;

(iv) Cigarette Load. Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced;

(v) Auto Burglar Alarm. Tube that contains pyrotechnic composition that produces a loud whistle and/or smoke when ignited. A small quantity of explosive, not exceeding 50 mg, also may be used to ignite the device;

(vi) Snapper. Small paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.

(20) "Fireworks Display" means an outdoor general or limited public fireworks display using common or special fireworks as entertainment and hereafter is referred to as a display.

(21) "Flash Powder" means explosive composition intended for use in firecrackers and salutes. Flash powder produces an audible report and a flash of light when ignited. Typical flash powder composition contains potassium chlorate or potassium perchlorate, sulfur or antimony sulfide, and powdered aluminum.

(22) "Fusee" means a highway distress flare, sometimes used to ignite fireworks at outdoor displays.

(23) "General Public Fireworks Display" means a display or event held outdoors for the general public, utilizing Class "C" and/or "B" special fireworks and shall be conducted by an operator.

(24) "Ground Display Piece" means a pyrotechnic device that functions on the ground (as opposed to an aerial shell that functions in the air). Typical ground public fireworks display pieces include fountains, roman candles, wheels, and "set pieces".

(25) "Law Enforcement Authority" means any law

enforcement official having jurisdiction over the public fireworks display site.

(26) "Limited Public Fireworks Display" means a public fireworks display or event held outdoors and limited to Class "C" fireworks. Quantities of firecrackers, sky rockets, missile rockets, helicopter spinners, mortars and similar items are subject to limitation by the fire authority.

(27) "Mortar" shall mean a tube from which aerial shells are fired into the air.

(28) "Monitor" means a person designated by the sponsors of the public fireworks display to keep the audience in the intended viewing area and out of the public fireworks display discharge site and fallout area.

(29) "Operator" means the person qualified as set forth in OAR 837-012-0810(1) or (3) to conduct the display. (See public fireworks display operators.)

(30) "Operator Assistant" means a person as set forth by OAR 837-012-0810(2) who works under the direction of the public fireworks display operator to put on a public fireworks display. The duties of an assistant include tasks such as loading mortars, spotting the bursting location of aerial shells, tending a ready box, setting up and cleaning the discharge site, igniting fireworks, etc., and hereinafter referred to as Assistant.

(31) "Permit" means a public fireworks display permit issued by the Office of State Fire Marshal authorizing its sponsor to purchase fireworks to perform a display.

(32) "Permit Application" means the application form(s) required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a public fireworks display permit.

(33) "Permit Holder" means the sponsor, operator, or assistant.

(34) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group or persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or sub-division.

(35) "Public-at-Large" shall mean any person who is not required to hold a valid public fireworks permit.

(36) "Public Fireworks Display" shall mean an outdoor display of aerial shells and/or ground display pieces and shall hereafter be referred to as display.

(37) "Public Fireworks Display Operator" means any qualified person(s) as set forth by OAR 837-012-0810(1) or (3) who, by experience, training and passing any required examination, has demonstrated the necessary skills and abilities for safely assembling, discharging, and supervising displays and is hereafter referred to as operator.

(38) "Public Fireworks Display Sponsor" means the person or group that has applied for and been issued a permit and hereafter is referred to as the sponsor.

(39) "Pyrotechnics, Pyrotechnic Device(s) or Pyrotechnic Item(s)" means any combination of materials, which, by the agency of fire, produce an audible, visual, mechanical or thermal effect designed and intended to be used for industrial, agricultural, personal, educational, entertainment or recreational purposes. The term includes, but is not limited to, agricultural and wildlife fireworks, exempt and allowed fireworks, novelty and trick noisemakers, emergency signaling devices, public display fireworks, and special effects fireworks.

(40) "Qualified Persons" shall mean any person(s) who meet(s) the minimum requirements of the knowledge, skills and abilities for the appropriate certification for performing displays as set forth by the Office of State Fire Marshal.

(41) "Salute" means a special firework that is designed to produce a loud report.

(42) "Special Fireworks" means large fireworks primarily designed to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, fire-crackers containing more than 2 grains (130 mg) of explosive composition, aerial shells, containing more than 40 g of pyrotechnic composition, and other display pieces that exceed the

limit for classification as "common fireworks". Special fireworks are classified as Class "B" explosives by the U.S. Department of Transportation.

(43) "Sponsor" means the person or group that has applied for and been issued a public fireworks display permit.

(44) "Supervision" means displays shall be under the supervision of the chiefs of Police and Fire Departments, or the county court.

(45) "Wholesaler" shall mean any person, other than an importer or manufacturer, who has a valid permit issued by the Office of State Fire Marshal to sell fireworks to retailers and other wholesalers for resale, or who sell fireworks to holders of display, predator, agricultural, manufacturer, special effect, emergency or illumination device permits. Whole-salers are not permitted to sell fireworks to any person notwithstanding the state in which they reside.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0730

General

(1) A permit allows the permit holder (and/or designated agent(s)) to engage only in the following activities including the purchase, transportation, possession, and storage of fireworks when those activities are otherwise in conformance with the requirements of these rules.

(2) A permit does not allow the permit holder (and/or designated agent(s)) to purchase, possess or sell fireworks to retailers, display permit holders, wholesalers or the public-at-large.

(3) Permit holders desiring to engage in other types of fireworks activities, including but not limited to wholesale or retail sales, must meet all the applicable requirements in ORS 480.110 to 480.165 and rules adopted pursuant thereto, including those requiring permits to be obtained from local and state authorities.

(4) Permit holders shall purchase fireworks only from wholesalers having the necessary and current permits required by ORS 480.110 to 480.165 and OAR 837-012-0700 through 837-012-0970.

(5) In addition to the laws and rules adopted and referenced herein, displays shall also comply with all rules and requirements applicable to public displays.

(6) Issuance of a permit does not constitute an endorsement of the fireworks purchased or sold.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0740

Permits — General

(1) Those persons having or intending to have a display shall obtain a permit from the Office of State Fire Marshal for each display.

(2) Only one permit may be applied for or issued for each specific display site.

NOTE: The final decision as to what constitutes and is acceptable as a display site rests with fire and law enforcement authority having jurisdiction and the Office of State Fire Marshal.

(3) Prior to acceptance of fireworks from a wholesaler, the permit holder shall confirm that all cartons, containers, cases and associated paper-work are imprinted and/or affixed with the wholesaler's permit number.

(4) The full name of the person to whom the permit was issued shall appear on all fireworks cartons, containers, cases and associated paper-work.

(a) If the name has been provided by the wholesaler, it shall be maintained;

(b) If the name is not present, it shall be added by the permit holder.

(5) A permit is not transferable from the person to whom it was issued to another person or business nor can another person or

business per-form any acts allowed by the permit unless that person or business is listed on the permit application and/or is the designated assistant for the permit holder.

(6) Permits are valid only for the specific site listed on the permit.

(7) Changes in the permit site, operator, assistant, fireworks requested, time or date of display, or site, may be made when:

(a) The new site is located in the same fire jurisdiction as the site listed on the permit, the fire and law enforcement authority having jurisdiction over the display site approves the change and it is documented in the general display report submitted to the Office of State Fire Marshal as required by OAR 837-012-0970;

(b) The operator named on the permit is replaced by another certified operator and the change is reported to the fire authority *prior to* the beginning of the display and the operator is acceptable to the fire authority. The change shall be reported to the State Fire Marshal on the General Display Report as required by OAR 837-012-0970.

(8) The permit and permit number issued by the Office of State Fire Marshal are valid for the date of display listed on the permit.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0750

Permit Investigations and Approvals

(1) Approvals shall not be granted by the fire authority when a site does not meet minimum safety and fire control requirements or the permit application is incomplete or otherwise not in conformance with the application requirements in OAR 837-012-0700 to 837-012-0970.

(2) The Office of State Fire Marshal shall not grant approval of permit applications without the signature of the fire and law enforcement authorities.

(3) The Office of State Fire Marshal shall either grant or deny permit applications within ten days following receipt of properly completed and submitted application.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0760

General Public Fireworks Display Permit Requirements

(1) Obtain a permit from the Office of State Fire Marshal (see OAR 837-012-0780).

(2) As of 1-1-93, meet the operator and assistant qualifications and restrictions as specified by OAR 837-012-0810(1) and (2) and obtain certification as specified by OAR 837-012-0790(1) and (2).

(3) Pay the fee as listed in OAR 837-012-8020(1) — \$25.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0770

Limited Public Fireworks Display Permit Requirements

(1) Obtain a permit from the Office of State Fire Marshal (see OAR 837-012-0780).

(2) As of 1-1-93, meet the operator qualifications and restrictions as specified by OAR 837-012-0810(3) and obtain certification as specified by OAR 837-012-0790(3).

(3) Pay the fee as listed in OAR 837-012-0820(1) — \$25.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0780

Public Fireworks Display Permit Applications

(1) As part of the permit application process, the applicant shall obtain the necessary local or state on-site inspections, approvals, proof of liability insurance, and other required permits.

(2) Permit applications for each display shall be made on

application forms provided by the Office of State Fire Marshal. Applications shall be complete and accompanied by the permit fee.

(3) Permit applications shall be postmarked and/or received in the Salem office of the Office of State Fire Marshal not later than 15 days prior to the proposed display date. Applications postmarked after the deadline will be returned unprocessed.

(4) The permit application shall include:

(a) Name, signature, address, age, and telephone number of the person completing the permit application;

(b) Sponsor name, address, telephone number and age, if applicable, of the person to whom the permit is to be issued;

(c) The name and wholesale permit number of the Oregon licensed wholesaler from whom the sponsor intends to purchase the fireworks;

NOTE: Intention does not constitute a requirement of purchase from a specific wholesaler, however, the purchase shall be made from an Oregon licensed wholesaler. The sponsor shall notify the Office of State Fire Marshal in writing of any change in the intended wholesaler prior to the date of fireworks purchase.

(d) The date and time of day the display is to be held;

(e) The size and number of all fireworks to be discharged including the number of set pieces, shells, and other items. Shells shall be designated by diameter specifying single, multiple break or salute;

(f) List of operators and assistants to include name, address, age, years of experience and (as of 1-1-93), their Office of State Fire Marshal operator certification number;

(g) The address where the sponsor will store fireworks in their possession before, during and after the display;

(h) A diagram of the display site shall be completed on either the permit application form or on a separate piece of paper which shall be attached to and submitted with the permit application. The diagram shall include the site on which the the display is to be held, showing:

(A) The point at which the fireworks are to be discharged;

(B) The location of all buildings, highways and other means of travel;

(C) The lines behind which the audience will be restrained;

(D) The location of all nearby trees, telegraph or telephone lines, or other overhead obstruction;

(E) The distance in feet from each of these points to the point of discharge of the fireworks.

(i) The signature of the fire and law enforcement authorities having jurisdiction over the display site or the designee having jurisdiction.

(5) The applicant shall obtain the signature of the fire and law enforcement authorities having jurisdiction over the display site on the permit application prior to submitting the permit application to the Office of State Fire Marshal for final approval.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0790

Operator Certification

(1) Effective 1-1-93, all operators and assistants shall meet operator and assistant qualifications, restrictions, and certification requirements prior to shooting a display.

(2) Applicants for General Public Fireworks Display Operator certification shall meet the following requirements:

(a) Be at least 21 years of age;

(b) Participate in three or more electrically or manually ignited Oregon displays in three years or less;

(c) Submit an Application for Operator Certification information as required by the Office of State Fire Marshal to substantiate work experience on three or more Oregon displays as follows:

(A) Permit numbers issued by the Office of State Fire Marshal for each display;

(B) List duties performed at each display.

(d) Pass a written examination, administered by the Office of

State Fire Marshal, with a score of 80 percent or more of the questions answered correctly. The examination shall assess the applicants knowledge of Oregon's Public Fireworks Display Statutes and Administrative Rules and safety procedures for displays;

(e) Complete one training course approved by the State Fire Marshal and administered by an instructor approved by the State Fire Marshal. Course content and instructor shall be approved by the State Fire Marshal prior to delivery of the course.

(3) Applicants for Limited Public Fireworks Display Operator certification shall meet the following requirements:

(a) Be at least 18 years of age;

(b) Complete an application for Limited Operator Certification on a form provided by the Office of State Fire Marshal;

(c) Certify a knowledge of Oregon's Fireworks Statutes, and Administrative Rules for Public Fireworks Displays and safety procedures for displays.

(4) Prior to 1-1-93, applicants for operator certification may use displays from other states to meet the requirements of subsection (2)(b) of this rule provided the following requirements are met:

(a) Present certified copies of display reports submitted to the State Fire Marshal of the state where the display was conducted. Copies shall be certified by the State Fire Marshal of the state where such displays were conducted;

(b) Training course as required by subsection (2)(e) of this rule;

(c) Pass the examination required by subsection (2)(d) of this rule.

(5) Applicants shall apply to the Office of State Fire Marshal for Operator Certification on an application form provided by the Office of State Fire Marshal. Applicants must apply a minimum of 90 days prior to the date of the first display for which they will be the operator. The completed application form shall contain the following:

(a) Applicants name, age, and address;

(b) Information as required by subsections (2)(a) - (c) and (e) and/or subsections (3)(a) - (c) of this rule.

(6) Certification shall be valid for a period of three years. Certification numbers shall be assigned by the State Fire Marshal.

(7) Certificate remains the property of the State Fire Marshal and must be surrendered upon request of the State Fire Marshal.

(8) The State Fire Marshal may revoke, suspend or refuse to issue certification for violation of ORS 480.110 through 480.165 and OAR Chapter 837, Division 12. Any such revocation, suspension or refusal shall be in conformance with ORS 183.310 through 183.550.

NOTE: Oregon does not recognize pyrotechnician/ operator certification, displays, training, or examinations from other states with the exception of displays in other states to meet initial certification when obtained prior to 1-1-93. However, the State Fire Marshal may elect to give credit for training, displays, or examinations conducted in other states provided they meet the requirements of this rule. It is incumbent upon the applicant to submit the documentation to be evaluated by the State Fire Marshal. Documentation submitted for evaluation must be certified by the supervising agency in the state from which the documentation is submitted. Training, displays or examinations to be evaluated shall be a maximum of five years old. The State Fire Marshal's decision shall be final.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0800

Renewal of Operator Certification

(1) General operators may renew their certification by complying with the following:

(a) Proof of participating in three displays during the three years their certification was valid. Participation means completing the following duties: installation of mortars, installation of set pieces, loading shells, after display cleanup and inspection,

installation of electrical firing system, electrically and/or manually firing the display, tending the magazine which may mean reloading the mortars. At a minimum, installation of mortars, loading of shells, and after display cleanup and inspection shall be required for renewal of certification. The State Fire Marshal shall have the final decision regarding qualifying duties for renewal of certification. Proof shall be determined from the reports required by OAR 837-012-0970 and the application required in Section (3) of this rule;

(b) Complete a training course approved by the Office of State Fire Marshal, during the three years immediately preceding the expiration date of their current certification.

(2) State Fire Marshal. Certify a knowledge of Oregon's Public Fireworks Statutes, Administrative Rules, and safety procedures for displays.

(3) Operator shall submit a completed Application For Renewal of Operator Certification as required by the Office of State Fire Marshal a minimum of 90 days prior to the date of expiration of their current certification.

(4) The application shall contain the following:

(a) Applicant's name, age, and address.

(b) Information as required by sections (1) and (2) of this rule.

(5) Certification renewal shall be valid for a period of three years.

(6) Certificate remains the property of the Office of State Fire Marshal and must be surrendered upon request of the State Fire Marshal.

(7) The State Fire Marshal may revoke, suspend, or deny renewal of certification for violation of ORS 480.110 through 480.165 and OAR Chapter 837 Division 12. Any such revocation, suspension, refusal, actions shall be in conformance with ORS 183.310 to 183.550

Stat. Auth.: ORS 480.150

Stats. Implemented: 480.140 & 480.150

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93; FM 1-1995, f. 8-14-95, cert. ef. 8-15-95; FM 1-1996, f. & cert. ef. 1-18-96

837-012-0810

Operator and Assistant Qualifications and Restrictions

(1) General Public Fireworks Display Operator shall:

(a) Be at least 21 years of age;

(b) Have participated in the setting up, loading and firing of at least three electrically or manually ignited public fireworks displays under the direct supervision of an operator that meets the qualifications as established by OAR 837-012-0790;

(c) Successfully pass the written examination with a score of not less than 80 percent;

(d) Meet all the requirements of a General Public Fireworks Display Assistant.

(2) General Public Display Assistant shall:

(a) Be at least 18 years of age;

(b) Work under the direct supervision of a general public fireworks display operator;

(c) Be limited to the performance of the following duties: Loading mortars, spotting the bursting location of aerial shells, tending a ready box, setting up and cleaning the discharge site, igniting fireworks, etc.

(3) Limited Public Fireworks Display Operator shall:

(a) Be at least 18 years of age;

(b) Certify a knowledge of Oregon's Fireworks Statutes, and Public Fireworks Display Administrative Rules and safety procedures for display.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0820

Permit Fees, Payment Issuance and Approval

(1) Public Display Permit fees are:

(a) General, \$25;

(b) Limited, \$25;

(c) Special, \$25.

(2) Every permit fee shall be paid or mailed to the Office of State Fire Marshal along with the permit application.

(3) No permit shall be issued until checks clear the bank.

(4) Fees shall not be transferrable to another permit or refunded if the permit is revoked, suspended or denied according to OAR 837-012-0830 or this rule.

(5) The Office of State Fire Marshal shall either approve or deny permit applications within ten days following receipt of properly completed and submitted application

(6) The Office of State Fire Marshal shall assign a number to each permit approved and issued.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0830

Permit Denial, Suspension and/or Revocation

(1) The State Fire Marshal may deny, revoke or suspend a permit. Any such denial, revocation, or suspension shall be in conformance with ORS 183.310 to 183.550. Valid cause exists for the denial, suspension and/or revocation of the permit when any of the following occur:

(a) A person named on the permit application fails to comply with applicable federal, state, or local laws, rules, ordinances or regulations pertaining to the manufacture, sale, use, discharge, transportation, storage or possession of fireworks; or

(b) The Office of State Fire Marshal is presented with evidence and a recommendation to deny, suspend and/or revoke an application or permit by fire or law enforcement authority. The evidence shall support the conclusion that the sponsor, permit holder or applicant has violated applicable rules and/or statutes; or

(c) The permit holder hires, employs, utilizes, etc., someone who has had a wholesale, retail or display permit has been revoked, denied or suspended within the last three years; or

(d) There has been a failure to obtain and maintain necessary local or state on-site inspections, approvals, proof of liability insurance and other required permits; or

(e) Sells, donates or otherwise provides fireworks to any person; or

(f) A permit or permit number that has expired, or that does not exist, or which has not been issued, is used to support the purchase, use, discharge, transportation, storage, possession or sale of fire-works; or

(g) The applicant submitted a fraudulent permit application; or

(h) Any other violation of the fireworks statutes or rules.

(2) The period of denial, revocation and/or suspension shall be as follows:

(a) Not to exceed three years if the circumstances of the permit holder's or applicant's failure to comply with applicable laws and rules pertaining to the manufacture, sale, use, discharge, storage or possession of pyrotechnics presented a significant fire hazard or other public danger;

(b) Not to exceed three years for the citation, arrest, or conviction for violation of laws and rules pertaining to the manufacture, sale, use, discharge, storage or possession of fireworks.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0840

Public Fireworks Display Conduct (General Display)

(1) Construction of Special Firework Aerial Shells:

(a) Shells shall be classified and described only in terms of the inside diameter of the mortar in which they can be safely used (e.g., three inch shells are only for use in three inch mortars);

(b) Aerial shells shall be constructed so that they fit easily into the appropriate size mortar and so that the lift charge and internal delay fuse are appropriate to propel the shell to a safe altitude before functioning;

(c) Shells shall be labeled with the type of shell, the shell size and the name of the manufacturer or distributor;

(d) The label or wrapper of any type of aerial shell shall be conspicuously marked with a number to indicate the shell size (the diameter of the mortar to be used);

(e) The label or wrapper of any type of aerial salute shall be conspicuously marked with the word "salute";

(f) For aerial shells using quick match fuse to ignite the lift charge, that fuse shall be long enough to allow not less than six inches of fuse to protrude from the mortar after the shell has been properly inserted;

EXCEPTION: This requirement does not apply when shells are to be fired electrically.

(g) In order to allow the person igniting the aerial shells to safely retreat, the time delay between igniting the tip of the shell's fuse and the firing of the shell shall not be less than three seconds or more than six seconds;

EXCEPTION: For electrically ignited displays, there is no requirement for a delay period.

(h) A safety cap shall be installed over the exposed end of the fuse. The safety cap shall be of a different color than that of the fuse. The safety cap shall be installed in such a manner that the fuse is not damaged;

EXCEPTION: For electrically fire displays, there is no requirement for safety caps except that there shall be no exposed pyrotechnic composition.

(i) Single break salute shells shall not exceed three inch in diameter or three inch in length (exclusive of the propellant charge). The maximum quantity of salute powder in such salutes shall not exceed 2.5 ounces;

(j) For single break shells greater than three inch in diameter containing multiple internal salutes and for multibreak shells greater than three inch in diameter, the maximum quantity of salute powder per shall not exceed five ounces.

(2) Storage of Aerial Shells not in Mortars:

(a) All fireworks shall be stored and transported according to the requirements of **National Fire Protection Association (NFPA) 1124, Code for the Manufacture, Transportation and Storage of Fireworks** prior to reaching the display site. (See also **CFR Title 27, Part 18, Subparts J and JJ.**);

(b) As soon as the fireworks have been delivered to the display site, they shall not be left unattended nor shall they be allowed to become wet;

(c) All shells shall be inspected upon delivery to the display site by the operator. Any shells having tears, leaks, broken fuses, or showing signs of having been wet shall be set aside and shall not be fired. After the display, any such shells shall either be returned to the supplier or destroyed according to the supplier's instructions;

EXCEPTION: Minor repairs to fuses shall be allowed. Also, for electrically ignited displays, attachment of electric matches and other similar tasks shall be permitted.

(d) Upon delivery to the display site, all shells shall be separated according to size and as to whether they are salutes. Until they are loaded into mortars, shells shall be stored in covered containers such as ready boxes or corrugated cartons meeting U.S. Department of Transportation requirements for the transportation of special fireworks;

(e) During performance of an outdoor display, ready boxes shall be located at a distance of not less than 25 feet upwind from the mortar placements. If the wind should shift during a display, the ready boxes shall be located so as to again, be upwind from the discharge site.

EXCEPTIONS:

-1- When acceptable to the fire authority alternate measures shall be taken.

-2- When there are no shells needing storage during a display, such as for an electrically ignited display, there is no need for ready boxes.

(3) Installation of Mortars:

(a) Prior to placement mortars shall be carefully inspected for defects, such as dents, bent ends, damaged interiors, and damaged plugs. Mortars found to be defective shall not be used;

(b) Mortars shall be positioned so that shells are propelled

away from spectators and over a fallout area. Under no circumstances shall mortars be angled toward the spectator viewing areas;

(c) Mortars shall be buried to a depth of at least 2/3 to 3/4 of their length, either in the ground or in above-ground troughs or drums;

EXCEPTION: Securely positioned mortar racks may be used for the firing of single break shells not exceeding six inches in diameter.

(d) Under conditions when paper mortars may be damaged by placement in damp ground, paper mortars shall be placed inside a moisture-resistant bag prior to placement in damp ground;

(e) Whenever there is the likelihood of ground water leaking into the mortar, the mortar shall be placed inside a water-resistant bag prior to placement in the ground;

(f) Weather-resistant coverings shall be placed over the mouth of mortars whenever there is imminent danger of water collecting in the mortars;

(g) In soft ground, when there is significant danger of the mortars being driven further into the ground when they are fired, sufficient added support shall be placed beneath the mortars;

EXCEPTION: When a mortar is only to be used once, such as for an electrically fired display, added support shall be optional.

(h) Mortars that are buried in the ground, in troughs, or in drums shall be separated from adjacent mortars by a distance at least equal to the diameter of the mortar. Mortars in troughs or drums shall be positioned to afford the maximum protection to the shooter;

EXCEPTION: The requirements shall not apply when electrical firing is used.

(i) If troughs and drums are used, they shall be filled with sand or soft dirt; in no case shall stones or other possible dangerous debris be present;

(j) Whenever more than three shells are to be chain fused, such as for sequential firing, additional measures are required to prevent adjacent mortars from being repositioned in the event that a shell detonates in a mortar, causing it to burst. For buried mortars, this shall be accomplished by placing the mortars with a minimum separation of four times their diameter. For mortars in racks, this shall be accomplished by using mortar racks that have sufficient strength to successfully withstand such a failure;

EXCEPTIONS:

-1- When there is doubt concerning the strength of racks holding chain fused mortars, the separation distances for those racks shall be twice those listed in **Table 1**.

-2- When the separation distance is two times that required in **Table 1**, buried mortars shall be separated by a minimum of one times the internal diameter of the largest mortar in the sequence.

(k) When mortars are to be reloaded during a display, mortars of various sizes shall not be intermixed. Mortars of the same size shall be placed in groups, and the groups must be separated from one another;

(l) When personnel are to be in the immediate area of the mortars during a display, sand bags or other suitable protection shall be placed around the mortars up to the approximate level of the mouth of the mortar in each direction where personnel could be located;

(m) Mortars shall be inspected before the first shells are loaded to be certain that no water or debris has been accumulated in the bottom of the mortar;

(n) Mortars shall be of sufficient strength and durability to safely fire the aerial shells to be used;

(o) Cast iron mortars shall not be used;

(p) Metal mortars shall be either seamed or seamless; however, seamed mortars must be placed such that the seam is facing either right or left as one faces the line of mortars;

(q) Mortars shall be of sufficient length to cause aerial shells to be propelled to safe heights;

(r) A cleaning tool shall be provided for the cleaning of debris from mortars as necessary;

EXCEPTION: When mortars are not to be reloaded during a display, there is no requirement for a cleaning tool.

(s) Numerals indicating the inside diameter of the mortar shall be conspicuously painted or otherwise marked on the top of

all mortars.

(4) Electrical Firing Unit:

(a) The purpose of this section is to provide guidance for the design of electrical firing units to be used when it is decided to electrically fire displays;

(b) At no point shall electrical contact be allowed to occur between any wiring associated with the electrical firing unit and any metal object in contact with the ground;

(c) If the electrical firing unit is powered from AC power lines, some form of line isolation shall be employed (i.e., a line isolation transformer);

(d) The electrical firing unit shall include a key-operated switch or other similar device that greatly reduces the possibility that unauthorized or unintentional firings can occur;

EXCEPTION: When the electrical firing unit is very small in size and attached to the wire running to electric matches for the brief duration of the actual firing, there is no requirement for a key-operated switch.

(e) Manually activated electrical firing units shall be designed such that at least two positive actions must be taken to apply electric current to an electric match. For example, this may be accomplished with two switches in series, both of which must be operated in order to pass current;

(f) Computer-activated automatic sequencing type electrical firing units shall have some form of "dead-man-switch", such that firings will cease the moment the switch is released;

(g) If the electrical firing unit has a built-in-test circuit, the unit shall be designed to limit the test current (into a short circuit) to 0.05 ampere or to 20 percent of the no-fire current of the electric match, whichever is less;

(h) Multi-testers such as Volt-Ohm Meters, shall not be used for testing unless their maximum current delivering potential has been measured and found to meet the requirements of subsection (g) of this section;

(i) When any testing of firing circuits is performed, no person shall be allowed to be present in the immediate area of fireworks that have been attached to the electrical firing unit.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0850

Site Selection and Set-Up (Local Approval Criteria)

(1) The purpose of this section is to provide guidance for clearances upon which the fire and law enforcement authority shall base its approval of the display site. Where added safety precautions have been taken, or particularly favorable conditions exist, the fire and law enforcement authority may decrease the recommended separation distances as it deems appropriate. When unusual or safety threatening conditions exist, the authority shall increase the recommended separation distances as it deems necessary.

(2) The areas selected for the discharge site, spectator viewing area, parking areas, and the fallout area shall be inspected and approved by the fire and law enforcement authority. When more than one person will be igniting the aerial shells for an outdoor fireworks display, it is preferred that the line of mortars be separated in some manner and that only one person be lighting shells in each area.

(3) Distances from health care, detention and correctional facilities shall be at least twice the distance specified in **Table 1**.

(4) Distances from bulk storage areas of materials that have a flammability, explosive, or toxic hazard shall be twice that required by **Table 1**.

NOTE: To determine whether materials are considered to possess these hazards, see **NFPA 325M, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids**, and **NFPA 49, Hazardous Chemicals Data**.

Table 1

**Minimum Radius of Display Site for
Shell Size Outdoor Display of Fireworks**

Less Than 3"	140 ft.
3"	210 ft.
4"	280 ft.
5"	350 ft.
6"	420 ft.
7"	480 ft.
8"	560 ft.
10"	700 ft.
12"	840 ft.
More Than 12"	Approval of fire authority (1200' recommended)

(5) **Figure 1** demonstrates some of the requirements for a suitable display site where mortars are placed vertically, such as may be the case for an electrically ignited display:

(6) The area selected for the discharge of aerial shells shall be located so that the trajectory of the shells shall not come within 25 feet of any overhead object.

(7) Ground display pieces shall be located at a minimum distance of 75 feet from spectator viewing areas and parking areas.

(8) When aerial shells are to be stored at the discharge site for subsequent loading into mortars during the display, mortars shall be placed at least 1/6, but not more than 1/3, the distance from the center of the display site toward the main spectator area. The mortars shall be angled such that any dud shells will fall at a point approximately equal to the offset of the mortars from the center of the display site but in the opposite direction.

(9) **Figure 2** demonstrates some of the requirements for a suitable display site when aerial shells are to be stored at the discharge site for subsequent loading into mortars during the display, such as may be the case for a manually ignited display:

(10) Fireworks shall not be discharged within 100 feet of any tent or canvas shelter.

(11) Fallout area:

(a) The fallout area shall be a large open area;

(b) Spectators, vehicles, or readily combustible materials shall not be located within the fallout area during the public fireworks display.

[Publications: The publication(s) and figures referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0860

Operation of the Public Fireworks Display

(1) The sponsor of the display shall provide adequate fire protection for the display.

(2) The sponsor shall consult with the fire authority to determine the level of fire protection required.

(3) Monitors whose sole duty shall be the enforcement of crowd control shall be located around the display area by the sponsor. The fire authority shall approve the provisions for crowd control.

(4) Monitors shall be located around the discharge site to prevent spectators or any other unauthorized persons from entering the discharge site. The discharge site shall be so restricted throughout the display and until the discharge site has been inspected after the display. Where practical, fences and rope barriers shall be used to aid in crowd control.

(5) During the period before the display, when pyrotechnic materials are present, unescorted public access to the site shall not be allowed.

(6) The operator has the primary responsibility for safety. While the operator is allowed to actively participate in the firing of the display, safety shall be the primary concern.

(7) The operator is responsible for ensuring that a sufficient number of assistants are on hand for the safe conduct of the display. Only the operator and necessary assistants shall be permitted in the discharge area while the display is in progress.

NOTE: In most situations, it is believed that it is appropriate to have

one person tending each ready box or shell storage area in use at a given time. Similarly, it is believed that there should be two persons reloading shells into mortars for each person igniting the aerial shells. Unless racks of chain fused shells are being fired, it generally is believed that a single person can safely ignite no more than about ten shells per minute. If a greater rate of firing is desired, it is appropriate to have more than one person lighting them.

(8) The operator is responsible for ensuring that all assistants are fully trained in the proper performance of their assigned tasks and that they are knowledgeable of safety hazards.

(9) Whenever in the opinion of the fire and law enforcement authority or the operator, an adverse condition exists that significantly affects safety, the display shall be postponed until the condition is corrected.

(10) If in the opinion of the fire or law enforcement authority or the operator, the lack of crowd control poses a danger, the display shall immediately be discontinued until such time as the situation is corrected.

(11) If high winds, precipitation, or other adverse weather conditions prevail, such that in the opinion of the fire authority or the operator, a significant safety danger exists; the display shall be postponed until weather conditions improve to an acceptable level.

NOTE: Changes that occur as a result of sections (9), (10) and (11) of this rule shall meet the requirements of OAR 837-12-740.

(12) Operators and assistants shall use only flashlights or electric lighting for artificial illumination.

(13) No smoking shall be allowed within 50 feet of any area where fireworks or other pyrotechnic materials are present.

(14) Measures shall be taken to protect all fireworks and pyrotechnic materials to be used in the display from adverse weather conditions. Moisture-damaged materials shall not be used.

(15) No person shall be allowed in the discharge area while under the influence of alcohol, narcotics, or drugs that could adversely affect judgment, movement, or stability.

(16) Communication when required by the fire official means the displays shall be provided with a method for notifying the fire authority in event of an emergency. Such method may consist of a telephone or other approved means. Methods of notifying the fire authority shall be readily available to the public.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0870

Loading and Firing of Shells

(1) Shells shall be carried from the storage area to the discharge site only by their bodies, never by their fuses.

EXCEPTION: It generally is believed that it is not safe to be loading mortars within ten feet of mortars that are being fired. When loading a shell into a recently fired mortar, the person should crouch along side the mortar with his back toward the area where shells are being fired.

(2) Shells shall be checked for proper fit in their mortars prior to the display.

(3) When being loaded into the mortars, shells shall be held by their fuses or lowering cord if provided and carefully lowered into the mortar. At no time shall the person loading the shells place any part of their body over the mouth of the mortar.

(4) The person loading shells shall be reasonably certain that the shell is properly seated in the bottom of the mortar.

(5) Shells shall not, under any circumstances, be forced into a mortar too small to accept them. Shells that do not fit properly into the mortars shall not be fired.

(6) The safety cap protecting the fuse shall not be removed by the person responsible for igniting the fuse until immediately before the shell is to be fired.

EXCEPTION: Where electrical ignition is used. The electric matches are attached prior to the display, generally with wires connected to an electrical firing unit during the display. The operator or an assistant ignites the fireworks from the electrical firing unit during the public fireworks display.

(7) Shells shall be ignited by lighting the tip of the fuse with

a fusee, torch, portfire, or similar device. The operator shall never place any part of their body over the mortar at any time. As soon as the fuse is ignited, the operator shall retreat from the mortar area.

EXCEPTION: Alternatively, electrical ignition may be used.

(8) The first shell fired shall be observed carefully to determine that its trajectory is such that the shell functions over the fallout area and that any dangerous debris or unexploded shells will land in the fallout area.

(9) The display shall be interrupted and the mortars shall be re-angled or repositioned as necessary for safety any time during a display.

(10) In the event of a shell failing to ignite in the mortar, the mortar shall be marked in some manner to indicate the presence of an unfired shell, and the mortar shell not be reloaded or reused so long as the misfired shell remains. Immediately following the display but no sooner than 15 minutes after the attempted firing, if the shell still has not fired, the mortar shall be cautiously flooded with water and let stand for a minimum of five minutes before it is cautiously emptied of the shell. The operator shall be knowledgeable in the proper disposal methods.

EXCEPTION: When electrical ignition is used and the firing failure is electrical in nature or the aerial shell was intentionally not fired, the shell may be salvaged by the operator.

(11) It is the responsibility of the person igniting the aerial shells to detect when a shell does not fire from a mortar. That person shall warn others in the area and immediately shall cause the mortar to be marked to indicate the presence of an unfired aerial shell.

EXCEPTION: When electrically firing, it is not necessary to mark the mortar. However, persons entering the area after the fireworks display shall conduct themselves as though unfired shells remain until advised to the contrary by the operator.

(12) Manual re-ignition of chain fused aerial shells shall only be attempted at properly installed ignition points.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93

837-012-0880

Ground Public Fireworks Display Pyrotechnics

(1) To the extent that it is practical, all ground pieces shall be positioned outside of the discharge area of aerial displays.

EXCEPTIONS:

-1- When ground display pieces are to be fired electrically, they can be located in the fallout area.

-2- When aerial shells have been preloaded, ground display pieces can be located in that discharge area.

(2) Dry grass shall be wet down or removed before the display.

(3) Combustible materials shall be removed if deemed a fire hazard by the fire authority.

(4) Poles for ground display pieces shall be securely placed and firmly braced so that they will not fall over during functioning of the firework device.

(5) Specific instructions from the supplier shall accompany all ground display pieces. A list of required accessories also shall be supplied.

EXCEPTION: Specific instructions are not mandatory for outdoor fireworks displays fired under the direct control of an operator.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0890

Site Clean-Up

(1) Following the display, the firing crew shall conduct an inspection of the fallout area for the purpose of locating any unexploded aerial shells. This inspection shall be conducted before any public access to the site is allowed. Any shells found during the search shall not be handled until at least fifteen minutes have elapsed from the time the shells were fired. The fireworks shall then be doused with water and allowed to remain for at least

five more minutes before being cautiously placed in a plastic bucket or fiberboard box. The supplier shall be contacted as soon as possible for disposal instructions.

(2) Mortar inspection and removal shall be conducted upon the elapse of not less than 10 minutes from the completion of ground display to allow for mortar cooldown or misfires.

(3) When fireworks are displayed at night and it is not possible to thoroughly inspect the site, the operator shall ensure that the entire site is reinspected very early the following morning.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0900

Transportation and Storage

(1) Storage of fireworks in residential locations, mini-storage units or other structures is prohibited unless such storage is in accordance with the **Uniform Fire Code**, the **Uniform Building Code**, these rules or requirements of the fire authority.

(2) Applicants shall also provide a complete and detailed description of how and where they will store fireworks in their possession before, during and after the public fireworks display. The description shall include:

(a) The address and location of the storage area(s);

(b) The approximate dates the fireworks will be at each storage area or site, equipment available at or near each storage area or site.

(3) Fireworks may be stored up to a maximum of 30 days prior to the display.

(4) Unused fireworks shall be returned to the wholesaler who provided them within 30 days after the display date.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0910

Prohibited Acts and Limitations

(1) No person(s) shall be allowed in the discharge area while under the influence of alcohol, narcotics, or drugs that could adversely affect judgement, movement, or stability.

(2) No smoking shall be allowed within 50 feet of any area where fireworks or other pyrotechnic materials are present.

(3) Only authorized person(s) will be allowed within the discharge area.

(4) No person shall maintain or allow the existence of a fire hazard at any location under their control where fireworks are stored, transported, sold, or used.

(5) No permit holder shall use:

(a) Any fireworks that have been altered;

(b) Any fireworks other than those supplied and/or distributed by a person with a current Oregon wholesale fireworks permit.

(6) No person who has been cited or arrested for fireworks violations or who has had a fireworks permit suspended, denied or revoked in any jurisdiction shall participate in any manner in the public fireworks display, including storage, distribution, or transportation of pyrotechnics for a period not to exceed three years.

(7) The permit does not authorize the manufacture, sale, use, discharge or possession of fireworks in any city or county in which such devices are prohibited by law or ordinance.

(8) Permit holders shall not use, explode or have exploded any fireworks device that has not been approved, certified or listed for transport by the U.S. Department of Transportation or has a U.S. Bureau of Explosive Temporary Transfer Permit.

(9) Displays shall not be conducted in the event the Office of State Fire Marshal or fire authority has invoked a burning ban.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0920

Records Keeping

(1) Permit holders shall keep a record of each shipment of fireworks received. The record shall include the wholesaler's name, address, display permit number and a list of the fireworks received including the name and quantity of each fireworks.

(2) Upon request, the records for each shipment received shall be readily available for review and inspection by the local fire authority and/or representatives of the Office of State Fire Marshal.

(3) All records shall be clear, legible, accurate and maintained for three years from the date of receipt of the fireworks. The records shall be submitted to the local fire authority and/or the Office of State Fire Marshal upon request.

NOTE: The wholesaler from whom the fireworks were purchased may maintain the records.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0930

Advertisements

(1) No person shall publish or cause to be published:

(a) Any advertisement for distribution to the general public concerning the sale of fireworks which have been declared unlawful by ORS 480.110 to 480.160, or these rules, for residents to purchase, use, store transport, sell, discharge, or possess;

(b) Any advertisement for the sale of items described in ORS 480.127 in any county, municipality or fire protection district that by law or ordinance has declared the sale, use, or possession of such items to be prohibited.

NOTE: The rules in this section concerning advertisements do not apply to any advertising medium which accepts such advertising in good faith, without knowledge of the violation of law or these rules.

(2) Section (1) of this rule, does not apply to advertisements placed in media when the primary distribution of that media is into areas which allow the fireworks even through some secondary distributions of that media may occur into areas which prohibit these items.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0940

Civil and Criminal Enforcement Actions

(1) In addition to denying, revoking and/or suspending permits and certification pursuant to administrative hearing and appeals procedures as specified in law, the Office of State Fire Marshal, fire or law enforcement authority may:

(a) Confiscate, remove or have removed at the violator(s) expense all fireworks offered for sale, used transported, stored, or possessed in violation of these rules; and

(b) Destroy seized fireworks when it has been determined that destruction is necessary for the preservation of public safety or health, that the sale, transport, storage or possession of the seized fireworks was in violation of the laws and rules of the State of Oregon or the ordinances of local municipalities.

NOTE: Upon the confiscation and/or prior to the destruction of any seized pyrotechnics, the person responsible for the confiscation and/or destruction, shall contact the Oregon licensed wholesaler listed on the permit application.

(2) All civil disputes arising as a result of the administration and enforcement of these rules and regulations, shall be referred to the State Fire Marshal who shall be the final administrative authority in all cases.

(3) Violation of any provision of ORS 480.110 through 480.160 and the administrative rules adopted thereto is a Class B misdemeanor. Violations thereof may be prosecuted in state or municipal courts when violations occur within the municipality served thereby. Justice and district courts shall have concurrent jurisdiction with circuit courts in all proceedings arising within ORS 480.110 to 480.160:

(a) The sentence for a Class B misdemeanor shall be for a

definite term and within the maximum limitation of six months or as otherwise provided by ORS 161.615;

(b) The sentence to pay a fine for a Class B misdemeanor shall be to pay any amount not exceeding \$1,000 or \$2,500, as appropriate, and in accordance with ORS 161.635 and 161.655.

(4) If a person has gained money or property through commission of a misdemeanor or violation, then upon conviction thereof, the court, instead of imposing the fine authorized by these rules, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense in accordance with ORS 161.635 and 161.655.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0950

Insurance Requirements

The governing body of any municipality or of any county, may require liability insurance or other form of indemnity deemed adequate by the municipality, or the county, from any person, in a sum not less than \$500, conditioned for payment of all damages which may be caused either to a person or property by reason of the authorized public fireworks display and arising from any acts of any person or agents, employees or sub-contractors of the person.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0960

Fire Protection

Fire extinguishers shall be provided in numbers and locations throughout the public fireworks display site as required by the fire authority.

NOTE: At a minimum, at least two 2A rated water type extinguishers, or equivalent water type extinguishing system, or an alternative determined by the fire authority shall be provided.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92

837-012-0970

Reports for General Displays

(1) Following each general display, the operator in charge of the display shall complete a report on forms provided by the Office of State Fire Marshal, submit to the State Fire Marshal, and certify the information contained in the report is accurate within ten days of the display. Certification and/or future permits may be denied, suspended, and/or revoked for false reporting.

(2) At a minimum, each report shall contain the following:

(a) The printed name, signature, mailing address, certification number and telephone number of the operator in charge completing the report;

(b) Name of company, organization, or person to whom the permit was issued;

(c) The number assigned to the permit by the Office of State Fire Marshal;

(d) The date and time of day the display was actually held;

(e) The location of the display. Include address and/or description sufficient to locate;

(f) A list of *all* fireworks discharged including the size and number of shells and set pieces;

(g) A list of *all* operators that assisted in assembling, discharging, and/or supervising the display. The list shall include the name, certification number, and description of duties performed for each operator;

(h) A list of *all* assistants that assisted operators with the display. The list shall include the name, mailing address, social security number, telephone number, and a description of duties performed for each assistant;

(i) A list of *all* fireworks that were duds, malfunctioned, or defective. For each firework listed, the report shall include, type

of firework, and size of firework if applicable (example six inch shell);

(j) A description of any injuries caused by fireworks authorized by the permit. Each injury shall be listed separately, and shall include the name of the firework that injured the person, cause of the injury, and name, address, age and telephone number of the injured person;

(k) A description of any fires caused by fireworks authorized by the permit. Each fire shall be listed separately and shall include the name of the firework that started the fire, cause of the fire, and brief description of the damage that occurred.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93

Fireworks Citations and Civil Penalty Assessments

837-012-1000

Authority and Application

(1) These rules are promulgated under the State Fire Marshal's authority contained in ORS 476.030 and 480.165.

(2) These rules apply to any person who violates any provision of ORS 480.110 through 480.165 and the rules adopted thereto including, but not limited to, those for public fireworks displays, agricultural use of fireworks, wholesale and retail sales of fireworks, special effect fireworks, and/or manufacturing of fireworks.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1010

Purpose and Scope

(1) These rules establish the basis and process by which citations and penalties will be determined and issued for violations of ORS 480.110 through 480.165 and the rules adopted thereto.

(2) These rules provide for fire authorities, as defined in ORS 476.060, to issue citations and proposed penalties.

(3) Each violation(s) is classified and penalty (ies) assessed according to violation type and instance.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1020

Effective Dates

OAR 837-012-1000 through 837-012-1110 are effective upon date of filing.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1030

Definitions

(1) "Citation" means a document issued by the Office of State Fire Marshal or a fire authority pursuant to ORS 480.165 to issue a civil penalty for a violation of ORS 480.110 through 480.165 and rules adopted thereto. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(2) "Fire Authority" means those local fire officers, constables, and others as described in ORS 476.060(1).

(3) "Fireworks" shall mean those pyrotechnic devices and items described in ORS 480.110(1).

(4) "Formal Hearing" is a hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion and order issued.

(5) "Hazard" means a condition which could result in fire loss injury or damage to a person or property.

(6) "Hearings Request" means the written request for a formal hearing to contest a civil penalty.

(7) "Informal Hearing" is a conference to discuss if there is a

basis for informal disposition of a civil penalty by stipulation, agreed settlement, or other means.

(8) "Instance" means the number of times a person has been cited. These are identified as 1st, 2nd, and 3rd instances.

(9) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

(10) "Pyrotechnic(s), Pyrotechnic Device(s), or Pyrotechnic Item(s)" means any combination of materials, which by the agency of fire, produce an audible, visual, mechanical, or thermal effect designed and intended to be used for industrial, agricultural, personal, educational, entertainment or recreation purposes. The term includes, but is not limited to, agricultural and wildlife fireworks, fireworks, exempt and allowed fireworks, illegal fireworks, novelty and trick noisemakers, model rockets, emergency signaling devices, public display fireworks, and special effect fireworks.

(11) "State Fire Marshal" means the State Fire Marshal or his/her administrative designee.

(12) "Type" means the classification of a violation, i.e., least, minimal, moderate, or severe. These are identified as Type I, II, III or IV.

(13) "Violation" types shall mean:

(a) "Least Violation" means a Type I violation which poses very little hazard or threat;

(b) "Minimal Violation" means a Type II violation which poses a minor hazard or threat;

(c) "Moderate Violation" means a Type III violation which poses a significant hazard or threat;

(d) "Severe Violation" means a Type IV violation which poses a substantial hazard or threat.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1040

General

(1) These rules establish civil penalty criteria for Types I, II, III and IV violations and the instances for each type of violation.

(2) These rules apply to persons who violate the requirements of ORS 480.110 through 480.165 or OAR Chapter 837, Division 12.

(3) Fire authorities may apply these rules per ORS 476.060.

(4) A citation describing the violation(s) and assessed penalty(ies) shall be issued to persons in non-compliance with ORS 480.110 through 480.165 or OAR Chapter 837, Division 12.

(5) Each separate instance of noncompliance with ORS 480.110 through 480.165 or OAR Chapter 837, Division 12 shall be considered a separate violation.

(6) Each day that a violation continues shall be considered a separate violation.

(7) The distribution, sale, use, manufacture, or possession of any amount of illegal fireworks is prohibited and subject to citation and penalty.

(8) In addition to the issuance of citations and penalties under these rules, the State Fire Marshal and fire authority acting in accordance with ORS 476.060 and 480.154(2) and OAR 837-012-0560(1)(a) and 837-012-0675(1)(a):

(a) May confiscate any amount of illegal fireworks; and

(b) May confiscate other fireworks possessed by persons violating ORS 480.110 through 480.165 and OAR Chapter 837, Division 12.

(9) In addition to the issuance of citations, penalties, and the confiscation of fireworks, the State Fire Marshal may also revoke, suspend, or deny any fireworks permit provided for under ORS 480.110 through 480.165 to any person who fails to pay a penalty(ies) assessed under these rules.

(10) The penalty for each violation shall range from \$0 to \$500 a day depending upon the type and instance of the violation.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS
 Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1050

Violation Types, Instances, and Penalty Assessments

(1) Penalties shall be assessed according to violation type and instance in **Table 2** and OAR 837-012-1130 through 837-012-1160, except as provided in OAR 837-012-1100.

(2) The types of violations are:

- (a) Least — Type I;
- (b) Minimal — Type II;
- (c) Moderate — Type III;
- (d) Severe — Type IV.

(3) The violation instance is determined based on the number of times a person has committed a violation.

TABLE 2

Penalties*

Violation Type	Violation Instance		
	1	2	3
Type I. Least	Warning	\$25	\$75
Type II. Minimal	\$25	\$75	\$150
Type III. Moderate	\$75	\$150	\$250
Type IV. Severe	\$125	\$250	\$500

***Table 2** is a *guidelines* for penalty assessments. Also refer to OAR 837-012-1130 through 837-012-1160.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1060

Issuance of Civil Penalty Citation and Forwarding to the Office of State Fire Marshal

(1) Local fire authority, pursuant to ORS 476.060, shall have the authority to issue civil penalty citations for violation of ORS 480.110 through 480.165 and/or OAR Chapter 837, Division 12.

(2) A citation may impose a penalty or provide a warning (OAR 837-012-1050, Table 2).

(3) The citation shall be forwarded to the Office of State Fire Marshal within ten days of issuance. Where possible, each citation shall be accompanied by a copy of the issuing authority's written report, inspection sheets, Fire District Property Report (or evidence receipt — Form #920-021-06) or any other forms that are completed during the process of issuing citations.

(4) The Office of State Fire Marshal shall issue a notice of civil penalty based upon the information contained in the citation and any accompanying documentation.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1070

Hearings

(1) Any person may request a hearing regarding the assessment of a civil penalty.

(2) Hearings requests shall be filed at the Salem Office of State Fire Marshal within 20 days from the date of service of the notice of civil penalty.

(3) Any person who requests a hearing shall be entitled to a hearing.

(4) The hearing process may include:

(a) An informal conference to discuss if there is a basis for informal disposition of a civil penalty by stipulation, agreed settlement, or other means;

(b) A formal hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion and order issued.

(5) The formal hearing shall be conducted as a contested case hearing according to the provision of the Administrative

Procedures Act (APA) ORS 183.413 to 183.470.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1080

Informal Conference

(1) The Office of State Fire Marshal will provide an opportunity for a person to informally discuss a civil penalty that has been assessed against them.

(2) An informal conference may be requested prior to a request for a formal hearing; however, a formal hearing shall be requested within 20 days of the date of service of the notice of civil penalty.

(3) The request for an informal conference may be in any form; and

(a) Shall be addressed to the Office of State Fire Marshal; and

(b) Shall clearly state the subject to be discussed.

(4) An informal conference concerning civil penalties *shall not* extend the 20 days allowed for filing a formal hearing request.

(5) If the parties agree, an informal conference may be held by telephone.

(6) As the result of an informal conference, the State Fire Marshal may, for good cause, amend, withdraw, or reduce a civil penalty. Such action is done in accordance with the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1090

Formal Hearing

(1) A person may request a formal hearing at any time before or after an informal conference, as long as the 20 day period for requesting a hearing has not lapsed.

(2) The Office of State Fire Marshal will arrange for a hearings officer to conduct the formal hearing.

(3) The Office of State Fire Marshal will set a date, time, and location for the formal hearing.

(4) The Office of State Fire Marshal will notify, by letter, the person requesting the hearing (or their designated representative) of the date, time, location, and the hearings officer conducting the formal hearing.

(5) The hearings officer will hear the case and render a proposed opinion and order, including recommended findings of fact and conclusions of law, according to the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

(6) The formal hearing shall be conducted as follows:

(a) The hearings officer will act as an impartial third party;

(b) It is not necessary for the person that requested the hearing to be represented by legal counsel;

(c) The Office of State Fire Marshal may or may not elect to be represented by legal counsel;

(d) Testimony shall be taken under oath;

(e) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible;

(f) Hearsay evidence is admissible if it meets statutory standards for being reliable and trustworthy.

(7) The proposed opinion and order shall be reviewed by the State Fire Marshal and, if accepted, finalized and issued as a final order.

NOTE: Final orders shall be forwarded to the authority issuing the citation within ten days of signing of the Final Order.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1100

Penalty Adjustments

(1) The assessment or adjustment of penalties for amounts other than those set by OAR 837-012-1050 shall be done only by

the State Fire Marshal through a hearings process either formally or informally.

(2) The assessment of penalties not in conformance with OAR 837-012-1050 may be made only after considering:

- (a) The gravity and magnitude of the violation;
- (b) The person's previous record;
- (c) Such other considerations as the State Fire Marshal may consider appropriate.

(3) During a formal hearing or informal conference, the Office of State Fire Marshal may modify or adjust the citation, cited violations, or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1110

Judicial Review

Judicial review of an agency order made after a hearing shall be provided according to ORS 183.480 or 183.497.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1120

Payment of Civil Penalty

(1) The penalty shall be paid to the Office of State Fire Marshal within ten days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) Penalties not paid within ten days after the order becomes final may be recorded with the county clerk in any county in Oregon.

(3) Upon recording of the penalty, the county clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1130

Type I Violations

(1) Type I violations are subject to penalties ranging from \$0 to \$75 a day depending upon instance and in accordance with OAR 837-012-1050(3).

(2) Examples of Type I violations include but are not limited to:

- (a) Failure to post "No Smoking" signs at the retail fireworks sales stand;
- (b) Failure to provide required fire extinguishing equipment at the retail fireworks sales stand;
- (c) Failure to maintain a clean, orderly area within 20 feet of the retail sales area;
- (d) Failure to keep a copy of the retail sales permit at the retail sales stand while the stand is open;
- (e) Possession of illegal fireworks worth less than \$50.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1140

Type II Violations

(1) Type II violations are subject to penalties ranging from a warning to \$150 a day depending upon instance and in accordance with OAR 837-012-1050(3).

(2) Examples of Type II violations include but are not limited to:

- (a) Failure to have a person 18 years of age or over inside the retail sales stand during business hours;
- (b) Omission of the required wholesale permit number, address and name of the wholesaler on any fireworks shipped within or into the State of Oregon;
- (c) Omission of the name of the retail sales permit holder and

retail sales permit number on fireworks cartons, containers, cases, and associated paperwork purchased by the permit holder and shipped within or into the State of Oregon;

(d) Possession of more than \$50 but less than \$100 worth of illegal fireworks;

(e) Discharge of less than \$50 worth of illegal fireworks;

(f) Smoking or the ignition of fireworks within 50 feet of any fireworks stand.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1150

Type III Violations

(1) Type III violations are subject to penalties ranging from \$75 to \$250 a day depending upon instance and in accordance with OAR 837-012-1050(3).

(2) Examples of Type III violations include but are not limited to:

(a) Possession of \$100 or more of illegal Class C fireworks;

(b) Sale of any amount of Class C fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(c) Sales of allowed fireworks to a person who is under 54 inches tall (this does not apply to persons over 12 years of age);

(d) The purchase of fireworks by an Oregon retail permit holder from an unlicensed wholesaler;

(e) Purchase of any amount of Class C fireworks without the necessary permits issued by the Office of State Fire Marshal or, where required, the local authority having jurisdiction;

(f) Manufacturing or altering any fireworks;

(g) Storage of any amount of Class B fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(h) Use of fireworks in a manner that presents a danger to life or property.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

837-012-1160

Type IV Violations

(1) Type IV violations are subject to penalties ranging from \$125 to \$500 a day depending upon instance and in accordance with OAR 837-012-1050(3).

(2) Examples of Type IV violations include but are not limited to:

(a) Possession of \$50 or more of Class B fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(b) Conducting a public fireworks display without the necessary permits and/or pyrotechnician certification issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(c) Purchase of any amount of Class B fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(d) Conducting the sale of any amount of Class B fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(e) Conducting a public display using illegal or unauthorized fireworks;

(f) Intentional or indiscriminate use of fireworks which injure someone or cause more than \$250 in property damage;

(g) Wholesale sales of fireworks without an Oregon wholesale permit;

(h) Storage of fireworks by a wholesaler in an unapproved location.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

DIVISION 20

FLAMMABLE AND COMBUSTIBLE LIQUIDS

Flammable Liquid Dispensing Regulations

[ED. NOTE: Previous rules in Division 20 were adopted and repealed by Administrative Orders FM 14, FM 39, and FM 54.]

837-020-0025

Scope and Application

These rules are being promulgated to assist owners of dispensing facilities, government officials and officers of the court in the interpretation and application of ORS 480.310 through 480.385.

Stat. Auth.: ORS Ch. 476 & 480.380

Stats. Implemented: ORS

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0035

Definitions

(1) "Container" shall mean all types of portable containers.

(2) "Dispensing" shall mean the transfer of a flammable liquid from a facility to a motor vehicle or container.

(3) "Dual Operations Facility" shall mean a facility at which Class 1 flammable liquids are dispensed at retail and nonretail.

NOTE: A dual operations facility is also a nonretail facility.

(4) "Equivalent Documentation" shall mean: Current federal income tax schedules F or C filed with the Internal Revenue Service, (a current Schedule F or C shall mean one which covers the tax year immediately preceding the most recent federal tax filing deadline date), a business license issued by a local government, licenses, permits or other documents issued by State or Federal Government that show the business status of the licensee, or similar documentation. Out of date or expired documents or licenses do not constitute equivalent documentation.

(5) "Facility" shall mean any service station, card-lock station, key-lock station, dual-operations station, conditional use facility, garage or other commercial location where the dispensing of flammable liquid occurs.

(6) "Flammable Liquid" shall mean any liquid with a flash point below 25 degrees Fahrenheit, closed cup test, capable of powering a motor vehicle.

(7) "Motor Vehicle" shall mean, but not be limited to, all vehicles, vessels, watercraft, aircraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(8) "Owner" shall mean any person or business entity, operator or employe having control over any facility where the dispensing of flammable liquids occurs. The term does not generally include members of associations or cooperatives, or general shareholders of corporate entities.

(9) "Nonretail Customer" shall mean a legitimate business enterprise, a government agency or nonprofit or charitable organization.

(10) "Nonretail Facility" shall mean an unattended or dual operations facility where Class 1 flammable liquids are dispensed through a card or key activated fuel dispensing device by nonretail customers.

NOTE: A dual operation facility is also a nonretail facility.

(11) "Person" shall mean each and every individual other than owners, including employees of nonretail customers, who dispense flammable liquids at a nonretail facility.

(12) "Verifiable Documentation" shall mean original or certified copies of written evidence which will clearly substantiate any certification or requirement of this division.

(13) "Uniform Fire Code (UFC)" shall mean the Uniform Fire Code as adopted and revised by the Office of State Marshal on a periodic basis.

(14) "Retail Facility" shall mean a facility that sells Class 1

Flammable liquids to the general public in compliance with ORS 480.330.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); FM 2-1995, f. 10-11-95, cert. ef. 10-16-95

837-020-0040

Nonretail and Conditional Use Operations - General

(1) In addition to other applicable provisions of law, each nonretail and conditional use facility shall:

(a) Have signs visible from each driveway access point directing customers to the "retail" and/or "nonretail" pump islands. Such signs shall be readily visible, be at least 3 feet by 4 feet in size, and have a minimum of 6 inch letters on a contrasting background;

(b) Where retail and nonretail dispensing of Class 1 Flammable Liquids occurs during the same hours, have nonretail pump islands separated from retail pump islands by a space of at least 50 feet;

(c) Unless separated by 50 feet, retail and nonretail dispensing shall not occur during the same hours at a facility;

(d) Have drainage grades or curbs so situated so as to prevent spills from flowing towards building or other pump islands;

(e) Have locations and instructions for the operation of emergency controls clearly and conspicuously posted;

(f) Have instructions for the operation of nonretail dispensing devices clearly and conspicuously posted;

(g) Have locations and instructions for all fire extinguishers clearly and conspicuously posted;

(h) Be adequately lighted at all times when available for use;

(i) Be equipped with a telephone, or other communications device, to request assistance if an emergency occurs. Telephone or other communications devices shall not require the use of a coin, credit card, etc. in order to be used; and

(j) Comply with all applicable provision of the UFC.

(2) After August 15, 1992, nonretail and conditional use facilities subject to the provisions of this division shall have customer warning signs posted. These signs shall:

(a) Be readily visible from each flammable liquid dispensing pump and easily readable by those with average eyesight from a distance of ten feet;

(b) State that it is a violation of law, subject to penalty, to dispense flammable liquids without first receiving the training required by the rules; and

(c) At nonretail facilities state that it is a violations of law, subject to penalty, to dispense flammable liquids for personal use or into vehicles or containers not owned and used by a business, government, non-profit, or charitable organization;

(d) Where retail and nonretail dispensing is separated only by time, have signs visible from each driveway access point and each flammable liquid dispensing pump stating what hours and days are retail operations and what hours and days are nonretail operations. Such signs shall be readily visible, be at least 3 feet by 4 feet in size, and have a minimum of 6 inch letters on a contrasting background.

(3) At least 45 days prior to the start of intended operations each new facility covered by this Division shall file the appropriate license application forms and certifications with the Office of State Fire Marshal.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); FM 2-1995, f. 10-11-95, cert. ef. 10-16-95

837-020-0045

Operation of Flammable Liquid Dispensing Device by Public Prohibited

No owner of a facility where flammable liquids are dispensed at retail shall allow any person other than owners and their

employees, when acting in their professional capacity to use or manipulate any pump, hose, pipe or other device used at the facility to dispense flammable liquids into a fuel tank of a motor vehicle or container.

EXCEPTION: Persons other than owners, operators and employees of the dispensing facility may be authorized to dispense flammable liquids at non-retail facilities if such persons meet the requirements of this Division.

Stat. Auth.: ORS Ch. 476 & 480.380

Stats. Implemented: ORS

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers

Notwithstanding ORS 480.330 and 480.340 or OAR 837-20-045, persons, other than owners, may be authorized to dispense flammable liquids at nonretail facilities only under the following conditions:

(1) The owner of the facility holds a valid nonretail facility license issued by the State Fire Marshal under OAR 837-020-0085 or 837-020-0110;

(2) The nonretail customer meets the quantity of purchase criteria established under ORS 480.345 and 480.360, and OAR 837-020-0060;

(3) The nonretail customer provides to the owner a federal employer identification number or equivalent documentation to indicate participation in a legitimate business enterprise or employment with a government agency or nonprofit or charitable organization;

(4) The person dispenses only into the fuel tank of a motor vehicle or other container owned and used in the course of business by the entity specified in section (3) of this rule;

(5) The person has received and satisfied the safety training requirements of OAR 837-020-0055; and

(6) The nonretail customer and the owner of the nonretail facility has entered into a written agreement which meets the requirements of OAR 837-020-0070.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0055

Fire Safety Training

(1) Owners of non-retail facilities shall provide an initial fire safety training course to each person authorized to dispense flammable liquids at their facilities. The training may be delivered through any suitable means which assures dispenser competence and shall be provided prior to allowing the person to dispense flammable liquids.

(2) The training described in section (1) shall include, but not be limited to, instruction on:

(a) The chemical properties and hazards of all forms of flammable liquids to be dispensed by the person receiving the training;

(b) The location and operation of emergency cut-off switches required under the **UFC**;

(c) The no smoking set-back requirements of the **UFC**;

(d) Procedures for contacting the local fire department and other emergency service organizations; and

(e) The use of the owner's fire extinguishers required under the **UFC**.

(3) Owners of non-retail facilities shall also provide annual refresher training to all persons authorized to dispense flammable liquids at their facility. Such training may be delivered through any suitable means which assures continuing dispenser competence.

(4) Persons who wish to dispense flammable liquids at non-retail facilities shall successfully complete the fire safety training described in sections (1) and (2) of this rule prior to engaging in

dispensing operations. Competency shall be maintained as long as the person continues to dispense flammable liquids.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480.380

Stats. Implemented: ORS

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0060

Quantity of Purchase Criteria

(1) Except as provided below, after April 1, 1992, each nonretail customer who wishes to dispense Class 1 flammable liquids at a nonretail facility must file verifiable documentation with the owner that the nonretail customer will purchase at least 2,400 gallons of Class 1 flammable liquids or diesel fuel every 12 months for business, government, nonprofit, or charitable purposes.

(2) The 2,400 gallons may have been purchased from any source.

(3) Accounts which do not meet the requirements of this section shall be terminated by the nonretail facility operator.

(4) Nonretail customers who wish to dispense Class 1 flammable liquids at a nonretail facility are not required to meet the provisions of this section if:

(a) The nonretail customer provides verifiable documentation that the fuel qualifies as a deductible farming expense on the nonretail customer's federal income tax return; or

(b) The fuel was purchased by a governmental agency providing fire, ambulance or police services; or

(c) The nonretail customer was a customer of the nonretail facility on and since June 30, 1991, and is otherwise qualified under OAR 837-020-0050.

(5) Nonretail account holders who do not have 12 months of account history as of April 1, 1992, must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 437-020-0060 within 12 months after the account was established.

(6) After April 1, 1992, nonretail account applicants must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 437-020-0060 within 12 months after the account was established.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0065

Certification and Record Keeping

(1) Each owner of a nonretail or conditional use facility shall certify in writing that each person who is authorized to dispense flammable liquids at the owner's nonretail or conditional use facility has successfully completed the safety training required by OAR 837-020-0055 and is competent to safely dispense flammable liquids.

(2) Owners of nonretail and conditional use facilities shall maintain electronic or hard copy documentation which is readily accessible to show compliance with this Division.

NOTE: Failure to provide the required safety training, makes the necessary certifications or to maintain the documentation required by this Division is prima facie evidence that the owner was negligent in the operation of the facility and/or in violation of this Division.

Stat. Auth.: ORS Ch. 476 & 480.380

Stats. Implemented: ORS

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0070

Nonretail and Conditional Use Customer Agreements

(1) Owners of nonretail and conditional use facilities shall enter into written agreements with each nonretail customer wishing to dispense flammable liquids.

(2) The agreements required under section (1) of this rule

shall include at a minimum the following certifications by the nonretail customer:

(a) The nonretail customer meets or exceeds the purchase criteria established under ORS 480.345 and 480.360, and OAR 837-020-0060;

(b) The nonretail customer is a legitimate business enterprise or a government agency or a nonprofit or charitable organization;

(c) That all persons authorized to dispense under the agreement will do so only into the fuel tank of a motor vehicle or other container owned and used by the entity specified in subsection (b) of this section; and

(d) That all persons authorized to dispense under the agreement have satisfied the safety training requirements of OAR 837-020-0055.

(3) The requirements of subsections (2)(a) and (b) of this rule do not apply to conditional use nonretail customer agreements.

(4) Any certifications required by this section shall be made under ORS 162.075.

NOTE: Under ORS 162.075 it is a crime to make a false statement, knowing it to be false. Upon conviction for making a false statement, a defendant is subject to a penalty of up to \$2,500 in fines and/or one year in jail.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0075

Complaint and Enforcement Procedures

(1) Alleged violations at dispensing facilities shall be investigated by the State Fire Marshal, Deputy State Fire Marshal, or authorized representative.

(2) Upon request of the State Fire Marshal, Deputy State Fire Marshal, or authorized representative, owners shall be able to demonstrate that all persons dispensing flammable liquids at their facilities meet the applicable requirements of this Division.

(3) Owners of retail and nonretail facilities who fail to meet the applicable requirements of this Division may be subject to the enforcement and closure provisions of ORS 479.170 in addition to the provisions in OAR 837-020-0125.

(4) The State Fire Marshal may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with this Division or any other applicable rule of the State Fire Marshal.

Stat. Auth.: ORS Ch. 476 & 480.380

Stats. Implemented: ORS

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0085

Nonretail Facility License

(1) Except as provided in OAR 837-020-005 and 837-020-0110, a nonretail facility shall not operate without a valid nonretail facility license issued by the State Fire Marshal.

(2) A separate nonretail facility license is required for each facility.

(3) Any license issued under this section shall be valid upon issue and shall expire September 30, 1992. Thereafter, nonretail facility licenses shall be valid for the period October 1st, or upon issue, to the following September 30th.

(4) The State Fire Marshal shall issue a nonretail facility license to the owner/applicant if the owner/applicant has:

(a) Submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(b) Certified that the applicant will comply with the provisions of ORS 480.345, the UFC and this Division;

(c) Attached a copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;

(d) Paid an application fee of \$250 for each facility site and \$5 for each customer as required by OAR 837-020-0115.

(5) Any and all certification required by this section shall be

made under ORS 162.075.

(6) The owner/applicant shall bear the burden of production and proof that the requirements of this Division, and of any other applicable rule of the State Fire Marshal, have been satisfied.

(7) The State Fire Marshal may conduct an on-site inspection to determine compliance with this Division and other applicable fire and life safety laws prior to issuing a nonretail facility license to the owner/applicant under section (4) of this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0095

Nonretail Facility Conditional Use License

(1) A nonretail facility may permit persons who are not otherwise qualified under OAR 837-020-0050 to dispense Class 1 flammable liquids if all conditions specified in this section are satisfied.

(2) After investigation and public hearing, and after considering the comments of local residents and government officials, the State Fire Marshal may issue a conditional use license to an owner/ applicant if the State Fire Marshal finds:

(a) There is no facility where Class 1 flammable liquids are dispensed by attendants at retail, including dual operations, within 7 miles of the owner/applicant's nonretail facility and other undue hardship conditions exist. Such undue hardship conditions shall be determined on a case by case basis and may include, but are not limited to, road conditions, and volume and type of traffic in the effected area;

(b) The owner/applicant has submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(c) The owner/applicant has certified that the owner/applicant will comply with the applicable provisions of ORS 480.345 and this Division;

(d) The owner/applicant has attached a copy of the form required by OAR 837-020-0070 that will be used as the written agreement between the owner and customers which outlines the safety training and emergency procedures to be used at the facility;

(e) The owner/applicant has paid an application fee of \$250 as required by OAR 837-020-0115 for each facility site and \$5 for each customer; and

(f) The cards, keys or other access means for the conditional use facility do not allow the user to access any other nonretail or conditional use facility.

(3) Where a license is issued under this section, the license requirements of OAR 837-020-0085 do not apply.

(4) A conditional use license shall be valid upon issue and shall expire 365 days later unless otherwise suspended, revoked or canceled.

(5) Any and all certifications required by this section shall be made under ORS 162.075.

(6) The owner/applicant shall bear the burden of production and proof that the requirements of this Division, and of any other applicable rule of the State Fire Marshal, have been satisfied.

(7) Within a given geographical area, applications for conditional use licenses issued under this section shall be considered in order of priority of receipt. The date the State Fire Marshal actually receives the application shall determine its priority.

NOTE: A conditional use license may not be renewed if the requirements of this section are not met at the time of application for renewal. In other words, there is no guarantee of continued operations under this section. Investment decisions should be made accordingly.

Stat. Auth.: ORS 480.355

Stats. Implemented: ORS 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); FM 2-1995, f. 10-11-95, cert. ef. 10-16-95

837-020-0105

License Refusals, Revocations and Sus-pensions; Appeals

(1) The State Fire Marshal may revoke or suspend, or refuse to issue or renew, a general or conditional nonretail facility license if the State Fire Marshal finds the owner/applicant:

(a) Falsified the application for the license; or

(b) Failed to comply with any applicable provision of this Division or any other applicable rule adopted by the State Fire Marshal.

(2) Where the State Fire Marshal has alleged a self-service violation at a facility, the burden of production and proof to show the purchase was lawful shall shift from the state to the defendant owner once the state establishes:

(a) The date and time of the alleged violation;

(b) The precise location of the alleged violation;

(c) The vehicle description and license number; and

(d) The description of the person dispensing the Class 1 flammable liquids.

(3) Any owner who applies for a license required by this Division, and whose application is denied, is entitled to file an appeal. Such appeals shall be conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(4) Before suspending, revoking or terminating a license issued under this Division, the State Fire Marshal shall give prior notice to the licensee and offer a hearing. If requested, such hearings shall be conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(5) Where the State Fire Marshal proposes to assess a civil penalty under ORS 480.385 and this Division, appropriate notice of appeal rights shall be given under ORS 480.385.

(6) Judicial review of a final order made after a hearing requested under section (1) or (2) of this rule shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(7) Nothing in this section shall prevent the State Fire Marshal from closing a facility under ORS 479.170 provided that the accelerated appeals process explained in ORS 479.180 is observed.

(8) Where a nonretail account list has been submitted to the State Fire Marshal during enforcement or appeal proceedings, the State Fire Marshal shall treat the list as confidential to the extent allowed by law.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0110

Dual Operations Facility License

(1) Every dual operations facility shall hold a valid nonretail facility license granted under OAR 837-020-0085 before allowing nonretail customers to dispense.

(2) A separate nonretail facility license is required for each dual operations facility.

(3) Any license issued under this section shall be for the period October 1st, or upon issue, to the following September 30th.

(4) The State Fire Marshal shall issue a nonretail facility license to the owner/applicant if the owner/applicant has:

(a) Submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(b) Certified that the applicant will comply with the applicable provisions of provisions of ORS Chapter 480, the UFC and this Division;

(c) Attached a copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;

(d) Paid an application fee of \$250 as required by OAR 837-020-0115; and

(e) Paid a \$5 per account fee under OAR 837-020-0115(6) unless previously paid under a nonretail facility license for the same license year;

(f) Where retail and nonretail dispensing is separated only by

time, the owner/applicant shall provide to the State Fire Marshal the specific hours and days when the owner/applicant proposes to conduct only retail dispensing and the specific hours and days when the owner/applicant proposes to conduct only nonretail dispensing.

(5) The State Fire Marshal may conduct an on-site inspection to determine compliance with this Division, and other applicable fire and life safety laws, prior to issuing a dual operations facility license to the owner/applicant under subsection (4) of this section.

(6) Any and all certifications required by this section shall be made under ORS 162.075.

(7) The owner/applicant shall bear the burden of production and proof that the requirements of this Division and of any other applicable rule of the State Fire Marshal have been satisfied.

Stat. Auth. ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); FM 2-1995, f. 10-11-95, cert. ef. 10-16-95

837-020-0115

Application and Annual Fees

The fees associated with this Division shall be as follows:

(a) The nonretail facility license application fee for the period October 1, 1991, or upon issue, through September 30, 1992 shall be \$250 per site;

(b) The conditional use nonretail facility application fee for the period October 1, 1991, through September 30, 1992 shall be \$250 per site;

(c) The nonretail facility license application fee for the period October 1, or upon issue, through September 30 of the following year shall be \$250 per site; and

(d) The conditional use nonretail facility application fee for the period October 1, or upon issue, through September 30 of the following year shall be \$250 per site.

(2) In addition to the application and renewal fees assessed by this section, owners of nonretail, and conditional use facilities shall pay to the State Fire Marshal an annual account fee of \$5 for each nonretail customer who either:

(a) Has a written agreement with the owner at the time the site license is granted or renewed. Fees assessed under this subsection shall become due and payable upon the granting or renewal of the site license; or

(b) Enters into a written agreement with the owner while the license is in effect.

(3) Fees assessed under this section shall become due and payable upon the earliest date of either a license renewal or termination.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

837-020-0125

Penalties

(1) The State Fire Marshal may impose a civil penalty of up to \$500 for each violation of ORS 480.310 through 480.385, this Division or any other applicable rule adopted by the State Fire Marshal.

(2) Each and every time a person, owner, or operator dispenses or allows dispensing of Class 1 flammable liquids in violation of this Division constitutes a separate violation.

(3) If a person fails to comply with any subpoena issued under OAR 837-020-0075(4), a judge of the circuit court or any county, upon application of the State Fire Marshal, shall compel obedience by proceedings for contempt.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92)

LIQUEFIED PETROLEUM GAS

[ED. NOTE: Administrative Order FM 22 repealed FM 17 (previous rules 837-30-005 through 837-30-035).]

837-030-0005 [Renumbered to 837-030-0100]

837-030-0010 [Renumbered to 837-030-0130]

837-030-0015 [Renumbered to 837-030-0130]

837-030-0020 [Renumbered to 837-030-0130]

837-030-0025 [Renumbered to 837-030-0130]

837-030-0030 [Renumbered to 837-030-0140, 0150, 0160, 0170, 0180, 0190, 0200 and 0210]

837-030-0035 [Renumbered to 837-030-0230]

837-030-0060 [Renumbered to 837-030-0035(3)]

837-030-0065 [Renumbered to 837-030-0035(4)]

837-030-0070 [Renumbered to 837-030-0035(5)]

837-030-0100

Purpose And Scope

(1) The purpose of these rules is to implement the standards, policies and procedures for liquefied petroleum gas for the protection and safety of the public and persons using or handling liquefied petroleum gas, pursuant to the authority vested in the State Fire Marshal by ORS 476.030 and 480.320.

(2) The scope of these rules apply to the implementation of the statutes in ORS 480.410 through 480.460 relating to liquefied petroleum gas.

(3) These rules establish application, examination, reporting inspection criteria, and other requirements for liquefied petroleum gas.

Stat. Auth.: ORS Ch. 476 & 48.

Stats. Implemented: ORS 480.410 through 480.460

Hist.: FM 22, f. 11-15-65; FM 1-1981, f. 7-20-81, ef. 8-1-81; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert.e f. 11-14-95; Renumbered from 837-30-005

837-030-0110

Effective Dates

(1) OAR 837-030-0100 through 837-030-0280 are effective upon date of filing for permanent adoption.

Stat. Auth.: ORS 480.420

Stats. Implemented: ORS

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0120

Definitions

(1) For the purpose of these rules, the following definitions apply to OAR 837-030-0100 through 837-030-0280.

(2) "Application" means the forms required by the Office of State Fire Marshal to be completed and submitted to the Office of State Fire Marshal.

(3) "Bulk Plant" or "Terminal" means that portion of a property where liquefied petroleum gas is received by tank vessel, pipelines, tank car or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquid by tank vessel, pipeline, tank car, tank vehicle, portable tank or container.

(4) "Company representative" means a person who has passed the installation examination administered by the Office of State Fire Marshal and represents the installation company at a specific site.

(5) "Delivery Unit" means any unit that is used to deliver and/or transport liquefied petroleum gas.

(6) Examination means a document designed to test an

applicant's knowledge regarding liquefied petroleum gas, its properties, related equipment and/or applicable safety regulations.

(7) "Fitter license" means a license issued to a person who performs liquefied petroleum gas fitting or gas venting work, installs, repairs or remodels any piping or venting, installs or repairs, connects, or disconnects any liquefied petroleum gas appliance.

(8) "Installation license" means a license issued to a company or business (hereinafter referred to as company) that engages in or works at the business of installing, extending, altering or repairing any liquefied petroleum gas appliance or piping, vent or flue connection.

(9) "License" shall mean the official written permission granted by the State Fire Marshal for the purpose of working in the liquefied petroleum gas business.

(10) "Liquefied petroleum gas" means any liquid composed predominately of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes.

(11) "Truck Equipment Operator license" means a license issued to a person who operates liquefied petroleum gas delivery equipment installed on a motorized vehicle (delivery unit).

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.410

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0130

Fire And Life Safety Standards

(1) The following National Fire Protection Association Standards (NFPA) are hereby adopted by reference and are the Standards on which the examinations referenced in these rules will be primarily based:

(a) **NFPA 54 - National Fuel Gas Code; (1992 edition);**

(b) **NFPA 58 - Storage and Handling of Liquefied Petroleum Gases (1995 edition); and**

(c) **NFPA 59 - LP Gases at Utility Gas Plants (1995 edition).**

(2) Whenever the following phrases or abbreviations appear in the above referenced standards, they shall mean the following:

(a) Authority Having Jurisdiction means the State Fire Marshal;

(b) **National Electrical Code** means the **Oregon Electrical Specialty Code**; and

(c) **NFPA** means the **National Fire Protection Association**.

(3) The Oregon State Fire Marshal has adopted the **Uniform Fire Code, Article 82 (Liquefied Petroleum Gas)** and **Uniform Fire Code Standard 82-1 (NFPA 58-1989 edition)** as amended for inspection and enforcement of liquefied petroleum gas installations pursuant to ORS 476.030(1) and ORS 480.420(1). (Refer to Oregon Administrative Rule 837, Division 40.)

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.420

Hist.: FM 22, f. 11-15-65; FM 59, f. 2-25-72, ef. 3-15-72; FM 62, f. 6-14-73, ef. 7-1-73; FM 66, f. 2-20-75, ef. 3-11-75; FM 1-1981, f. 7-20-81, ef. 8-1-81; FM 6-1985, f. & ef. 9-20-85; FM 1-1987, f. & ef. 3-18-87; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert.e f. 11-14-95; Renumbered from 837-30-010, 837-30-015, 837-30-020 & 837-30-025

837-030-0140

Licenses Required

(1) An Installation license is required for any company engaged in the business of installing, extending, altering or repairing any liquefied petroleum gas appliance or piping, vent or flue connection.

(2) A Fitter license is required for any person performing liquefied petroleum gas fitting, venting, installation or repair.

(3) A Truck Equipment Operator license is required for any person operating delivery equipment on liquefied petroleum gas delivery units.

(4) Any person required to have a Fitter and/or Truck Equipment Operator license is also required to have an Installation

license unless the person is an employee of an employer who has an Installation license.

(5) Company licenses are not transferable. When a company transfers ownership, the new company shall complete the licensing process the same as any other new company.

(6) Fitter and/or Truck Equipment Operator licensees may transfer from company to company without relicensing.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.432

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0150

Installation (Company) License (Company Representative)

(1) Each business or dealership location shall obtain a separate company license.

(2) Each business or dealership location shall have a company representative unique to that location.

(3) To qualify the company for a company license, a person (company representative) at each business or dealership location shall pass a written examination, as detailed in OAR 837-030-0190, and administered by the Office of State Fire Marshal, with a score of 80 percent or more of the questions answered correctly.

(4) If the company representative transfers or resigns employment with the company, the State Fire Marshal shall be notified, in writing, within two weeks of the transfer or resignation. The new company representative shall meet examination requirements within 60 days of the last date of employment of the preceding company representative.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.432

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0160

Fitter License

(1) Any person performing liquefied petroleum gas fitting, venting, installation or repair shall obtain a Fitter license.

(2) To qualify for a fitter license, a person shall pass a written examination, as detailed in OAR 837-030-0190, and administered by the Office of State Fire Marshal, with a score of 80 percent or more of the questions answered correctly.

(3) A person may work under probationary status only as detailed in OAR 837-030-0190.

(4) A Fitter may transfer their license to another company.

(5) The Office of State Fire Marshal shall be notified in writing within two weeks of employment by the new company that the Fitter's license is to be transferred.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.432

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0170

Truck Equipment Operator License

(1) Any person operating liquefied petroleum gas delivery truck equipment shall obtain a Truck Equipment Operator license.

(2) To qualify for a truck equipment operator license, a person shall pass a written examination, as detailed in OAR 837-030-0190, and administered by the Office of State Fire Marshal, with a score of 80 percent or more of the questions answered correctly.

(3) A person may work under probationary status only as detailed in OAR 837-030-0180.

(4) A Truck Equipment Operator may transfer their license to another company.

(5) The Office of State Fire Marshal shall be notified in

writing within two weeks of employment by the new company that the Truck Equipment Operator's license is to be transferred.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.432

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0180

Probationary Status (On-The-Job Training)

(1) Persons who desire to obtain a Fitter and/or Truck Equipment Operator license may work up to 60 days of on-the-job training.

(2) The 60 days of training shall be actual work days. (For the purposes of tracking a person's probationary status, work days shall be considered to be Monday through Friday unless the company submits documentation to the State Fire Marshal of another work schedule.)

(3) On-the-job training for Fitters shall be under the supervision of a licensed Fitter.

(4) On-the-job training for Truck Equipment Operators shall be under the supervision of a licensed Truck Equipment Operator.

(5) Persons receiving on-the-job training shall pass the written examination required under OAR 837-030-0190 and obtain their license(s) after not more than 60 days probationary period of on-the-job training.

(6) Any person who exceeds the 60 days probationary status time, and has not yet obtained their fitter and/or truck equipment operator license(s), shall immediately cease working as a fitter and/or truck equipment operator until such time as they have obtained the required license(s).

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.435

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0190

Examinations

(1) Persons applying for Installation (company), Fitter, and/or Truck Equipment Operator licenses shall pass a written examination, administered by the Office of State Fire Marshal, with a score of 80 percent or more of the questions answered correctly.

(2) Examinations for Fitter and Truck Equipment Operator licenses shall assess the person's knowledge of liquefied petroleum gas, its properties, related equipment, and applicable codes, statutes and safety regulations.

(3) Fitter and Truck Equipment Operator examinations have a three (3) hour time limit.

(4) Installation (company) examinations have a one (1) hour time limit.

(5) Examinations for Installation (company) licenses shall assess the person's knowledge of applicable codes, statutes, and safety regulations.

(6) Examinations are open book, however, all examinations are required to have an on-site examination proctor that is present throughout the examination process to assure that appropriate testing processes are adhered to. No person completing an examination shall use any information other than the information referenced in these rules to complete the examination, nor shall they use any other means to obtain a passing score on the examination.

(7) Examinations will be based primarily on the standards referenced in OAR 837-030-0130, Oregon Revised Statutes (ORS) 480.410 through 480.460, ORS 480.990, and OAR 837-030-0100 through OAR 837-030-0280.

(8) All applications to take examinations shall be made on a form provided by the Office of State Fire Marshal.

(9) Upon receipt of a properly completed application, the Office of State Fire Marshal will notify the applicant of a time and

place for examination.

(10) License holders and persons previously licensed are not required to complete new examinations unless a period of two years or more has elapsed from the date of their last license expiration date.

(11) Notification of examination results will be mailed to the company following the completion of the examination process.

(12) The State Fire Marshal reserves the right to disqualify an applicant's examination score for valid cause.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.434

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0200

License Application, Approval, Issuance

(1) All license applications shall be on a form provided by the Office of State Fire Marshal.

(2) License applications shall not be submitted until the applicant has passed the appropriate qualifying examination(s).

(3) The completed Application form shall contain the following:

- (a) Applicant's name,
- (b) Type of License applied for,
- (c) Name and address of the Company,
- (d) Signature of the Company Representative and,
- (e) Company number assigned by the Office of State Fire Marshal.

(4) Applications shall be accompanied by the appropriate license fee(s).

(5) Upon approval of the application, a license will be issued and mailed to the company.

(6) Licenses shall be valid for a period of one year from date of issue.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.434

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0210

License Revocation, Suspension, and/or Denial

(1) The State Fire Marshal may revoke, suspend, and/or refuse to issue or renew a license required under ORS 480.410 to 480.460. Any such revocation, suspension, or refusal to issue shall be in conformance with ORS 183.310 to 183.550. Valid cause exists for the revocation, suspension, and/or refusal to issue a license when any of the following occur:

(a) The licensee or applicant deliberately falsifies an application for an examination or license;

(b) Has committed a violation of ORS 162.305;

(c) Has failed to comply with any provision of ORS 480.410 to 480.460;

(d) Has failed to comply with any provision of OAR 837-030-0100 through OAR 837-030-0280;

(e) Has failed to maintain the status required under ORS 480.434; or

(f) Has violated any other provision of the liquefied petroleum gas statutes, administrative rules, or applicable fire and life safety standards.

(2) The period of denial, revocation and/or suspension shall be as follows: Not to exceed three (3) years if the circumstances of the licensee's or applicant's failure to comply with applicable laws and rules pertaining liquefied petroleum gas presented a significant hazard or other public danger.

(3) Licenses are the property of the Office of State Fire Marshal and shall be surrendered upon request of the State Fire Marshal or his assistant.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.435

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95; Renumbered from 837-30-030

837-030-0220

License Renewal

(1) All licenses shall be renewed on or before a date specified by the State Fire Marshal. Such date shall be 30 days after service of written notice by the State Fire Marshal and shall be specified on the renewal application.

(2) License renewal shall be made on a form provided by the Office of State Fire Marshal and shall be accompanied by the appropriate fees.

(3) License renewal shall be valid for a period of one year.

(4) Licenses not renewed by the specified date are subject to a late fee equal to the original license fee.

(5) Licenses not renewed by their expiration date are invalid and the licensee shall cease working until such time as licensing is brought current.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.436

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0230

Motor Fuel Installations (Conversions)/Plan Approval

(1) Any company converting or manufacturing any vehicle or machinery to use liquefied petroleum gas for motor fuel shall obtain the company and fitter licenses as required in OAR 837-030-0140.

(2) Any manufacture of vehicle or machinery, or any conversion of existing vehicle or machinery to use liquefied petroleum gas as motor fuel, shall be in compliance with all applicable liquefied petroleum gas laws, rules and regulations.

(3) All equipment shall be installed in accordance with these regulations and the applicable safety standards as adopted, unless written approval is otherwise granted by the State Fire Marshal.

(4) The State Fire Marshal or his assistant may make on-site inspections of manufacturing plants where liquefied petroleum gas motor fuel systems are being installed to ensure compliance with applicable safety standards.

(5) Any company manufacturing or converting vehicles or machinery to use liquefied petroleum gas as motor fuel may make application for plan approval of a model or prototype to the State Fire Marshal. The application and plans shall include two complete sets of plans which shall show in detail:

(a) The location of all liquefied petroleum gas equipment including containers, fuel lines, carburetion system, vaporizers, and all pertinent equipment; and

(b) The name of the equipment manufacturer and model numbers when available;

(c) Sufficient information to permit the State Fire Marshal to determine compliance or noncompliance with fire and life safety regulations relating to the use of liquefied petroleum gas as motor fuel.

(6) Upon approval, one copy of the plans shall be returned to the applicant with the written approval and a permit number shall be assigned. One copy of the plans shall be retained by the State Fire Marshal;

(7) If the plans are disapproved, the applicant will be notified in writing the reason the plans were disapproved and provided information on how to meet the applicable fire and life safety regulations so the plans may be approved.

(8) All vehicles or machinery manufactured or converted to use liquefied petroleum gas as motor fuel and installing liquefied petroleum gas motor fuel tanks shall be reported to the State Fire Marshal;

(9) The State Fire Marshal shall be notified by the last day of each month by the installation company of all new liquefied petroleum motor fuel installations made during the preceding month.

(10) United States Post Office postmark date shall be used to determine the reporting date.

(11) Notification shall be made on a form (Notice of In-

stallation of Liquefied Petroleum Gas Tank for Motor Fuel) and shall include the following information:

- (a) customer name for whom the conversion was made,
 - (b) address where the vehicle or machinery may be inspected,
 - (c) date conversion was completed,
 - (d) water capacity of tank,
 - (e) signature of fitter who installed tank and their fitter license number,
 - (f) tank serial number,
 - (g) name of company installing tank and their company license number,
 - (h) any other information that may be helpful in locating the tank,
- (12) The company representative shall sign the notice verifying the information is correct, and
- (13) The appropriate tank installation fees shall accompany the Notice of Installation.

EXCEPTION: This section shall not apply to liquefied petroleum gas installations made in manufactured dwellings or recreational vehicles that are constructed or altered in accordance with applicable rules of the Department of Consumer and Business Services.

(14) Any vehicle or machinery manufactured or converted to use liquefied petroleum gas as motor fuel that is found to be in violation of the applicable fire and life safety standards, may be ordered by the State Fire Marshal to be taken out of service. Once out of service, it shall not be placed back in service, sold or offered for sale until all necessary corrections have been made, the State Fire Marshal notified and the vehicle or machinery put back in service by the State Fire Marshal.

Stat. Auth.: ORS Ch. 476 & 480.

Stats. Implemented: ORS 480.450.

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 81, f. & ef. 3-3-76; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert.e f. 11-14-95; Renumbered from 837-30-035

837-030-0240

Reporting Tank Installations

- (1) The State Fire Marshal shall be notified by the last day of each month by the installing company of all new liquefied petroleum gas tank installations made during the preceding month.
- (2) United States Post Office postmark date shall be used to determine the reporting date.
- (3) Notification shall be made on a form (Notice of Installation of Liquefied Petroleum Gas Tank) provided by the Office of State Fire Marshal and include the following information:
 - (a) Customer name for whom the tank was installed;
 - (b) Address where tank was installed;
 - (c) County of installation;
 - (d) Date tank was installed;
 - (e) Water capacity of tank;
 - (f) Tank serial number;
 - (g) Signature of fitter who installed tank and their fitter license number;
 - (h) Name of company installing tank and their company license number;
 - (i) Any other information that may be helpful in locating the tank.
- (4) Tank installation notices shall be accompanied by a summary sheet that details the number and size of tanks installed during the preceding month.
- (5) The company representative shall sign the summary sheet verifying the information is correct.
- (6) The appropriate tank installation fees shall accompany the tank installation notices and summary sheet

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0250

Inspection Of Tank Installations

- (1) State Fire Marshal Deputies or State Fire Marshal

assistants shall inspect a certain number of reported tank installations.

- (2) Inspection records shall be maintained at the Office of State Fire Marshal.
- (3) Tank installation companies shall be notified in writing by an inspection notice when a tank installation is not in compliance with State Fire Marshal requirements.
- (4) The State Fire Marshal shall notify the company of:
 - (a) Necessary corrections to bring the installation into compliance;
 - (b) The number of days (shall not exceed 60 days) the company has to bring the installation into compliance.
- (5) The installing company shall notify the State Fire Marshal that the corrections have been made to bring the installation into compliance, as follows:
 - (a) The date the corrections were made shall be in writing; and
 - (b) Shall be mailed to the Office of State Fire Marshal.
- (6) Corrections not made and/or not reported within the number of days allowed to bring the installation into compliance, are subject to reinspection and a reinspection fee of \$10.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0260

Bulk Storage Sites: Inspections/Notifications

- (1) State Fire Marshal Deputies or State Fire Marshal assistants shall inspect bulk storage sites annually.
 - (2) Inspection records shall be maintained at the Office of State Fire Marshal.
 - (3) The installing company shall be notified in writing by an inspection notice when a bulk site is not in compliance with State Fire Marshal requirements.
 - (4) The State Fire Marshal shall notify the company of:
 - (a) Necessary corrections to bring the installation into compliance;
 - (b) The number of days (shall not exceed 60 days) the company has to bring the installation into compliance.
 - (5) The installing company shall notify the State Fire Marshal that the corrections have been made to bring the installation into compliance, as follows:
 - (a) The date the corrections were made shall be written on the copy of the inspection notice provided to the company;
 - (b) The inspection notice shall be mailed to the Office of State Fire Marshal.
 - (6) Any changes to the bulk site, including but not limited to the installation of one or more additional tanks, removal of one or more tanks, and closure of the site, shall be reported to the State Fire Marshal in writing within two weeks of the change.
- Stat. Auth.: ORS Ch. 476 & 480
- Stats. Implemented: ORS 480.440 & 480.450
- Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0270

Delivery Units: Inspections/Notifications

- (1) State Fire Marshal Deputies or State Fire Marshal assistants shall inspect delivery units annually.
- (2) Delivery units shall be made readily available to the Deputy or assistant for the annual inspection after notification by the Office of State Fire Marshal that the annual inspection is due.
- (3) Inspection records shall be maintained at the Office of State Fire Marshal.
- (4) Companies shall be notified in writing by an inspection notice when a delivery unit is not in compliance with State Fire Marshal requirements.
- (5) The State Fire Marshal shall notify the company of:
 - (a) Necessary corrections to bring the delivery unit into compliance;
 - (b) The number of days (shall not exceed 60 days) the company has to bring the delivery unit into compliance.
- (6) The company shall notify the State Fire Marshal that the corrections have been made to bring the delivery unit into

compliance, as follows:

(a) The date the corrections were made shall be written on the copy of the inspection notice provided to the company;

(b) The inspection notice shall be mailed to the Office of State Fire Marshal.

(7) Any changes to the delivery units, including but not limited to the addition of one or more delivery units to the company, and transfer, sale, disposal, or taking out of service of one or more delivery units shall be reported to the State Fire Marshal in writing within two weeks of the change.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.440 & 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

837-030-0280

Fees/Penalties

(1) Annual fees are:

(a) Installation (Company) License for businesses located in Oregon - \$55;

(b) Installation (Company) License for businesses located outside Oregon - \$220;

(c) Fitter License (located inside or outside Oregon) - \$5 each;

(d) Truck Equipment Operator License (located inside or outside Oregon) - \$5 each;

(e) Bulk Plant Inspection Fee - \$57.50. (Excludes initial inspection during plant construction);

(f) Delivery Unit Inspection Fee - \$24.

(2) Tank Installation Fees are:

(a) Tank with a capacity of 1,000 gallons or less - \$8;

(b) Multiple tanks at the site have a total combined capacity of 200 gallons or less - \$8;

(c) Tank with a capacity of more than 1,000 gallons - \$14.

(3) Reinspection Fees - \$10.

(4) Motor Fuel Tank Installation Fees for each motor fuel tank installed - \$8.

(5) 10 year tank inspection fee - \$14.

(6) Penalty Fees - Reporting tank installations or renewing licenses after the required deadline: Penalty is equal to original fee.

Stat. Auth.: ORS Ch. 476 & 480

Stats. Implemented: ORS 480.436, 480.440, 480.450, & 480.460

Hist.: FM 3-1995, f. & cert. ef. 11-14-95

DIVISION 31

AGRICULTURAL USE OF FIREWORKS OF OREGON

837-031-0005 [Renumbered to 837-012-0305]

837-031-0010 [Renumbered to 837-012-0310]

837-031-0015 [Renumbered to 837-012-0315]

837-031-0020 [Renumbered to 837-012-0320]

837-031-0025 [Renumbered to 837-012-0325]

837-030-0030 [Renumbered to 837-012-0330]

DIVISION 39

ADMINISTRATION OF FIRE PREVENTION PROGRAMS

837-039-0001

Scope and Application

(1) This Division improves fire protection services by:

(a) Eliminating duplication in the administration of state and local fire protection programs;

(b) Giving the regulated community reasonable notice of how governmental subdivisions will enforce fire regulations; and

(c) Providing a procedure to assure that fire codes adopted and administered by local governmental subdivisions are consistent with the minimum standards promulgated by the State Fire Marshal.

(2) This Division includes four program elements:

(a) The application procedures to be used by governmental subdivisions applying for exempt status under ORS 476.030(4);

(b) The evaluation process to be used by the State Fire Marshal to assure that the adoption and administration of local fire codes meet or exceed minimum state standards;

(c) A description of those programs the State Fire Marshal will not delegate to local jurisdictions; and

(d) A description of the appeals process to be used for fire code inconsistency findings, denied applications for exempt status, or for terminations of exempt status.

(3) This Division does not provide for the creation of fully exempt jurisdictions in the State of Oregon.

NOTE: There has been some confusion in past years as to the scope of the exempt jurisdiction program. Although ORS 476.030(4) authorizes the State Fire Marshal to "fully" exempt qualifying local governmental subdivisions from the State's fire laws, the State has not done so. There are some programs which have state-wide impact and are, therefore, more reasonably managed at the state level. See OAR 837-39-050.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0003

Definitions

(1) "Administration" (or "administrative") means the inspection, enforcement and recordkeeping systems used in the management of a fire prevention/investigation program.

(2) "Appeal" means that administrative appeals process which is offered to an aggrieved party by the authority having jurisdiction which:

(a) Assures the aggrieved party is given due process of law;

(b) Is in response to the aggrieved party having received an order from the authority having jurisdiction;

(c) Is requested by the aggrieved party; and

(d) Is consistent with the lawful authority of the authority having jurisdiction.

(3) "Applicant" means a local government subdivision or authority having jurisdiction which has applied to the State Fire Marshal for exempt status or authorization to conduct a fire code enforcement program.

(4) "Assistant" means an Assistant to the State Fire Marshal under ORS 476.060, including, but not limited to, "all fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established".

(5) "Authority Having Jurisdiction" means a local governmental subdivision recognized by the State Fire Marshal under this Division including, but not limited to:

(a) Municipal fire departments operated under home rule charter;

(b) Rural fire protection districts operating under ORS 478.910;

(c) Water supply districts operating under ORS 264.342; or

(d) Public fire protection agencies not described above, and which are subject to the laws of the State of Oregon.

(6) "Board" means the Oregon Fire Standards and Accreditation Board established under ORS 476.840 et seq.

(7) "Delegated Appeals Process" means an administrative appeals process established by an exempt authority which the State Fire Marshal has bound to be the equivalent of a contested case proceeding established under ORS Chapter 183 and the accelerated appeals process established under ORS 479.180.

(8) "Deputy State Fire Marshall" means an employee of the Office of State Fire Marshal charged with providing audits, investigations, inspections, assistance, training, coordination, or evaluations, necessary to implement the statutes and rules administered by the Office of State Fire Marshall in an area or

region of the state.

(9) "Enforcement" means the investigation, inspection, citation, and prosecution of alleged violations of state and local fire protection laws, rules and regulations.

(10) "Fire Code" means all Oregon fire protection statutes, the administrative rules of the State Fire Marshal and local government regulations which are adopted in conformance with this Division.

(11) "Fully Exempt Jurisdiction" means and has the same meaning as used in ORS 476.030(4). There are no fully exempt jurisdictions in Oregon.

(12) "Local Appeals Process" means the administrative appeals process adopted and operated by a local government subdivision under local ordinance or resolution.

(13) "Local Government Subdivision" means a city, county or rural fire protection district whose function includes regulation of building use and occupancy and the administration of fire safety laws, ordinances and regulations.

(14) "Nonexempt Jurisdiction" means a local government subdivision which has not applied for and been granted exempt status by the State Fire Marshal under this Division.

(15) "Partially Exempt Jurisdiction" means a local government subdivision which has received authorization from the State Fire Marshal under this Division to administer specified fire prevention programs within a well-defined geographical area.

(16) "Promulgate" means to lawfully adopt as a state administrative rule, local ordinance or by other means.

(17) "State Appeals Process" means an administrative contested case proceeding under ORS Chapter 183 and, if applicable, the accelerated appeals process established under ORS 479.180.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0010

Applications for Exempt Status

(1) Local government subdivisions seeking exempt status shall submit a written application to the State Fire Marshal which describes in detail the scope of the proposed exemption.

(2) The applicant shall use application forms provided by the State Fire Marshal and must include such other documentation and supportive materials as may be required by the State Fire Marshal.

(3) Within 30 days of receipt of the application, the State Fire Marshal will evaluate the application and, if complete, request a formal advisory from the Board as to the scope of the exempt status which should be granted. The Board's advisory shall not be binding on the State Fire Marshal.

(4) Within 60 days of a request for advisory under section (3) of this rule, the Board shall make an on-site evaluation of the applicant's administrative capabilities and shall advise the State Fire Marshal in writing of:

(a) The scope of exempt status that should be granted; or

(b) That the application should be denied.

(5) Within 30 days of receipt of the Board's written advisory, the State Fire Marshal shall either grant or deny partially exempt status to the applicant.

(6) Once granted, exempt status shall remain in effect:

(a) Unless terminated by the State Fire Marshal for cause under ORS 476.030(4) and OAR 837-039-0100; or

(b) Upon 30 days written termination notice to the State Fire Marshal at the local jurisdiction's unilateral discretion;

(c) Unless there is an unsatisfactory biennial review by the State Fire Marshal of the exempt authority's program and administration.

Stat. Auth.: ORS 476.030

Hist.: FM 3-1978, f. & ef. 6-16-78; FM 5-1978, f. & ef. 9-29-78; FM 2-1988, f. & cert. ef. 2-17-88; FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0015

Minimum Fire Code Requirements

(1) Under ORS 476.120, the State Fire Marshal is

responsible for promulgating state-wide rules and regulations which establish minimum standards for the protection of life and property from the dangers of fire.

(2) To meet this responsibility and to promote uniformity, the State Fire Marshal shall assure that local fire codes are consistent with minimum state standards. Therefore, local government subdivisions, including authorities having jurisdiction, shall not adopt a fire code unless such action:

(a) Adopts by reference the fire code promulgated by the State Fire Marshal; or

(b) Is consistent with state fire protection statutes and, is equal to or more stringent than, the fire code promulgated by the State Fire Marshal.

(3) Nothing in this Division requires a local government subdivision to enact a fire code.

(4) Nothing in this Division shall prevent a local government subdivision from enacting a fire code which is more stringent than the **State Fire Code**, if such local fire code is otherwise lawful.

(5) Where a local fire code has been adopted prior to the effective date of this rule, the authority having jurisdiction which adopted the local code shall provide two current copies to the State Fire Marshal not more than 30 days after the effective date of this amended section.

(6) When an authority having jurisdiction proposes a new local fire code, or intends to amend an existing fire code, after the effective date of this amended section, two copies of the proposed fire code or amendment shall be provided to the State Fire Marshal within 30 days of final adoption. Nothing in this section shall prevent an authority having jurisdiction from submitting a draft of the proposed change to the State Fire Marshal for a pre-adoption evaluation.

(7) The State Fire Marshal shall evaluate the fire codes submitted under sections (5) and (6) of this rule to assure conformity with state fire protection statutes and the minimum standards established by the State Fire Marshal. As part of this evaluation, the State Fire Marshal may request an advisory opinion from the Board under ORS 476.120.

(8) If the State Fire Marshal determines that a fire code submitted under sections (5) and (6) of this rule conforms with minimum state standards, the State Fire Marshal shall issue a consistency finding.

(9) If the State Fire Marshal determines that a fire code submitted under sections (5) and (6) of this rule does not meet minimum state standards, the State Fire Marshal shall:

(a) Notify the authority having jurisdiction of the proposed finding; and

(b) Give the authority having jurisdiction a reasonable opportunity to amend or delete such inconsistencies.

(10) Whenever the State Fire Marshal issues a proposed inconsistency finding under section (9) of this rule, and the authority having jurisdiction disagrees with the proposed finding, the aggrieved party may appeal and request a contested case hearing under ORS Chapter 183 and OAR 837-039-0100. Thereafter, the State Fire Marshal shall process the appeal within a reasonable time.

(11) If an appeal is not filed within 20 days of notification, and if the authority having jurisdiction has failed to delete or amend the inconsistent fire code provision identified by the State Fire Marshal, a final inconsistency finding shall be issued.

(12) Any court hearing a challenge to the validity of an inconsistent local fire code may take judicial notice of a State Fire Marshal's inconsistency finding issued under this section.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS Ch. 79 & 476.030

Hist.: FM 3-1978, f. & ef. 6-16-78; FM 2-1988, f. & cert. ef. 2-17-88; FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0030

Fire Code Administration

(1) The fire code administration programs of authorities having jurisdiction shall conform with the requirements of this division.

(2) Local fire code administration programs shall be limited

to:

- (a) Partially exempt; or
- (b) Nonexempt.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0040

Exemption Criteria

(1) In order to qualify for partially exempt status, applicants shall demonstrate the ability to effectively administer and enforce the fire code sections specified in their application.

(2) To the extent of the proposed exemption, an ability to effectively administer a fire code is demonstrated by meeting or exceeding the qualifications described in this section.

(3) Applicants shall employ an adequate number of qualified fire prevention personnel to:

(a) Inspect all regulated buildings as often as may be necessary in order to provide a reasonable level of fire and life safety;

(b) Except as otherwise provided by law, inspect all institutional, and primary or secondary educational occupancies, not less than once every 12 months;

(c) Make necessary reinspections at appropriate intervals to assure compliance with correction orders issued in response to noted deficiencies; and

(d) Make necessary special inspections as warranted for unusual conditions, including but not limited to, response to complaints of special hazards and special events requiring supervision.

(4) Applicants shall employ fire prevention personnel who are reasonably qualified. Such qualifications shall be demonstrated by:

(a) Being Board certified as a Fire Prevention/ Investigation Officer; or

(b) Having documented training and experience equivalent to Board certification; or

(c) Having documented professional competency equivalent to either subsection (a) or (b) of this section.

(5) Applicants shall demonstrate the ability to assure coordination between all authorities responsible for structural fire safety and fire protection within the applicant's jurisdiction.

(6) Partially exempt jurisdictions shall recognize and protect the due process rights of the regulated community. Therefore, applicants shall:

(a) Have the ability to provide an administrative appeals process upon the request of any party who may receive a fire code compliance order issued by the applicant. Such delegated appeal process shall generally conform to a contested case proceedings described under ORS Chapter 183 unless otherwise provided for by state law; or

(b) Demonstrate the ability to establish and maintain a fire code appeals board generally performing the functions outlined in ORS 476.115. If such Appeals Board meets the criteria established in subsection (5)(a) of this rule, the Board may hear local and delegated appeals and rule on fire code or other issues such as alleged unnecessary hardship, inconsistent regulations, requests for alternate materials or methods, etc.

(7) Where a fire code delegated appeals process or board has been established under section (5) of this rule, applicants shall demonstrate the ability to:

(a) Coordinate the interpretation of state fire laws with the State Fire Marshal to assure uniformity;

(b) Submit a list of hearing officers or board members, including their term of appointment, to the State Fire Marshal. An updated list shall thereafter be submitted annually or upon any change; and

(c) Submit a written summary of the results of any fire code appeal to the State Fire Marshal within 30 days of issuance of a final order.

(8) To the extent of the proposed exemption, applicants shall employ an adequate number of fire investigation personnel to investigate the cause, origin, and circumstances of each fire occurring in the exempt area. Applicants shall demonstrate that

their investigators are reasonably qualified through:

(a) Board certified as a Fire Prevention/ Investigation Officer; or

(b) Having documented training and experience equivalent to Board certification; or

(c) Having documented professional competency equivalent to either subsection (a) or (b) of this section.

(9) To the extent of the proposed exemption, applicants shall employ an adequate number of trained personnel to provide effective fire prevention education for all schools, institutions, and similar occupancies.

(10) To the extent of the proposed exemption, applicants shall demonstrate the ability to maintain records of their fire code administration and delegated appeal activities, investigations or other related functions as follows:

(a) Fire prevention inspection records shall be maintained for at least two years after the life of the structure;

(b) Records of fire code appeals shall be maintained for a period of at least ten years;

(c) Fire investigation records which document a loss of life shall be maintained for a period of 75 years; other investigation records shall be maintained for ten years following the incident;

(d) Records of public fire education programs shall be maintained for a period of five years;

(e) Records of the fire prevention educational program activities shall be maintained for a period of five years; and

(f) Records not described elsewhere in the subsection shall be maintained in a manner consistent with the City Records Retention Schedule published by the Oregon Secretary of State Archives Division.

(11) Applicants shall demonstrate the ability to develop and forward to the State Fire Marshal a written annual report which:

(a) Clearly describes the fire code administration activities of the applicant;

(b) Is on a calendar year basis; and

(c) Will be forwarded to the State Fire Marshal no later than July 1st of the following year.

(12) Once exempt status is granted, to the extent of such exemption, the performance criteria described in this section shall become mandatory duties.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0050

Programs Eligible for Delegation

(1) Except as limited by section (2) of this rule, all fire code administration programs of the State Fire Marshal, including permit, licensing, and fee collection functions, may be delegated to qualified applicants.

(2) As indicated by statutory reference and title, the administration of the following functional areas shall be retained in all cases by the State Fire Marshal:

(a) ORS 453.307 through 453.414, Community Information on Hazardous Substances;

(b) ORS 476.055, State Fire Marshal Fund;

(c) ORS 476.060, Local Constables as Assistants to the State Fire Marshal;

(d) ORS 476.090, Record of Fires;

(e) ORS 476.420, Standardization of Existing Fire Protection Equipment; Exemption;

(f) ORS 476.440, Sale of Nonstandard Equipment Prohibited;

(g) ORS 476.510 through 476.610, Protection of Life and Property from Fire (Emergency Conflagration Act);

(h) Except as otherwise provided in OAR Chapter 837, Division 100, ORS 476.805 through 476.835, Accreditation of Fire Service Personnel;

(i) ORS 476.855, Discretionary Powers of the State Fire Marshal;

(j) ORS 476.900 through 476.925, Forest Fire Protection Equipment Acquisition;

(k) Except as otherwise provided in OAR Chapter 837, Division 40, ORS 480.010 through 480.095, Explosives

Generally;

(l) Except as otherwise provided in OAR Chapter 837, Division 40, ORS 480.200 through 480.280, Application and Use of Certificates of Possession of Explosives;

(m) Except as otherwise provided in OAR Chapter 837, Division 12, ORS 480.130, Permits for Public Fireworks Display;

(n) Except as otherwise provided in OAR Chapter 837, Division 12, ORS 480.150, Permits for Public Fireworks Sales or Displays;

(o) Except as otherwise provided in OAR Chapter 837, Division 12, ORS 480.156, Sales of Fireworks to Out-of-State Residents;

(p) ORS 480.350, Nonretail Facility License;

(q) ORS 480.355, Conditional Nonretail Facility License;

(r) ORS 480.375(2), Audits of Nonretail Facilities;

(s) ORS 480.432 through 480.440 LPG Licensing Program;

and

(t) Those other statutory functions reserved exclusively to the State Fire Marshal.

(3) Although the administration of the functional areas listed in section (2) of this rule are reserved to the State Fire Marshal, nothing in this division prevents an authority having jurisdiction from enforcement of state statutes or the **State Fire Code** if such provisions are not covered in the **Local Fire Code** or are more stringent than the **Local Fire Code**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0060

Nonexempt Jurisdictions

(1) Local government subdivisions who have not applied for and been granted exempt status by the State Fire Marshal operate fire code administration programs in conformance with this division.

(2) Under ORS 476.060, public fire marshals and fire chiefs are designated as Assistant to the State Fire Marshal and enforce the fire code in conformance with this division.

(3) There are three areas of nonexempt enforcement activities:

(a) Responses to imminent life or property threats;

(b) Inspection and enforcement of the state fire code; and

(c) Referrals.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0070

Nonexempt Response to Imminent Life or Property Threats

(1) Whenever an Assistant to the State Fire Marshal in a nonexempt jurisdiction encounters a situation which presents an imminent threat to life or property, the Assistant to the State Fire Marshal shall:

(a) Take such measures as are reasonably necessary to stabilize the situation including, but not limited to closing the building or premises for use or occupancy under ORS 479.170 until such dangerous conditions are remedied; and

(b) Notify the Office of State Fire Marshal.

(2) Any enforcement action taken under this section by an Assistant to the State Fire Marshal shall be considered an act of the State Fire Marshal.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0080

Inspections or Other Activities by Nonexempt Jurisdictions

(1) If an Assistant to the State Fire Marshal in a nonexempt jurisdiction desires to administer a fire prevention program, the Assistant may do so in conformance with this section.

(2) The Assistant to the State Fire Marshal will have a written plan of their fire prevention program which includes and describes the following:

(a) Types of inspection activities;

(b) Frequency of inspections;

(c) Type of enforcement actions that may be taken; and

(d) Record keeping system.

(3) The State Fire Marshal may advise Assistants to the State Fire Marshal with fire prevention inspection and enforcement programs if the requirements of the state fire codes are not being enforced in a uniform manner.

(4) Records will be maintained of all fire code inspections and reinspections, investigations, appeal activities and any other related functions.

(5) If any lawful order of the Assistant to the State Fire Marshal is appealed, the State Fire Marshal shall provide a contested case appeals process under OAR 837-039-0100, unless otherwise provided by law, as follows:

(a) The Assistance to the State Fire Marshal who took the enforcement action which was appealed shall be available and prepared to participate in the appeals process;

(b) The State Fire Marshal shall pursue and present the state through the appeals process; and

(c) The State Fire Marshal shall determine what, if any, orders are to be issued and/or penalties are to be assessed.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0090

Routine Referrals by Nonexempt Jurisdictions

(1) An Assistant to the State Fire Marshal in a nonexempt jurisdiction may request assistance in resolving a fire prevention problem from the regional Deputy State Fire Marshal.

(2) Referral notifications can be by telephone or by written request.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0100

Reviews and Appeals

(1) The State Fire Marshal shall review all approvals issued under this division every two years and may terminate any approval for cause.

(2) If a termination is proposed under section (1) of this rule, the State Fire Marshal shall give the affected jurisdiction written notice at least 30 days before a proposed termination becomes effective.

(3) An affected jurisdiction may appeal in writing any refusal of the State Fire Marshal to grant an approval or a proposed termination.

(4) Upon receipt of an appeal under section (3) of this rule, the State Fire Marshal shall initiate an administrative appeals process. The process shall conform to the contested case provisions of ORS Chapter 183.

(5) The results of the appeals process conducted under section (4) of this rule shall be final and thereafter not appealable.

Stat. Auth.: ORS 476.030

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-039-0110

Certification Requirements for Plan Review

(1) These rules establish standards for certification of fire officials who review plans, new construction, alterations, and specifications from a **Uniform Fire Code**.

(2) All fire officials who review plans, new construction, alterations, and specifications shall obtain a **Uniform Fire Code** certification within one year of March 1, 1994. The **Uniform Fire Code** certification test is given by International Fire Code Institute (IFCI) on a continuing basis. The fire official must apply to IFCI to take the test.

(3) The State Fire Marshal shall maintain a roster of **Uniform Fire Code** certified fire officials. A current list of **Uniform Fire Code** certified fire officials will be provided to each building jurisdiction annually. All fire officials who review plans shall provide documentation of certification to the building official. Certification must be maintained to continue participation in the plan review process.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the State Fire Marshal.]
Stat. Auth.: ORS 455.150
Hist.: FM 3-1994, f. & cert. ef. 3-1-94

DIVISION 40

FIRE AND LIFE SAFETY REGULATIONS

[ED. NOTE: Previous Division 40, OAR 837-40-005 through 837-40-200, consisted of the following Administrative Orders of adoption, amendment, and/or repeal: FM 13, 21, 23, 24, 25, 26, 27, 29, 31, 32, 33, 36, 41, 44, 45, 46, 48, 49, 50, 51, 53, 55, 60, and 61.]

837-040-0001

Scope

(1) The **Uniform Fire Code** and these Oregon amendments represent a total scope of regulation.

(2) None of the individual articles in the **Uniform Fire Code** and Oregon amendments are stand alone requirements.

(3) The provisions of these articles are not retroactive for existing facilities unless the chief determines that the condition presents a distinct hazard to life or property.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]
Stat. Auth.: ORS 476.030
Stats. Implemented: ORS
Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-040-0010

Adoption of the Uniform Fire Code

The **1994 edition of the Uniform Fire Code** as promulgated by the International Fire Code Institute is hereby adopted as the **Oregon Uniform Fire Code** subject to the exclusions therefrom and amendments thereto as hereafter set forth in these regulations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]
Stats Auth.: ORS 476.030, Ch. 479 & 480
Stats. Implemented: ORS 476, 479 & 480
Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-40-005, Section (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; FM 6-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92); FM 2-1996, f. 1-22-96, cert. ef. 4-1-96

DIVISION 41

FIRE PROTECTION REGULATIONS RELATING TO INSTITUTIONAL CARE FACILITIES

Exitway Protection

837-041-0050

Exitway Protection — General Provisions

(1) "High Life Hazard" definition:

For the purpose of this rule, a "high life hazard" is any condition, or combination of conditions, where a reasonably adequate level of exiting safety has not been provided for the building occupants in the event of a fire or fire-related emergency.

(2) All existing buildings and structures (other than institutional, group care and single family dwelling occupancies) which constitute a high life hazard to the occupants in the event of a fire or fire-related emergency shall be improved to provide a reasonably adequate level of exiting safety through substantial compliance with the requirements for new construction under the **Oregon State Structural Specialty Code and Fire and Life Safety Code**, or any of the following methods or combinations thereof which the State Fire Marshal or deputy approves for the building or structure:

(a) An automatic sprinkler system utilizing pipe sizing and head spacing as specified in **N.F.P.A. Standard No. 13, 1980**

Edition, installed throughout the complete exit system and inside of every unprotected opening into the exit system. The system shall be connected to a proven water supply capable of supplying at least 5 sprinkler heads simultaneously for not less than 20 minutes at a residual pressure of not less than 15 psi at the highest head in the system. The sprinkler system shall be fitted with a swing check valve on the supply side and a fire department connection along with a water flow detection device that sounds an alarm on the premises or is connected into the building fire alarm system, except that the fire department connection may be omitted when waived by the authority having jurisdiction;

(b) An automatic particles of combustion fire detection system engineered specifically for life safety and early warning, installed throughout the premises as specified in **N.F.P.A. Standard No. 72-A, 1979 Edition**. Heat detectors may be installed in place of particles of combustion detectors in mechanical service rooms, storage rooms, kitchens, custodial closets, and areas not normally occupied or traversed by people. The fire detection system shall be interconnected with a building evacuation fire alarm system.

EXCEPTION: In Group E Occupancies, detectors shall not be required in classrooms normally under the direct supervision of a staff member.

(c) An approved direct means of egress from each room opening to the outside at ground level. Windows may be accepted if they are easily openable, provide a clear opening with the least dimension of 24 inches, and have a minimum clear opening of not less than 5.7 square feet; the maximum sill to ground level not to exceed 4 feet and suitable means are provided for the occupants to use the opening.

EXCEPTION: In Group E Occupancies, direct exterior exits shall consist of doors, landings, and necessary stairs or ramps complying with the **State Building Code**, except that outswinging casement windows equipped with a latch or lock requiring no key, special effort, or knowledge may be allowed if the opening is a minimum of 24 inches in width, 5 feet in height and is provided with sill-height landings 30 inches square, and access from floor to landing and from landing to grade is by way of stairs which have a maximum rise of nine (9) inches and are equipped with code-complying handrails.

(d) Any other plan submitted by the owner, lessee, agent or occupant and certified by a registered engineer of the State of Oregon of reasonably adequate expertise in fire and life safety, which will provide a reasonably adequate level of exiting safety from the building or structure in the event of a fire or fire-related emergency.

(3) In determining whether a building or structure constitutes a high life hazard and in determining whether to approve a method of improvement, the State Fire Marshal or deputy shall determine whether the level of hazard is unreasonable by considering among other factors the following:

- (a) Type of construction;
- (b) Type of use;
- (c) Type and density of occupancy;
- (d) Type of contents and equipment;
- (e) Fire division walls creating horizontal exits;
- (f) Compartmentation;
- (g) Areas of refuge;
- (h) Ceiling height;
- (i) Corridor and stair construction;
- (j) Alarm, communication and detection systems;
- (k) Fire suppression systems;
- (l) Exit design and fire escapes;
- (m) Automatic smoke control; and
- (n) Fuel loading.

(4) The State Fire Marshal or deputy shall submit to the owner, lessee, agent or occupant written findings setting forth the facts supporting the determination that a high life hazard exists. Except as provided in ORS 479.170, the owner, lessee, agent or occupant shall have 60 days after receipt of such findings to propose the method of improvement to the State Fire Marshal or deputy, who shall have 60 days thereafter to approve or disapprove of the proposed method of improvement. If the proposed method of improvement is disapproved by the State Fire Marshal or deputy, a written owner, lessee, agent or occupant within such

60 day period.

(5) Except for governmental subdivisions fully exempt under ORS 476.030(4), the owner, lessee, agent or occupant aggrieved by the determination that the building or structure constitutes a high life hazard or by the disapproval of the proposed method of improvement (hereafter the order) and desires a hearing, the owner, lessee, agent or occupant may complain or appeal in writing to the State Fire Marshal within ten days from the service of the written findings of a high life hazard or the statement of reasons for disapproval of the proposed method of improvement. The complaint or appeal shall set forth the specific grounds of the complaint and appeal and no other grounds shall be considered thereafter. The complaint or appeal shall be accompanied by a fee of \$40 payable to the State Fire Marshal, and the State Fire Marshal may refer the complaint or appeal to the Regional Appeal Advisory Board established for that region by notifying the chairman of that board and sending a copy of the notice to the complainant or appellant. The Board shall fix a time for a hearing and notify the complainant or appellant of the time and place thereof which shall be within ten days after such referral by the State Fire Marshal. If the State Fire Marshal does not refer the matter to a Regional Appeal Advisory Board, the State Fire Marshal shall fix a time and place, not less than five and not more than ten days thereafter, when and where the complaint or appeal will be heard by the State Fire Marshal. Within ten (days after receiving a recommendation from the Regional Appeal Advisory Board, or if no referral was made to such Board, within days after the hearing before the State Fire Marshal, the State Fire Marshal may affirm, modify, revoke or vacate the order. If the State Fire Marshal affirms the order, the State Fire Marshal shall fix the time within which the owner, lessee, agent or occupant shall comply with the requirements of this rule. If the State Fire Marshal vacates or revokes the order, or modifies it in any particular other than extending time for compliance, the fee paid with the complaint or appeal shall be refunded. Otherwise, it shall be credited to appropriate state funds, and the State Fire Marshal shall so notify the State Treasurer.

(6) If the complainant or appellant under section (5) of this rule is aggrieved by the final order of the State Fire Marshal, the complainant or appellant may, within ten days thereafter, appeal to the circuit court of the county in which the building or structure is situated, in the manner provided in ORS 479.180(2).

(7) In governmental subdivisions fully exempt under ORS 476.030(4), the owner, lessee, agent or occupant, aggrieved by the determination that the building or structure constitutes a high life hazard or by the disapproval of the proposed method of improvement, and desires a hearing, the owner, lessee, agent or occupant may complain or appeal in writing to the Board of Appeals as provided by the ordinance and rules of the governmental subdivision.

(8) Commentary:

(a) Upgrading deficient exit facilities should always be of primary concern in any occupancy, but it must be recognized that there are degrees of deficiency from a very slight or negligible hazard to what is defined as a high life hazard under this rule. Fire officials should not equate the level of exiting safety required for new construction under the current building code with the reasonably adequate level of exiting safety required by this rule. The intent of this rule is to allow the continued use of existing buildings which provide a level of exit safety that substantially comply with the requirements for new construction under the current building code or use one of the alternatives to come within the range of reasonable safety that the public should be provided;

(b) Rather than looking strictly to the current standard for new construction under the building code, fire officials must use their own best judgment on a case-by-case basis as to reasonableness of the degree of hazard and adequacy of exit safety after evaluating all of the relevant factors stated in the rule and any other factors unique to the building or structure. The written findings required by the rule should list and analyze the relevant factors so that if the determination of the fire official is appealed, a written record of the reasons for the determination will be available for review;

(c) While fire and life safety must be given primary consideration, the determination of whether the existing level of hazard is unreasonable requires the fire official to consider the cost of the possible improvements in relation to the benefits provided by increased exiting safety from such improvements. The cost benefit analysis should be considered in deciding which methods of improvement to approve once the determination of high life hazard has been made;

(d) The rule has been amended to provide greater flexibility in the method of improvement of deficient buildings. The fire official must not approve any proposed plan of improvement unless it will provide the reasonably adequate level of exiting safety required. While the fire official is not expected to plan the method of improvement for the building owner, much time will be saved if the fire official will actively assist the building owner or the owner's engineer in finding the least expensive method of improvement providing the reasonably adequate level of exiting safety;

(e) Substantial compliance with the requirements for new construction under the current building code will often be impossible or so expensive as to be impractical. The approval for one or more of the remaining three alternatives should always be given on a case-by-case basis after a consideration of all of the same factors considered in determining that the building constitutes a high life hazard and after balancing the costs against the benefits provided by the different methods. For example, in a hotel or apartment building the existence of a passive occupancy where cooking, portable space heaters, smoking in bed and other such activities create a significantly higher risk of undetected and/or uncontrolled fire incidents, the fire official might justifiably refuse to approve any plan that does not include significant use of automatic sprinklers. In contrast, where an active occupancy is involved such as in an office building, approval might be given for a plan of improvement consisting of horizontal exits and areas of refuge;

(f) In approving a plan of improvement, the fire official will require a commitment to a date of completion for the improvements, but will allow a sufficient period for completion;

(g) Once the improvement has been completed, unless there is a significant change in one or more of the factors considered in the determination of a high life hazard, no further improvements will be required under this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476

Hist.: FM 68, f. 5-2-75, ef. 5-25-75; FM 7-1981, f. & ef. 11-5-81

DIVISION 43

FIRE PROTECTION REGULATIONS RELATING TO EXISTING GROUP CARE FACILITIES

837-043-0005

Purpose and Scope

For the purpose of correcting deficiencies in State Fire Protection regulations and to assure a reasonable degree of life safety from fire in Group Care Facilities as defined herein and existing on the effective date of these regulations, basic fire protection shall be provided as follows:

(1) Within 12 months after the effective date of these regulations, an approved manual and particles of combustion fire alarm system shall be provided. Detectors shall be installed in all sleeping rooms and exitways of Class A, B, or C Group Care Facilities as defined in OAR 837-043-0010(1)(a), (b), and (c).

(2) Within 24 months after the effective date of these regulations, an approved automatic fire suppression system shall be installed in all portions of the exit system and inside every unprotected opening exposing interior exitways and any other points necessary to insure the protection of exitways in Class A Group Care Facilities.

EXCEPTION: Automatic fire suppression system is not required in facilities classified as Class A and housing only persons designated

Level I (see OAR 837-43-010(1)) because of mental conditions in regulations of the Health Division, Department of Human Resources, as they existed on January 11, 1975.
Stat. Auth.: ORS Ch.
Hist.: FM 70, f. 7-18-75, ef. 8-11-75

837-043-0010

Definitions

(1) "Level" means the degree of disability of the residents to be served:

(a) Level I — A mildly handicapped individual who is not impaired in his/her ability to make reasonable decision to take prudent action with respect to health or fire safety and self-preservation and is capable of responding on his/her own, without assistance, to a signal device to depart a building in an emergency situation;

(b) Level II — A handicapped individual who is considered to be capable of responding positively for self-preservation in emergency situations, and who would require 24-hour supportive services.

(2) "Group Care Facilities" are defined as structures not licensed as homes for the aged, housing more than five persons of any age, and not members of the same family, and:

(a) Class A. Used for the lodging and care of ambulatory persons who may be handicapped to a degree which makes total self-dependence either impossible or undesirable, but who possess sufficient faculties to recognize an emergency situation and to react immediately and positively to attain self preservation;

(b) Class B. Used for the lodging and supervision of persons who are not handicapped whose place of residence therein is dictated by an authorized and duly responsible governmental agency exercising legal restraint over the occupant; and

(c) Class C. Child care facilities providing temporary care of children, where the ratio of supervision is less than 1 to 10 or staff members are allowed to sleep.

(3) "Handicap" is defined as:

(a) A physical condition which is certified by competent medical personnel as making it unlikely that a person could escape the building in a fire emergency; or

(b) A mental condition certified by competent mental health personnel as being Level I or II as defined in regulations of the Health Division, Department of Human Resources, as they existed on January 11, 1975.

(4) "Temporary Care" is defined as the care of any individual child for less than 24 hours in any one day.

(5) "Approved Automatic Sprinkler System" is defined as being a system wherein the piping layout and head spacing follows the standard of the National Fire Protection Association as contained in **N.F.P.A. Standards No. 13, Edition of 1975** entitled "**Sprinkler Systems**" which is by this reference adopted and made a part hereof. Except that such a system may be supplied by an unrestricted two-inch supply or domestic water service, or an on-site reservoir or tank, where such service is capable of flowing at least five standard heads simultaneously on the highest protected floor for a period of not less than 20 minutes at a residual pressure of not less than 15 pounds per square inch. Automatic sprinkler heads shall be installed in all exit corridors, stairways, inside room openings, or other openings which face on interior exitways, and any other points necessary to assure the protection of the exitways. Single head location shall be no more than six and no less than four feet inside such openings except that when side-wall sprinkler heads are used they shall be located above the opening on the room side. Components of the system shall include an approved O.S. & Y. valve, swing check valves, pressure gage, fire department connection, main drain, inspectors test at remote end of system, and fire alarm water flow switch interconnected to the building fire alarm system.

(6) "Fire Alarm System" is defined as being an approved electrically supervised manual and particles of combustion detection system that has the provision for emergency backup power capable of operating the system for a period of eight (8) hours in the event of the failure of public utility power. The fire alarm system shall be installed in compliance with the **National**

Fire Protection Association Standard No. 72A, Edition of 1974 entitled "**Local Signal Systems**" which is by this reference adopted and made a part hereof. Where an automatic sprinkler system is required by these regulations, the sprinkler water flow alarm shall be electrically interconnected with the building fire alarm system.

NOTE: Plans are required to be submitted to the authority having jurisdiction before installation of automatic sprinkler and/or fire alarm systems.

(7) Building Construction defined. Buildings for any of the above uses shall be in substantial compliance with the requirements for Group H occupancies and shall be limited to the types of construction set forth in Tables 5C and 5D and shall not exceed, in area or height, the limits specified in **Sections 505, 506, and 507** of the **State Building Codes**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch.

Hist.: FM 70, f. 7-18-75, ef. 8-11-75

DIVISION 44

"NO SMOKING" SIGNS IN PUBLIC ELEVATORS

837-044-0005

"No Smoking" Sign in Elevators Used by the Public

The building owner in which an elevator is used by the public shall:

(1) Post a "No Smoking" sign in each elevator.

(2) The sign shall be in a conspicuous location near the control panel of each elevator car, no lower than five and one-half feet from the floor.

(3) The sign shall be printed in plain block letters of bright or contrasting color with minimum dimensions of one-inch height and three-sixteenths inch stroke.

Stat. Auth.: ORS Ch.

Hist.: FM 73, f. & ef. 1-26-76

DIVISION 45

SMOKE DETECTORS

837-045-0005

Purpose and Scope

(1) To provide improved safety for Oregon residents from fire, approved smoke detectors shall be installed in dwelling units, lodging houses, dormitories, hotels, or any other structure intended for sleeping purposes. Owner-occupied dwellings shall be provided with an approved smoke detector upon change of owner-ship. An approved smoke detector shall be provided in other than owner-occupied dwellings by July 1, 1980.

(2) Hotels shall provide a minimum of one smoke detector for the hearing impaired per 75 rooms rented or portion thereof for sleeping purposes. Hotels shall provide smoke detectors for hearing impaired persons by January 1, 1990.

Stat. Auth.: ORS Ch. 476 & 479

Hist.: FM 2-1980, f. & ef. 3-20-80; FM 6-1989(Temp), f. & cert. ef. 12-15-89; FM 2-1990, f. & cert. ef. 6-1-90

837-045-0010

Approved Detectors

(1) Any smoke detector which has been tested and listed by Underwriters Lab-oratories, Inc., Factory Mutual, or any testing laboratory recognized by the State Fire Marshal, and complies with the **Uniform Fire Code with Oregon Amendments** and which is installed in accordance with its listing.

(2) Smoke detectors for hearing impaired persons shall, in addition, have a strobe light that, when activated, emits a white light. The light pulse device shall be tested and listed in accordance with UL Standard 1638 (effective October 22, 1984). The light shall be sufficient to warn a hearing impaired person of

fire or smoke, or shall be listed by a nationally recognized testing laboratory for the particular purpose of alerting the deaf and hearing impaired in the event of a fire.

(3) Smoke detectors for hearing impaired persons, or their components, installed and operational on the effective date of this rule may continue to be used, as long as the detectors meet the requirements of the rules adopted in section (2) of this rule, or if the detectors are performing or can be made to perform at the level required in section (2) of this rule to the satisfaction of the authority having jurisdiction.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476 & 479

Hist.: FM 2-1980, f. & ef. 3-20-80; FM 6-1989(Temp), f. & cert. ef. 12-15-89; FM 2-1990, f. & cert. ef. 6-1-90

837-045-0015

Location of Detectors

Detectors in dwelling units shall be mounted on the ceiling or wall in the corridor or area giving access to sleeping rooms. Where sleeping rooms are on an upper level, the detector shall be placed in an accessible location as close as practical to the center of the ceiling directly over the stairway. Where sleeping areas are widely separated (i.e., on different levels or opposite ends of the dwelling unit) and/or where a single smoke detector will not adequately service all sleeping areas, there shall be a smoke detector installed adjacent to each sleeping area. In an efficiency dwelling unit, hotel sleeping rooms and in hotel suites, the detector shall be located on the ceiling or wall of the main room or hotel sleeping room. All detectors shall be located in accordance with the manufacturer's instructions. When activated, the detector shall provide an alarm in the dwelling unit, guest room or sleeping room. In hotels, smoke detectors for hearing impaired persons shall be installed in unobstructed view of the guest or sleeping room bed. If the smoke detector for hearing impaired persons is a portable unit, the detector shall be installed by hotel staff in accordance with these rules and the manufacturer's instructions.

Stat. Auth.: ORS Ch. 476 & 479

Hist.: FM 2-1980, f. & ef. 3-20-80; FM 6-1989(Temp), f. & cert. ef. 12-15-89; FM 2-1990, f. & cert. ef. 6-1-90

837-045-0020

Power Source

The power supply of a smoke detector shall be a commercial power source or an integral battery or batteries. When a detector is served from a commercial power source, wiring shall be permanent and without a disconnecting switch other than those required for over current protection. When a line cord and plug is used, it shall be plugged directly into a fixed outlet box and the plug shall be secured by a device that cannot be removed without the use of a tool.

Stat. Auth.: ORS Ch. 476 & 479

Hist.: FM 2-1980, f. & ef. 3-20-80; FM 6-1989(Temp), f. & cert. ef. 12-15-89; FM 2-1990, f. & cert. ef. 6-1-90

837-045-0025

Commentary

The term "Hotel" as defined in ORS 479.250 includes, but is not limited to: Hotels, Motels, Auto Courts, Motor Inns and all similar occupancies by another name (i.e., School Dormitories, Fraternities, Sororities, and any other similar building with six or more sleeping rooms for non-family members). The term "Lodging House" as defined in ORS 479.250 includes, but is not limited to: School Dormitories, Fraternities, Sororities, Youth Camps, and Private Dwellings having five or less sleeping rooms for rent where rent is paid for in money, goods, labor, or other tender.

Stat. Auth.: ORS Ch. 479

Hist.: FM 2-1980, f. & ef. 3-20-80

837-045-0030

Refundable Deposit

If a landlord requires a guest to pay a refundable deposit for

providing a smoke detector for hearing impaired persons, the amount of deposit shall not exceed 50 percent of the purchase price of the smoke detector.

Stat. Auth.: ORS Ch. 476 & 479

Hist.: FM 6-1989(Temp), f. & cert. ef. 12-15-89; FM 2-1990, f. & cert. ef. 6-1-90

837-045-0035

Notification

A hotel shall provide a printed notice of the requirements of OAR 837-045-0005 (2), posted conspicuously at the place of registration or in each guest room, in accordance with the following requirements:

The sign shall be printed or typed in contrasting colors with respect to the background color of the sign or surface on which it is mounted. The sign shall state, "**Smoke detectors for the hearing impaired are available upon request**" or other appropriate wording as may be specifically approved by the authority having jurisdiction. If the notice is at the place of registration, the sign shall be posted in such a manner that it is readily visible and legible from the public side of the registration desk or counter.

Stat. Auth.: ORS Ch. 476 & 479

Hist.: FM 6-1989(Temp), f. & cert. ef. 12-15-89; FM 2-1990, f. & cert. ef. 6-1-90

DIVISION 61

FIRE FIGHTING

Standardization of Fire Protection Equipment

[ED NOTE: Administrative Order FM 40 repealed FM 19.]

837-061-0005

Purpose

(1) ORS 476.030 requires the State Fire Marshal to make rules and regulations relating to standards for equipment used for fire protection purposes. ORS 476.410 requires that all fire protection equipment purchased by state and municipal authorities shall be equipped with standard thread for fire hose couplings and hydrant fittings as adopted by the State Fire Marshal. ORS 476.440 prohibits any person from selling in Oregon any fire protection equipment unless such equipment is fitted and equipped with the standard thread for fire hose couplings and hydrant fittings as adopted by the State Fire Marshal. This statute also provides for exemption from this requirement for special purposes.

(2) The following rules and standards for fire protection equipment are adopted in order to implement the intent of the above statutes to provide for the interchangeability of fire hose and related equipment between fire departments during emergency operations.

Stat. Auth.: ORS Ch. 476

Hist.: FM 40, f. 3-5-70, ef. 3-25-70; FM 3-1988, f. & cert. ef. 2-17-88

837-061-0010

Threaded Couplings and Fittings

All equipment used for fire protection purposes, having hose couplings and fittings of nominal 1-1/2 inch inside diameter and larger, shall have threads designated "American National Fire Hose Connection Screw Thread." The form, dimensions, tolerances, gauges, and overall design and construction of threads on threaded couplings and fittings shall conform to "**National Fire Protection Association Standard No. 1963, 1985 edition**".

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476

Hist.: FM 40, f. 3-5-70, ef. 3-25-70; FM 3-1988, f. & cert. ef. 2-17-88

837-061-0015

Exemptions

(1) Fire protection equipment used under the authority of ORS Chapters 477 and 526 are exempt from the provisions of this Division.

(2) The State Fire Marshal may grant exemption from these rules for private fire protection equipment used for special purposes, research programs, or special features of fire protection equipment found appropriate for uniformity within a particular protection area and not essential to the coordination of public fire protection operations. Any such exemption shall be granted in writing by the State Fire Marshal.

(3) Fire protection equipment having non-threaded couplings or fittings with an inside diameter greater than three inches may be purchased and used without written exemption from the State Fire Marshal under the following conditions:

(a) Non-threaded couplings shall conform to the specifications contained in Underwriters Laboratories of Canada "Standard for Internal Lug Quick-Connect Couplings for Fire Hose, ULC-S543-M1983";

(b) All fire apparatus carrying hose equipped with non-threaded couplings shall also carry inlet and discharge adapters in accordance with the following:

(A) 3-1/2" Hose: — For the initial 1,000 feet, or portion thereof, and each additional 1,000 feet, or major portion thereof (500 feet or more);

(B) Inlet: — Minimum of one 2-way 2-1/2" threaded female with inlets (clappered) adapted to non-threaded coupling hose size;

(C) Discharge: — Minimum of one 2-way 2-1/2" threaded male gated outlets adapted from non-threaded coupling hose size;

(D) 4" Hose and Larger: — For the initial 1,000 feet, or portion thereof, and each additional 1,000 feet or major portion thereof (500 feet or more);

(E) Inlet: — Minimum of one 3-way 2-1/2" threaded female with inlets (clappered) adapted to non-threaded coupling hose size;

(F) Discharge: — Minimum of one 3-way 2-1/2" threaded male with gated outlets adapted from non-threaded coupling hose size.

(c) All fire department coupling, i.e., hydrants, sprinkler systems, standpipes, nozzles, adapters, etc., must be equipped with "American National Fire Hose Connection Screw Threads" regardless of size. However, such equipment may be additionally equipped with adapters of the non-threaded type when approved by the chief of the fire department.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476

Hist.: FM 3-1988, f. & cert. ef. 2-17-88

DIVISION 70

DRY CLEANING PLANTS

837-070-0005

Adoption of NFPA Standards

The provisions of the NFPA Standard No. 32, Edition of 1974, entitled "Dry Cleaning Plants", are adopted subject to the definitions and modifications hereinafter stated: Whenever the following phrases or abbreviations appear, they shall be construed as follows:

(1) "Authority having jurisdiction" shall mean the State Fire Marshal, his deputies, or assistants.

(2) "Standard for the Installation of Sprinkler Systems, NFPA No. 13" shall mean the 1974 edition.

(3) "Water Spray Fixed Systems for Fire Protection, NFPA No. 15" shall mean the 1973 edition.

(4) "Standard for Air Conditioning, NFPA No. 90A" shall mean the 1974 edition.

(5) "Standard for Blower and Exhaust Systems, NFPA No. 91" shall mean the 1973 edition.

(6) "The National Electric Code, NFPA No. 70" shall

mean the 1975 edition.

(7) "Flammable & Combustible Liquids Code, NFPA No. 30" shall mean the 1973 edition.

(8) "Standard for Carbon Dioxide Extinguishing Systems, NFPA No. 12" shall mean the 1973 edition.

(9) "Standard for Portable Fire Extinguisher, NFPA No. 10" shall mean the 1974 edition.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of Fire Marshal.]

Stat. Auth.: ORS Ch.

Hist.: FM 20, f. 3-4-64; FM 66, f. 2-20-75, ef. 3-11-75

DIVISION 80

LIQUEFIED NATURAL GAS

837-080-0005

Purpose and Scope

Pursuant to the authority vested in the State Fire Marshal by ORS 476.030 and to the end that the health, welfare, and safety of the public and of persons using or handling Liquefied Natural Gases shall be protected, the following rules establishing minimum general standards for the production, storage, and handling of Liquefied Natural Gas (LNG) are adopted.

Stat. Auth.: ORS Ch. 476

Hist.: FM 67, f. 3-20-75, ef. 4-11-75

837-080-0010

Adoption of NFPA Standard

"Production, Storage, and Handling of Liquefied Natural Gas (LNG)", NFPA Standard No. 59A, Edition of 1972 as published by the National Fire Protection Association, together with all definitions, asterisk marked paragraphs, notes, and appendices.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476

Hist.: FM 67, f. 3-20-75, ef. 4-11-75

837-080-0015

"Production, Storage, and Handling of Liquefied Natural Gas (LNG)", NFPA No. 59A, Edition of 1972

(1) Whenever the phrase "Authority having jurisdiction" appears in Standard No. 59A, it shall mean the State Fire Marshal, his deputies, or assistants.

(2) Reference to the following documents in NFPA No. 59A, edition, shall mean the Standard as dated in NFPA No. 59A, or the most recent code or standard, promulgated and dated prior to the adoption of these regulations:

(a) American Concrete Institute (ACI);

(b) American Gas Association (AGA);

(c) American National Standards Institute (ANSI);

(d) American Petroleum Institute (A.P.I.);

(e) American Society of Mechanical Engineers (ASME);

(f) American Society for Testing Materials

(ASTM);

(g) Compressed Gas Association (CGA);

(h) International Conference of Building Officials (ICBO);

(i) National Fire Protection Association (NFPA);

(j) Tubular Exchanger Manufacturers Association (TEMA).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS Ch. 476

Hist.: FM 67, f. 3-20-75, ef. 4-11-75

DIVISION 85

COMMUNITY RIGHT-TO-KNOW SURVEY AND COMPLIANCE PROGRAMS

Agriculture, Forestry and Fishing

837-085-0010

Authority and Application

(1) These rules are promulgated under the Office of State Fire Marshal's authority contained in ORS 453.367 and 453.402(2).

(2) OAR Chapter 837, Division 85 applies to covered employers, owners and operators of fixed facilities where hazardous substances or wastes are likely to be manufactured, generated, used, stored, possessed or disposed of.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0020

Purpose and Scope

(1) The purpose of OAR Chapter 837, Division 85, is:

(a) To insure that all reportable hazardous substances or wastes manufactured, generated, used, stored, possessed or disposed of at fixed facilities are identified and the information is submitted to the Office of State Fire Marshal;

(b) To address the process by which hazardous substance information is identified and communicated to the Office of State Fire Marshal;

(c) To address the process by which information received through the Office of State Fire Marshal's Hazardous Substance Survey and Incident Reporting Systems are distributed to emergency personnel, public agencies, and the public;

(d) To address the process of assessing penalties;

(e) To address the process by which covered employers, owners and operators will be evaluated to determine their level of compliance with the Community Right-to-Know and Protection Act;

(f) To establish procedures for issuing Non-Compliance and Proposed/Final Penalty Assessment Order to covered employers, owners and operators who fail to comply with the reporting requirements.

(2) The "Community Right-to-Know and Protection Act", ORS 453.307 to 453.414, requires covered employers, owners and operators to report to the Office of State Fire Marshal, the identity, associated hazard classification(s) and other information for all reportable hazardous substances or waste which they manufacture, generate, use, store or dispose of at fixed facilities.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

830-085-0030

Covered Employers, Owners, Operators and Standard Industrial Classifications (SICs)

(1) Persons having one or more facilities, except those with facilities whose only SICs are listed in section (3) and (4) of this rule, are designated as covered employers, owners and/or operators and are required to complete and submit hazardous substance surveys.

(2) Persons with facilities not covered may voluntarily complete and submit the Office of State Fire Marshal's Hazardous Substance Survey. Such persons shall not be subject to Hazardous Substance Possession Fees.

(3) Person(s) classified within construction or logging SICs are not required to report their temporary work sites.

(4) Persons having facilities classified within SIC 5193 (wholesalers of flowers, nursery stock & florist's suppliers) and/or SIC 5261 (retailers of nursery, lawn and garden supplies), that *do not* sell, or otherwise market, products that require a material safety data sheet to be developed by the manufacture, are not required to report for that facility.

(5) Person(s) having facilities which can *only* be classified by the following Standard Industrial Classifications (SICs) codes are *not* subject to the hazardous substance survey rules unless otherwise notified by the Office of State Fire Marshal:

- 0111-0191 — Crops
- 0211-0291 — Livestock and Animal
- 0722-0781 — Agricultural Services
(except 0723)
- 0811-0831 — Timber Tracts
- 0912-0971 — Fishing, Hunting and Trapping
(except 0921)

Construction

- 1521-1531 — Building, Construction, General
- 1741-1795 — Construction, Special Trade
(except 1761 and 1791)

Transportation, Communication, Electric and Gas

- 4311 — U.S. Postal Service
- 4412-4489 — Water Transportation
- 4512-4522 — Air Transportation
- 4612-4724 — Pipelines and Transportation Services
- 4822-4899 — Communications

Wholesale Trade

- 5012-5015 — Motor Vehicles Supplies
(except 5013)
- 5021-5039 — Furniture, Lumber and Construction Material
(except 5032 and 5031)
- 5044-5049 — Professional Equipment
- 5063-5065 — Electrical Goods
- 5082-5088 — Machinery, Equipment and Supplies
(except 5085 and 5087)
- 5094 — Jewelry, Watches and Precious Stones
- 5111-5159 — Paper, Drugs, Apparel and Farm Products
- 5181-5182 — Alcoholic Beverages
- 5192-5199 — Books & Miscellaneous Non-Durable Goods
(except 5193 and 5198)

Retail Trade

- 5311-5499 — Mobile Home Dealers, Food & General Store
- 5611-5963 — Apparel, Furniture, Appliances, Eat Drink & Miscellaneous
- 5992-5999 — Retail Not Elsewhere Classified
- 6011-6799 — Finance, Insurance and Real Estate

Services

- 7011-7041 — Lodging
- 7221-7338 — Personal Services, Mailing & Advertising
(except 7261, 7334 and 7336)
- 7352-7521 — Miscellaneous Equipment & Retail Services
(except 7353, 7359 and 7384)
- 7536 — Auto Glass Replacement Shops
- 7622-7694 — Miscellaneous Repair Shops
(except 7623, 7641 and 7692)
- 7812-7933 — Movie, Dance Studios and Bowling Alleys
- 7999 — Amusement and Recreation
- 8011-8059 — Medical Offices, Clinics and Nursing Care
- 8082-8111 — Home Health Care and Legal Services
- 8231-8412 — Libraries, Social Services, Museums & Art Galleries
(except 7623, 7641 and 7692)
- 8611-8748 — Membership, Engineering & Accounting Organization
(except 8731 and 8734)
- 8811-8999 — Private Household and Services

Public Administration

- 9111-9131 — Executive and Legislative Offices
- 9211-9229 — Public Order & Safety
(except 9221, 9223 and 9224)

9311-9532 — Finances, Taxes, Human & Environmental Resources (except 9512)

9611-9721 — Economic Programs & National Security

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94

837-085-0040

Definitions

(1) "Act" means the Community Right-to-Know and Protection Act, ORS 453.307 to 453.414.

(2) "Appeal" means the written request for a contested case in order to contest the required submission of hazardous substance survey information or to contest a "Notice of Noncompliance and Proposed/Final Penalty Assessment" order, or a response to a request for exemption.

(3) "Approved Form" means a form either provided by or authorized by the Office of State Fire Marshal.

(4) "Audit" means the evaluation of covered employers, operators and owners to determine their level of compliance with the Oregon Community Right-to-Know and Protection Act.

(5) "Chemical" means any element, chemical compound, or mixture of elements and/or compounds.

(6) "Chemical Name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Services (CAS) rules of nomenclature.

(7) "Common Name" means any designation or identification such as code name, code number, trade name, brand name or generic name, used to identify a chemical other than by its chemical name.

(8) "Compliance Auditor" means a designated employee of the Office of State Fire Marshal whose responsibility is to conduct audits, identify noncompliance issues and propose penalties, establish correction dates and assist employers, owners and operators in voluntarily complying with ORS 453.307 to 453.414.

(9) "Compliance or Due Date" means the day set for submitting a Hazardous Substance Survey, substantive change or other information requested by the Office of State Fire Marshal.

(10) "Compressed Gas" means:

(a) A gas or mixture of gases, in a container, having an absolute pressure exceeding 40 psi at 70° F. (21.1° C.); or

(b) A gas or mixture of gases, in a container, having an absolute pressure exceeding 104 psi at 130° F. (54.4° C.) regardless of the pressure at 70° F. (21.1° C.); or

(c) A liquid having a vapor pressure exceeding 40 psi at 100° F. (37.8° C.) as determined by **ASTM D-323-72**, Test Method of Vapor Pressure of Petroleum Products (Reid Method).

(11) "Confidential" means information submitted to a public body in confidence (ORS 192.502(3)).

(12) "Confidentiality Agreement" means a written agreement between a covered employer, owner or operator and an entity authorized under ORS 453.337 and OAR Chapter 837, Division 85 to request and receive trade secret information.

(13) "Contiguous Site" means a facility with multiple buildings, structures, yards, etc., which are owned by the same company and whose boundaries are touching and/or separated by public right-of-ways. Facilities separated by property owned or operated by others are not considered contiguous.

(14) "Correction Order" means a written order which directs an employer, owner or operator to submit hazardous substance survey information.

(15) "Covered Employer, Owner or Operator" means:

(a) Any person(s) operating a facility having one or more Standard Industrial Classification code(s) not exempted by the Office of State Fire Marshal in OAR 837-085-0030(3); or

(b) Any person(s) operating a facility which the Office of State Fire Marshal believes may store, generate, use, or otherwise possess hazardous substances.

(16) "Department" means the Department of Revenue.

(17) "Division" means OAR Chapter 837, Division 85 of the

Office of State Fire Marshal.

(18) "Emergency" means any human caused or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss which includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills of oil or other substances, contamination, utility or transportation accidents, disease, blight, infestation, civil disturbance, riot, sabotage or war.

(19) "Emergency Service(s)" means those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. Without limitation, these activities include coordination, preplanning, training, interagency liaison, firefighting, hazardous substance management, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, public information, damage assessment, administration and fiscal management.

(20) "Emergency Service Agency" means an organization within a local government which performs essential services for the public's benefit prior to, during, or following an emergency. This includes, but is not limited to, organizational units within local governments, such as emergency medical technicians, health, medical and sanitation services, public works and engineering, public information and communications.

(21) "Entity" means any individual trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the federal government and any agency thereof.

(22) "Exempted Substance" means a substance that is not required to be reported.

(23) "Exemption" means the written authority given to a person by the Office of State Fire Marshal, granting an exemption from the requirements of a rule or law.

(24) "Explosives" means a hazardous substance that has been classified as a Class A, B or C Explosive by the U.S. Department of Transportation.

(25) "Extension" means the written authorization of the Office of State Fire Marshal to extend a compliance or due date.

(26) "Facility/Fee" means all buildings, equipment structures and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned or operated by a covered employer, owner or operator.

(27) "Facility/Reporting" means all buildings, equipment structures and other stationary items that are located at a single address that are owned and/or operated by a covered employer, owner or operator.

(28) "Facility Representative" means any individual designated by an employer, owner or operator to serve as spokesperson or, in the absence of a designated spokesperson, the person in charge of a facility being audited.

(29) "Filed" means the receipt of a document by the Office of State Fire Marshal, except that an appeal will be considered filed upon receipt at any regional office of the Office of State Fire Marshal.

(30) "Fire District" means any agency having responsibility for providing fire protection services.

(31) "Fixed Facility" means a facility having permanent and/or non-mobile operations.

(32) "Hazard Classification" means the U.S. Department of Transportation hazard class as published in the **Bureau of Explosives Tariff No. BOE-6000-E, effective June 14, 1985**. However, when the definitions in **Tariff No. BOE-6000-E** refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage and/or other regulated activities under OAR Chapter 837, Division 85.

(33) "Hazardous Substance" means:

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the Office of State Fire Marshal; or

(b) Any substance required to have a Material Safety Data

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Sheet (MSDS) pursuant to Oregon Occupational Safety and Health Division's OAR 437-155, and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienist (ACGIH); or

(c) Any substance required to have an MSDS pursuant to Oregon Occupational Safety and Health Division's OAR 437-155, *except*:

(A) Substances exempted by designation of the Office of State Fire Marshal; or

(B) Substances which are solids and do not react or dissolve and are stored in unprotected areas; or

(C) Substances exempted by the rules of OAR Chapter 837, Division 85; or

(d) Any substance for which a manufacturer is required to develop an MSDS, that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use and/or during an emergency situation; or

(e) Any waste substance that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use and/or during an emergency situation; or

(f) Any radioactive waste and/or radioactive material as defined in ORS 469.300(19) and radioactive substance as defined in ORS 453.005.

(34) "Hazardous Substance Survey" means a hazardous substance report that covered employers, owners or operators are required to submit, on an approved form, to the Office of State Fire Marshal.

(35) "Health Professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(36) "Identity" means any chemical or common name which is indicated:

(a) On a Material Safety Data Sheet (MSDS) as required under OAR 437-155; or

(b) On shipping documents as required under **49 CFR Part 171-177** under the Transportation Safety Act of 1974 (**49 U.S.C. 1801 et seq.**) and as published in the **Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985**; or

(c) On hazardous waste manifests as required by OAR Chapter 340, Division 102 as adopted by the Department of Environmental Quality; or

(d) On packaging or container labels as required under the Federal Insecticide, Fungicide, and Rodenticide Act (**7 U.S.C. 136 et seq.**) and labeling regulations issued under the Act by the Environmental Protection Agency; or

(e) On a radioactive material license as issued under OAR Chapter 333, Divisions 100 through 113 as adopted by the Radiation Control Section of the Health Division of the Oregon Department of Human Resources.

(37) "Incident" means the threatened or actual injury or damage to a human, wildlife, domestic animal or the environment, or any property loss resulting from a hazardous substance release.

(38) "Law Enforcement Agency" means county sheriffs, municipal police departments, state police, other police officers of this and other states and law enforcement agencies of the federal government.

(39) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of pressure and/or cryogenic conditions.

(40) "Material Safety Data Sheet (MSDS)" means written printed or electronic material concerning a hazardous chemical which is prepared in accordance with OAR Chapter 437, Division 155, Hazard Communication rules of the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(41) "Noncompliance" means failure of a covered employer, owner or operator to comply with the Community Right-to-Know and Protection Act and/or its administrative rules.

(42) "Noncompliance Classification" means the category assigned to issues of noncompliance for the purposes of assessing a penalty.

(43) "Notice of Noncompliance and Proposed/ Final Penalty

Assessment Order" means a written document issued to covered employers, owners or operators that advises them they were not complying with the Community Right-to-Know and Protection Act, establishes correction dates and notifies them of penalty assessments.

(44) "Person" means:

(a) Any entity including, but not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof, and the federal government and any agency thereof;

(b) Any entity operating a facility that is included in one or more of the Standard Industrial Classification (SIC) categories designated by the Office of State Fire Marshal according to ORS 453.408(2) and OAR 837-085-0030.

(45) "Poison Class A and B" means a poisonous substance as defined in **49 CFR, Part 173.326** as published in the **Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985**.

(46) "Record" means any recorded information.

(47) "Reportable Hazardous Substance" is a hazardous substance that is manufactured, generated, used, stored, possessed, or disposed of at a fixed site location(s) by covered employers, owners and operators at or above the reportable quantities.

(48) "Reportable Quantity" means the amount of hazardous substance that must be present in a facility before reporting is required. See OAR 837-085-0070.

(49) "Reporting Range" means a range of quantities assigned by the Office of State Fire Marshal for reporting hazardous substances.

(50) "Significant Maximum Daily Amount Change" means a change in the maximum daily quantity reporting range to a higher reporting range than previously was reported.

(51) "Standard Industrial Classification (SIC)" means a system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget for the purpose of classifying establishments by the type of activity they engage in. The number assigned to each group classified is called the SIC code.

(52) "State Fire Marshal" means the State Fire Marshal or designee.

(53) "Substantive Change" means a change(s) in hazardous substance reporting information which requires notification to the Office of State Fire Marshal. See OAR 837-085-0100.

(54) "Temporary Worksite" means a single site location where activities, such as construction and logging, will likely occur for less than 24 months.

(55) "Trade Name" means the brand name or trademark given to a hazardous substance by a manufacturer or distributor.

(56) "Trade Secret(s)" means, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented; which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances having commercial value; and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(57) "Waste Hazardous Substance" means any substance which meets the Department of Environmental Quality's definition of "hazardous waste".

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0050

Hazardous Substance Survey — General

(1) The Office of State Fire Marshal shall develop and distribute an annual Hazardous Substance Survey to covered employers, owners and operators. The information received shall be used to establish and maintain the hazardous substance information program required by the Community Right-to-Know

and Protection Act.

(2) The hazardous substance survey period shall be for the calendar year preceding the date the survey is due at the Office of State Fire Marshal.

(3) Covered employers, owners and operators receiving the survey are required to complete and return a survey for each of their covered facilities in accordance with the reporting requirements in these rules. See OAR 837-085-0090.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0060

Hazardous Substance Survey — Substance Determinations

Covered employers, owners and operators shall identify and evaluate all substances or wastes manufactured, generated, used, stored, possessed, or disposed of at their facilities to determine if they are hazardous substances and reportable on the survey. The definition of hazardous substance in OAR 837-085-0040(34) shall be used.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0070

Hazardous Substance Survey — Reportable Quantities

(1) If at any time during the year being surveyed, a covered employer, owner or operator has manufactured, generated, used, stored, possessed, or disposed of hazardous substance(s) in an amount at or above the reportable quantities, they shall report the hazardous substance.

(2) The hazardous substance reportable quantities shall be as follows:

(a) Any quantity of radioactive substance including radioactive wastes;

Exception: Sealed source radioactive materials, as defined by OAR 333-100-055(71), contained in smoke detectors, survey equipment and small laboratory testing equipment are not required to be reported.

(b) Any Class A or B poison or explosive in quantities equal to or greater than ten pounds, five gallons or 20 cubic feet;

(c) Any other hazardous substance in quantities equal to or greater than 50 gallons, 200 cubic feet, or 500 pounds.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94

837-085-0080

Hazardous Substance Survey — Quantity Determinations

(1) Covered employers, owners and operators shall calculate the average daily amount, maximum daily amount and the total amount manufactured, generated, used, stored, possessed, or disposed of during the survey year for each hazardous substance.

(2) The quantities of hazardous substances shall be measured in the physical state assumed at "Standard Temperature and Pressure" (STP) or when released uncontrolled into the environment.

NOTE: Although liquefied gases are reported in gallons, their reportability is determined by measuring them in cubic feet.

(3) The total amounts of hazardous substances shall be reported in the following units:

(a) Solids shall be reported in units of pounds;

(b) Liquids shall be reported in units of gallons;

(c) Liquefied gases shall be reported in units of gallons;

(d) Compressed gases that are not liquefied shall be reported in units of cubic feet;

(e) Radioactive materials shall be reported in units of milluries.

(4) The following methods shall be used to calculate reportable amounts:

(a) The "Average Amount" of each hazardous substance may be calculated by dividing the total amount of the hazardous substance on-site during the year by the total estimated number of

days on-site;

(b) The "Maximum Daily Amount" of each hazardous substance shall be determined by reviewing purchasing records, inventory records, production records, receiving records, etc., to identify the one day during the survey year that the highest amount of the hazardous substance was on-site for more than 24 hours;

(c) The "Amount Per Year" may be calculated for each hazardous substance on-site by adding the amount manufactured, generated, used, stored, possessed, or disposed of during the survey year and then subtracting from this total the amount on-site on the last day of the survey year.

(5) For a mixture, the total amount of the substance is reported regardless of the concentration of hazardous substance(s) in the mixture.

(6) The amounts of a hazardous substance with the same chemical composition in separate containers at one address, shall be added together for reporting purposes.

(7) Like substances which are exempted from Hazardous Substance Possession Fee shall be grouped and reported together. Examples of these groups include but are not limited to: Gasoline, motor oils, asphalt emulsion, and diesels.

(8) Water based paints, solvent based paints and fertilizers with the same major components (such as urea and ammonia nitrate) may be grouped and reported together.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0090

Hazardous Substance Survey — Reporting Requirements

(1) Covered employers, owners and operators shall report hazardous substance information as required by these rules on the survey form provided or approved by the Office of State Fire Marshal.

(2) Covered employers, owners and operators who receive the Office of State Fire Marshal's annual Hazardous Substance Survey shall complete and return it to the Office of State Fire Marshal within 60 days from the date it is postmarked.

(3) Covered employers, owners and operators receiving a survey for one or more of their facilities shall submit a separate survey for each of their facilities operating within a covered SIC.

(4) Within 30 days of receiving a survey, covered employers, owners or operators shall request a survey from the Office of State Fire Marshal for each of their facilities not receiving a survey.

(5) Covered employers, owners, and operators receiving the survey shall provide the following information:

(a) The facilities reporting status, i.e., no hazardous substance present; hazardous substance present but below reportable quantity; or hazardous substance present in reportable quantity;

(b) Demographic information including:

(A) The primary and secondary Standard Industrial Classification code(s) for the facility;

(B) A description of the type of business. Examples: An automotive repair shop, silicon chip manufacturing, a chemical warehouse;

(C) The Dun and Bradstreet Number, if applicable, which can often be obtained by checking with the firm's Certified Public Accountant (CPA);

(D) The name of the manager or person in charge of the site;

(E) The known business name which the firm operates under as well as the department, division or person responsible for the facility's compliance;

(F) The physical site address including the street, city, county, and zip code or grid location acceptable to responding fire department if no address exists, as well as a phone number for the site;

(G) The mailing address if different from the site address;

(H) The number of employees at the site;

(I) The name and telephone number(s) of personnel qualified to give technical, on-site information about hazardous substances present at the facility in the event of an emergency. Listed phone numbers shall include both business and after-hours contact

information;

(J) The name of the responding fire department by local jurisdiction;

(K) A brief summary of any procedures established by the covered employer, owner or operator for the control of hazardous substances in the event of an emergency; and

(L) Whether the hazardous substance storage location(s) for each reportable hazardous substance(s) is placarding according to **National Fire Protection Association (NFPA) Standard 704**.

(c) The name and signature of the person completing the survey. The date the survey was completed;

(d) Information about each reportable hazardous substance meeting the reportable quantity thresholds including, but not limited to:

(A) The common name or trade name for each reportable hazardous substance;

(B) The chemical name of the hazardous ingredient present in the highest concentration in each reportable hazardous substance;

(C) Information regarding whether the substance is pure or a mixture;

(D) The status of hazardous substance as it is used in the facility, i.e., no change, new, change made, no longer used and/or reportable, or stayed the same;

(E) The physical state of the hazardous substance as it is released into the environment at STP (Standard Temperature and Pressure) relating whether it is a solid, liquid or a gas;

(F) The unit of measure used to report the quantity range of the hazardous substance, i.e., relating whether it is reported in pounds, gallons, cubic feet or millicuries;

(G) The average amount of each reportable hazardous substance;

(H) The maximum amount of each reportable hazardous substance;

(I) The amount used per year of each reportable hazardous substance;

(J) The total estimated number of days each hazardous substance was on-site;

(K) The type(s) of containers used for storage of each reportable hazardous substance(s);

(L) The pressure and temperature at which the substance is stored;

(M) The primary and secondary associated U.S. Department of Transportation hazard classification(s) for each reportable hazardous substance;

(N) The Chemical Abstract Service (CAS) number if known for each reportable hazardous substance;

(O) The four-digit United Nations (UN) or North American (NA) number if known for each reportable hazardous substance; and

(P) A brief description of the site specific storage location(s) for each reportable hazardous substance(s).

(e) Upon request of the Office of State Fire Marshal, covered employers, owners and operators shall provide Material Safety Data Sheets (MSDSs) for clarification, evaluation and reference purposes;

(f) Other information that may be requested by the Office of State Fire Marshal in order to meet the intent of The Community Right-to-Know and Protection Act.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Fire Marshal.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94

837-085-0100

Hazardous Substance Survey — Substantive Changes

(1) Covered employers, owners and operators shall notify the Office of State Fire Marshal whenever a substantive change occurs. This notification shall be made within 30 days of the substantive change on a form provided or approved by the Office of State Fire Marshal.

(2) The occurrence of any of the following events shall constitute a substantive change and shall be reported:

(a) A covered employer, owner or operator has become exempt from reporting requirements;

(b) A covered employer, owner or operator who was previously surveyed and identified as being exempt has become a covered employer;

(c) Hazardous substance(s) not previously reported have been introduced at the facility;

(d) A significant maximum daily amount change, as defined by OAR 837-085-0040(51), has occurred (occurs) for a previously reported hazardous substance;

(e) The reported location of a reportable hazardous substance has changed and it is now located in another building at the same site or it has been moved 300 feet or more from its previously reported location within the same building or it has been moved to a different floor level;

(f) A change of mailing or site address has occurred;

(g) A change of emergency contact person has occurred;

(h) A change of phone numbers has occurred; or

(i) A change of ownership or business name has occurred.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94

837-085-0110

Records Keeping Requirements

(1) Covered employers, owners and operators shall maintain complete and accurate records of each hazardous substance they manufacture, generate, use, store, possess or dispose of (ORS 453.406):

(a) These records shall be maintained for a period of three calendar years;

(b) Copies of these records shall be kept at the facility for which they apply.

EXCEPTION: Records for facilities and/or remote sites, where the covered employer, owner or operator is not set up to maintain such records, may be maintained at another of their facilities within the state.

(c) Examples of hazardous substance records include, but are not limited to:

(A) Material Safety Data Sheets (MSDSs);

(B) Invoice and purchase records;

(C) Receiving and shipping papers;

(D) Bills of lading;

(E) Production records;

(F) Waste/recycling records; and

(G) Inventory/dispensing records.

(2) Covered employers, owners and operators shall maintain a copy of the Hazardous Substance Survey:

(a) Copies of the survey shall be maintained for a period of three calendar years;

(b) Copies of the survey shall be kept at the facility for which they apply.

EXCEPTION: Surveys for facilities and/or remote sites where the employers, owners and operators do not have staff available to complete the survey, may be kept at the facility where the person responsible for submitting the survey works.

(3) Covered employers, owners and operators shall maintain copies of any Noncompliance and Proposed/Final Penalty Assessment Order issued by the Office of State Fire Marshal:

(a) Copies of Notices of Noncompliance shall be maintained for a period of five years;

(b) These copies shall be kept with the covered employer, owner or operator's Hazardous Substance Survey.

(4) Covered employers, owners and operators shall, upon request, make records information available and provide copies of those records to the Office of State Fire Marshal (ORS 453.317(2)).

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0120

Application for an Exemption

(1) Any covered employer, owner or operator may apply for an exemption from all or part of reporting requirements of the Community Right-to-Know and Protection Act and its administrative rules.

(2) An application for an exemption must be in writing and contain the following:

- (a) The name and mailing address of the person making application;
- (b) The site address and location of the facility;
- (c) The facility number assigned by the Office of State Fire Marshal;
- (d) The rule or law, identified by number, from which the exemption is sought; and
- (e) The basis for the request.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

830-085-0130

Administrative Action on Exemption Application

(1) After an exemption request is determined to be complete and procedurally adequate, as provided in OAR 837-085-020(2), the Office of State Fire Marshal shall review the request.

(2) The Office of State Fire Marshal may conduct an on-site review of the facility involved in the requested exemption.

(3) An application for an exemption shall be granted only if the applicant demonstrates and the Office of State Fire Marshal determines that the exemption requested is consistent with all applicable ORS's and OAR's.

(4) An exemption, if granted, will not be the basis for amending or withdrawing a previously submitted survey, Notice of Noncompliance and Proposed/Final Penalty Assessment Order, or hazardous substance fee not under contest.

(5) If an exemption is granted, written notification shall be given to the employer, owner or operator specifying the terms of the exemption.

(6) Affected applicants may appeal the decision on an exemption application in accordance with OAR 837-085-0330.

(7) If an exemption is denied, a written notice of denial shall be issued to the requesting employer, owner or operator. The notice will:

- (a) Give reasons for the denial;
- (b) Notify the applicant of their appeal rights.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0140

Trade Secrets — General

(1) A covered employer, owner or operator may request to withhold the specific chemical identity, including the chemical name and other specific identification of a reportable substance, from the Hazardous Substance Survey provided that:

(a) The claim that the information withheld is a trade secret can be supported with the burden of proof placed on the covered employer, owner or operator;

(b) The information required by the Office of State Fire Marshal concerning the properties and effects or reportable substances are disclosed; and

(c) The specific chemical identity is made available to health professionals in accordance with OAR 837-085-0170(1) and (2).

(2) Any claim of trade secret by a covered employer, owner or operator must be made in writing and submitted at the time the covered employer returns the Hazardous Substance Survey or a substantive change notice to the Office of State Fire Marshal.

(3) A claim of trade secret by a covered employer, owner or operator may be recognized by the Office of State Fire Marshal as sufficient if the claim is substantiated by the Occupational Safety and Health Division of the Department of Consumer and Business Services or the U.S. Environmental Protection Agency.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0150

Trade Secrets — Claim Submissions

(1) To substantiate a trade secret claim, a covered employer, owner or operator must submit *both* of the following:

(a) Hazardous Substance Survey with the generic name(s) included and the information being claimed as Trade Secret deleted; and

NOTE: Only the identities and/or percentages of the chemical component(s) can be claimed as trade secrets.

(b) A Material Safety Data Sheet (MSDS) (as released to the public) for each chemical or formulation for which the covered employer is claiming trade secret protection.

(2) Covered employers, owners and operators must submit a justification to support their trade secret claims. In order to substantiate a claim, the following must be provided for each chemical or formulation for which trade secret protection is being requested:

(a) The specific measures the covered employer has taken to safeguard the confidentiality of any chemical identity claimed as trade secret;

(b) Whether the chemical identity has been disclosed to any person not an employee of the covered employer or of a local, state, or federal government entity, who has not signed a confidentiality agreement requiring the person to refrain from disclosing the chemical identity to others;

(c) A list of all local, state, and federal government entities to which the covered employer has disclosed the specific chemical identity. For each, indicate whether or not a confidentiality claim was asserted for the chemical identity, and whether or not the government entity denied that claim;

(d) The measures that have been taken with respect to distribution of the product to maintain trade secrets;

(e) Whether discovery of trade secret information is feasible by sophisticated chemical analysis ("reverse engineering"). The covered employer, owner or operator must provide evidence to support their answer;

(f) An explanation of why the covered employer's, owner's or operator's use of the substance would be valuable information to their competitors;

(g) An analysis of the nature of the harm to the covered employers, owners or operators competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss in sales and profitability; and

(h) Whether the substance, or the covered employer's, owner's or operator's use of it, is subject to any U.S. patent of which the covered employer is aware. If so, identify the patent and explain why this does not protect the covered employer from competitive harm.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0160

Trade Secrets — Determinations and Response

The Office of State Fire Marshal shall respond in writing to the requesting employer, owner or operator for trade secret protection within 60 days after the request has been received:

(1) The response shall advise the requesting employer, owner or operator as to whether or not trade secret protection is granted.

(2) The employer, owner or operator will be advised of disclosure requirements if trade secret protection is granted.

(3) If trade secret protection is denied, the Office of State Fire Marshal shall provide the employer, owner or operator with the criteria used to make the determination.

(4) If trade secret protection is denied, the Office of State Fire Marshal shall state the reasons why.

(5) The employer, owner or operator will be advised of the appeal rights.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS
Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0170

Trade Secrets — Disclosures

(1) Where a treating physician, registered nurse, or emergency medical technician determines that a medical emergency exists and the specific identity of a chemical substance or waste is necessary for emergency or first-aid treatment, the covered employer, owner or operator shall immediately disclose the specific identity of a trade secret chemical to that treating physician, registered nurse, or emergency medical technician regardless of a written statement of need or a confidentiality agreement. The covered employer may require a written statement of need and a confidentiality agreement in accordance with the provisions of sections (2) and (3) of this rule as soon as the circumstances permit.

(2) In a non-emergency situation, a covered employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under OAR 837-085-0140(1), to a health professional, if:

(a) The request is in writing on a form approved by the Office of State Fire Marshal;

(b) The request describes, with reasonable detail, one or more of the following community health needs for information:

(A) To assess the hazards of the chemical substance or waste to which emergency service personnel will be exposed;

(B) To provide medical treatment to exposed employees, emergency service personnel or members of the community;

(C) To select or assess appropriate protective equipment for potential exposures;

(D) To design or assess engineering controls or other protective measures for emergency situations.

(c) The request explains, in detail, why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional to provide the services described in subsection (2)(b) of this rule:

(A) The properties and effects of the chemical;

(B) Measures for controlling community exposure to the chemical; and

(C) Methods of diagnosing and treating harmful exposures to the chemical.

(d) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(e) The health professional, and the covered employer, owner or operator agree in a written confidentiality agreement that the health professional will not use the trade secret information for any purpose other than the health need(s) asserted and will not release the information under any circumstances other than to the Office of State Fire Marshal, except as authorized by the terms of the agreement or by the covered employer.

(3) The confidentiality agreement authorized by section (1) of this rule:

(a) May restrict the use of the information for the purposes as indicated in the written statement of need;

(b) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and

(c) May not include requirements for the posting of a penalty bond.

(4) If the health professional receiving the trade secret information decides that there is a need to disclose it to the Office of State Fire Marshal, the covered employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0180

Trade Secrets — Refusal to Disclose

(1) If the covered employer denies a written request for disclosure of a specific chemical identity, the denial must:

(a) Be provided to the health professional within 30 days of the request;

(b) Be in writing;

(c) State the specific reasons why the request is being denied;

(d) Include evidence to support the claim that the specific chemical identity is a trade secret; and

(e) Explain in detail how alternative information may satisfy the specific planning or health need without revealing the specific chemical identity.

(2) The health professional whose request for information, as authorized by OAR Chapter 837, Division 85, is denied may refer the request and the covered employer's written denial to the Office of State Fire Marshal for consideration.

(3) When the health professional refers the denial to the Office of State Fire Marshal, the State Fire Marshal shall consider the evidence to determine if:

(a) The covered employer has supported the claim that the specific chemical identity is a trade secret;

(b) The health professional has supported the claim that there is a medical, planning, or health need for the information; and

(c) The health professional has demonstrated adequate means to protect the confidentiality.

(4) If a covered employer, owner or operator demonstrates to the Office of State Fire Marshal that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of trade secret data, the State Fire Marshal may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the health or planning services are provided without undue risk of harm to the covered employer.

(5) If the Office of State Fire Marshal determines that the specific chemical identity requested under OAR 837-085-0140 is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate need for the information, has executed a written confidentiality agreement and has shown adequate means to protect the confidentiality of the information, the covered employer, owner or operator shall provide the requested information.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0190

Hazardous Substance Survey — Availability of Survey Information

(1) The Office of State Fire Marshal shall provide a summary report computer printout, or copies of the information furnished by covered employer(s) to:

(a) Each county public health authority;

(b) Each local fire district; and

(c) Each county emergency manager.

(2) Upon request, the Office of State Fire Marshal shall also provide information to the following agencies located in the geographic jurisdiction of the local fire district:

(a) Emergency service personnel responding to a hazardous substance incident;

(b) Health professionals;

(c) Law enforcement agencies;

(d) Local emergency management agencies; and

(e) Any public or private safety agency administering an emergency telephone system pursuant to ORS 401.710 to 401.790.

(3) If the Office of State Fire Marshal considers the information essential to the safe control of an emergency, the Office of State Fire Marshal may distribute the information to persons outside the jurisdiction of the fire district.

(4) The Office of State Fire Marshal shall provide, upon request, access to reportable substance information, except for trade secret restrictions identified in OAR 837-085-0140, to any agency of this state.

Chapter 837 Department of Oregon State Police, Office of State Fire Marshal

OREGON ADMINISTRATIVE RULES 1997 COMPILATION

(5) Site specific information regarding the exact amount and/or the exact storage location of reportable substances provided to the Office of State Fire Marshal shall be treated as confidential:

(a) The Office of State Fire Marshal may require written statement of need and a written confidentiality agreement to be executed by the requesting agency prior to the release of confidential information; and

(b) During emergency situations, the Office of State Fire Marshal may immediately release confidential information and require requesting agencies to complete a written statement of need as soon as circumstances permit.

(6) The public shall be permitted access to hazardous substance information that is not otherwise protected as a trade secret or is designated as confidential under OAR 837-085-0140(1) and ORS 453.332(3) and (4):

(a) Public access to hazardous substance survey information may be provided through the Office of State Fire Marshal in Salem;

(b) If, in the discretion of the Office of State Fire Marshal, it is necessary to protect the public safety and welfare, the Office of State Fire Marshal may require a person requesting information to complete an approved form which includes their name, address and proof of identity.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0200

Compliance Audit Program — General

(1) The Office of State Fire Marshal shall provide a compliance audit program to assist and ensure covered employers, owners and operators comply with the statutes, regulations, rules, standards or orders of the Community Right-to-Know and Protection Act.

(2) The compliance audit program shall include, but is not limited to:

(a) Providing training, guidance and assistance to covered employers, owners and operators and the community;

(b) Evaluating and auditing facilities where hazardous substances are likely to be manufactured, generated, used, stored, possessed, or disposed of;

(c) Issuing Notice of Noncompliance and Proposed/Final Penalty Assessment Order for noncompliance with the Community Right-to-Know and Protection Act and administrative rules;

(d) Issuing correction orders;

(e) Assessing civil monetary penalties for noncompliance;

(f) Holding informal conferences with covered employers, owners and operators or their representatives to discuss notices of noncompliance and penalty assessments, penalties, survey requirements or correction orders without limiting or extending their appeal rights;

(g) Granting or denying requests for extensions of the time set by correction orders; and

(h) Examining and auditing a covered employer, owner or operator's hazardous substance information records.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-083-0210

Scheduling and Selection of Compliance Audits

(1) Compliance audits may be conducted when the Office of State Fire Marshal deems it necessary to confirm or validate hazardous substance information surveys.

(2) The reasons the Office of State Fire Marshal would deem it necessary to conduct an audit include, but are not limited to, the following:

(a) A covered employer, owner or operator fails to submit their survey;

(b) A review of survey records show reporting errors may have been made;

(c) Information is received that indicates reporting errors may have been made;

(d) A covered employer, owner or operator requests an audit be conducted;

(e) A Standard Industrial Classification code review indicates misreporting may exist;

(f) To verify survey information.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0220

Right of Entry

(1) In accordance with ORS 453.317(8), a compliance auditor has the right to enter and audit any facility of a covered employer, owner or operator during normal working hours or at other reasonable times.

(2) If the covered employer, owner or operator or their representative are not present at the facility, an audit will not be conducted. Exceptions:

(a) When executing an inspection warrant;

(b) The covered employer, owner or operator has been notified that the audit is to be conducted.

(3) Compliance auditors will identify themselves as representatives of the State Fire Marshal and, as necessary, present their credentials to the covered employer, owner or operator or their representative to establish the right of entry.

(4) The compliance auditor will not sign any form of liability release or agree to waive any rights of the agency.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0230

Compliance Audit Warrants

If a compliance auditor is denied entry, the Office of State Fire Marshal may institute action(s) to obtain an inspection warrant, as provided for in ORS 476.155.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0240

Compliance Audit Activities

During a compliance audit, the compliance auditor is authorized, but not limited to, the following activities:

(1) Conduct an audit without unreasonably disrupting operations in the facility;

(2) Conduct a physical audit of the facility and all of its operations;

(3) Examine and obtain copies of hazardous substance information records;

(4) Inform the covered employer, owner or operator of reporting errors; and

(5) Conduct interviews and receive information from anyone in the facility.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0250

Notice of Noncompliance and Proposed/Final Penalty Assessments

(1) If, during an audit initiated by the Office of State Fire Marshal, it is concluded that a covered employer, owner or operator has not complied with the Community Right-to-Know and Protection Act and its administrative rules, a Notice of Noncompliance and Proposed/Final Penalty Assessment Order will be issued to the covered employer, owner or operator which shall:

(a) State the name of the covered employer, owner or operator, location of the facility, and the date of the compliance audit. The period of time the employer, owner or operator is in

noncompliance will be included;

(b) Describe how the covered employer, owner or operator was in noncompliance, such description to take the form of findings of fact and inclusion of law and rule;

(c) State the classification(s) of noncompliance;

(d) Identify the rule or order the covered employer, owner or operator failed to comply with and any other statute or rules involved;

(e) Establish a compliance date if compliance is not obtained prior to issuing a Notice of Noncompliance and Proposed/Final Penalty Assessment Order;

(f) State the total dollar amount of penalties assessed and the amount subject to suspension;

(g) Inform the covered employer, owner or operator of the right to appeal the Notice of Noncompliance and Proposed/Final Penalty Assessment Order and the compliance date; and

(h) Notify the covered employer, owner or operator that the Office of State Fire Marshal has designated its file in this matter as the record in this case and that the Notice of Noncompliance and Proposed/Final Penalty Assessment Order becomes final if a written appeal is not filed within 30 days of its service.

(2) The Notice of Noncompliance and Proposed/ Final Penalty Assessment Order shall be served on the covered employer, owner or operator in person or by registered or certified mail.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1995, f. 12-14-94, cert. ef. 12-15-94

837-085-0260

Covered Employer, Owner or Operator Response to Notice of Noncompliance and Proposed/Final Penalty Assessment Order

(1) After receipt of a Notice of Noncompliance and Proposed/Final Penalty Assessment Order, the covered employer, owner or operator shall submit all information requested by the Office of State Fire Marshal on or before the established correction date.

(2) The above requirements shall not limit a covered employer's appeal rights.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

830-085-0270

Penalty Criteria for Noncompliance — General

(1) Issuance of any penalty is subject to appeal in accordance with OAR 837-085-0330 through 837-085-0370.

(2) Any covered employer, owner or operator found to be in noncompliance may be assessed a penalty of up to \$1,000 per day for each day of noncompliance in accordance with ORS 453.357.

(3) The noncompliance classification established in OAR 837-085-0280 shall be used to determine the penalty, if any, that will be assessed.

(4) Covered employers, owners or operators found to be in noncompliance in more than one Noncompliance Class (OAR 837-085-0280) shall have a penalty calculated and assessed for each Noncompliance Class.

(5) At any time prior to a Notice of Noncompliance and Proposed/Final Penalty Assessment Order becomes final, the Office of State Fire Marshal may modify the notice to reflect the correct noncompliance classification and/or penalty assessment.

(6) Nothing in these rules shall affect the ability of the Office of State Fire Marshal to modify penalties through a Stipulated Final Order.

(7) Penalty suspensions may be made in accordance with OAR 837-085-0310.

(8) Daily penalties may be assessed and accrued in accordance with OAR 8370850-290(2)(b) and 837-085-0310.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0280

Noncompliance Classes

For the purpose of determining the penalties that may be assessed for noncompliance, the following "Noncompliance Classes" are established:

(1) Class I Noncompliance. Covered employers, owners or operators who fail to request and/or submit their Hazardous Substance Survey or substantive changes when required, shall be considered in Class I Noncompliance.

(2) Class II Noncompliance. Covered employers, owners or operators who fail to maintain records in accordance with OAR 837-085-0110; or when requested by the Office of State Fire Marshal, fail to provide an MSDS or other hazardous substance information not elsewhere classified, shall be considered in Class II Noncompliance.

(3) Class III Noncompliance. Covered employers, owners and operators who report all their hazardous substances but fail to submit the information required by OAR 837-085-0090 or who report the information incorrectly shall be considered in Class III Noncompliance. Exceptions: Failing to submit or submitting incorrect information on the following will not be considered Class III Noncompliance:

(A) Standard Industrial Classification Codes;

(b) Dun and Bradstreet Number;

(c) Number of Employees;

(d) NFPA 704 Placarding;

(e) Maximum Daily Quantity;

(f) Chemical Abstract Number; or

(g) UN or NA Numbers.

(4) Class IV Noncompliance. Covered employers, owners and operators who fail to immediately provide health professionals with any pertinent hazardous substance information, in accordance with OAR 837-085-0170, during a medical emergency, shall be considered in Class IV Noncompliance.

(5) Class V Noncompliance. Covered employers, owners or operators who intentionally misreport on their Hazardous Substance Survey, substantive changes, survey corrections or records of hazardous substance(s) shall be considered in Class V Noncompliance.

(6) Class VI Noncompliance. Covered employers, owners or operators who, when submitting their Hazardous Substance Survey, substantive changes or survey corrections, fail to report all reportable hazardous substances or fail to report the correct maximum daily quantity shall be considered in Class VI Noncompliance.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0290

Penalties for Class I Through V Noncompliance

(1) Class I through IV Noncompliance Penalties. Employers, owners or operators identified as being in Class I, II, III and/or IV noncompliance shall be assessed a penalty for each non-compliance class for which they are found to be in non-compliance. The penalty assessments shall be made using the following schedule:

(a) Class I Noncompliance: \$200;

(b) Class II Noncompliance: \$70;

(c) Class III Noncompliance: \$30;

(d) Class IV Noncompliance: \$1,000.

(2) Class V Noncompliance penalties. Employers, owners or operators identified as being in Class V Noncompliance shall be assessed a penalty using the following criteria:

(a) A penalty determination shall be made for each classification of noncompliance they are found to be in, due to intentional misreporting. The penalty schedules in OAR 837-085-0290 through 837-085-0310 shall be used to make this determination;

(b) Daily penalties will be assessed for each classification of noncompliance the employer, owner or operator is found to be in, due to intentional misreporting;

(c) The daily penalty assessments will be made for each day the employer, owner or operator has failed to correct the intentional misreporting;

(d) The daily penalty assessments will be made from the date the Office of State Fire Marshal receives the intentional misreporting, to the date the misreporting is identified.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

6	\$420	\$300
7	\$490	\$350
8	\$560	\$400
9	\$630	\$450
10	\$700	\$500

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0300

Penalties for Class VI Noncompliance

(1) A penalty shall be calculated for the total quantity of unreported quantities of radioactive substances, radioactive waste, Class A and B poisons and explosives. These substances are required to be reported at the "Lower Reporting Levels" (LRL) of five gallons, ten pounds or 20 cubic feet. For the purpose of determining Class VI Noncompliance penalties, these substances shall be identified as LRL substances.

(2) A separate penalty shall be calculated for the total quantity of all other unreported quantities of hazardous substances. These substances are required to be reported at the "Upper Reporting Levels" (URL) of 50 gallons, 200 cubic feet or 500 pounds. For the purpose of determining Class VI Noncompliance penalties, these substances shall be identified as URL substances.

(3) To calculate the penalty for LRL and URL substances the following criteria shall be used:

(a) A "Total Quantity Range" shall be determined and established for LRL substances, by adding together the daily maximum quantity amounts of all LRL substances, not reported;

(b) A "Total Quantity Range" shall be determined and established for URL substances, by adding together the daily maximum quantity amounts of all URL substances, not reported;

(c) The daily maximum quantity amounts shall be added together as though they were measured in the same unit of measurement;

(d) The Total Quantity Range(s) shall be converted to a "Penalty Quantity Code" using the following table:

Total Quantity Range	Penalty Quantity Code
0 - 999	01
1,000 - 4,999	02
5,000 - 9,999	03
10,000 - 49,999	04
50,000 - 99,999	05
100,000 - 499,999	06
500,000 - 999,999	07
1,000,000 - 49,999,999	08
50,000,000 - 99,999,999	09
100,000,000 - higher than 100,000,000	10

(4) A penalty determination shall be made for Lower Reporting Levels (LRL) and Upper Reporting Levels (URL) substances using the "Class VI Noncompliance Penalty Table":

(a) Penalties will be determined by intersecting the appropriate "Reporting Level", i.e., LRL or URL with the corresponding Penalty Quantity Code;

(b) If penalties are determined for both LRL and URL substances, the higher penalty shall be assessed.

Class VI Noncompliance Penalty Table

Penalty Quantity Code	Lower Reporting Levels (LRL)	Upper Reporting Levels (URL)
1	\$70	\$50
2	\$140	\$100
3	\$210	\$150
4	\$280	\$200
5	\$350	\$250

837-085-0310

Penalty Suspensions and Daily Penalty Accrual

(1) First Instance Class I, II, III and/or VI Noncompliance. For the first Class I, II, III or VI Noncompliance within five years, the penalty will be suspended if the employer submits the required information by the compliance date. Failure to submit the information by the compliance date will result in the assessment of the original penalty. If not submitted within ten days following the compliance date, additional penalties shall accrue on a daily basis in the amount of the original penalty until the information is received by the Office of State Fire Marshal.

(2) Second Instance Class I, II, III and/or VI Noncompliance. For the second Class I, II, III and/or VI Noncompliance within five years 50 percent of the penalty will be suspended provided the employer submits the required information by the compliance date. Failure to submit the information by the compliance date will result in the assessment of the original penalty. If not submitted within ten days following the compliance date, additional penalties shall accrue on a daily basis in the amount of the original penalty until the information is received by the Office of State Fire Marshal.

(3) Third Instance Class I, II, III and/or VI Noncompliance. For the third Class I, II, III and/or VI Noncompliance within five years, the penalty *will not be* suspended. If required information is not submitted within ten days following compliance date, additional penalties shall accrue on a daily basis in the amount of the original penalty until the information is received by the Office of State Fire Marshal.

(4) Fourth Instance Class I, II, III and/or VI Noncompliance. For the fourth Class I, II, III and/or VI noncompliance within five years, the penalty will be assessed on a daily basis. The penalty accrual period will run from the date the information was originally due, to the date the appropriate information is received by the Office of State Fire Marshal.

(5) Penalty suspensions will not be made on any Class IV or V Noncompliance penalty assessment.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0320

Payment of Penalties

(1) All civil penalties become due and owing ten days after the Notice of Noncompliance and Proposed/Final Penalty Assessment becomes a final order.

(2) If payment is not received within ten days after the order becomes final, it may be docketed as a judgment as provided by law.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0330

Appeals Process — General

(1) Any person directly affected may appeal, in part or in total, Notice of Noncompliance and Proposed/Final Penalty Assessment Order and decisions related to the application for exemption.

(2) Any person directly affected may participate in the appeals process which includes, but is not limited to:

(a) An informal conference to discuss, consider and determine if there is a basis for informal disposition of an appeal by stipulation, agreed settlement, consent order, default or other

means; or

(b) A formal hearing before a hearings officer where the laws, rules and evidence are presented and considered and a proposed opinion and order is issued.

(3) The appeals process shall comply with the requirements of the Administrative Procedures Act (APA), ORS 183.025 to 183.725, unless specifically addressed in these rules.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0340

Filing an Appeal

(1) Appeals shall be filed in writing, within 30 days following:

(a) The issuance of Notice of Noncompliance and Proposed/Final Penalty Assessment Order;

(b) Issuance of decision related to an application for exemption.

(2) Appeals shall be sent to the Office of State Fire Marshal and shall include:

(a) The name, address and telephone number of the person making the appeal;

(b) The facility's name and address;

(c) The facility number assigned to the firm by the Office of State Fire Marshal;

(d) The Notice of Noncompliance and Proposed/ Final Penalty Assessment Order number and amount of penalty for which the appeal is made; and

(e) The basis upon which the appeal is being made and the specific defense relied upon.

(3) The filing of an appeal shall stay payment of penalties until the Notice of Noncompliance and Proposed Final Penalty Assessment Order or an Opinion and Order become final.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0350

Informal Conference

(1) The Office of State Fire Marshal will provide an opportunity for a person to discuss their appeal informally. An informal conference may be requested and held prior to or in lieu of a formal hearing.

(2) An informal conference concerning survey reporting requirements, Notice of Noncompliance and Proposed/Final Penalty Assessment Order *shall not* extend the 30 days allowed for filing appeals.

(3) The informal conference may be used to:

(a) Clarify requirements of the Community Right-to-Know and Protection Act;

(b) Discuss the basis for any Notice of Noncompliance and Proposed/Final Penalty Assessment Order;

(c) Discuss correction dates;

(d) Clarify the wording and meaning of the Notice of Noncompliance and Proposed/Final Penalty Assessment Order;

(e) Improve a person's understanding of the Community Right-to-Know and Protection Act;

(f) Correct errors in a Notice of Noncompliance and Proposed/Final Penalty Assessment Order or penalty;

(g) Narrow issues of concern; and/or

(h) Arrive at the basis for an informal disposition of an appeal

(4) As the result of an informal conference, the Office of State Fire Marshal may amend, withdraw, extend, delete or reduce a Noncompliance and Proposed/Final Penalty Assessment Order, for good cause.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0360

Formal Hearing

(1) The Office of State Fire Marshal will arrange for a hearings officer to conduct a formal hearing if it is deemed that the issues being appealed cannot be resolved informally.

(2) The Office of State Fire Marshal will set a date, time and location for the formal hearing.

(3) The Office of State Fire Marshal will notify, by letter, the person filing an appeal or their designated representative of the date, time, location and hearings officer conducting the formal hearing.

(4) The hearings officer will hear the case and render a proposed Opinion and Order, including recommended findings of fact and conclusion of law, according to the Administrative Procedures Act (APA), ORS 183.025 to 183.725

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0370

Manifest Injustice

(1) To prevent a manifest injustice, if a timely appeal has not been filed, the Office of State Fire Marshal, at the State Fire Marshal's own discretion or upon request from the affected employer, owner or operator, may vacate or amend the Community Right-to-Know reporting requirements, Notice of Noncompliance and Proposed/ Final Penalty Assessment Order for a facility.

(2) The Office of State Fire Marshal may refer a matter arising under this rule to a hearings officer for a formal hearing or a regional appeals advisory board.

(3) All requests by an employer, owner or operator for consideration based on a manifest injustice shall be in writing and contain a statement indicating the basis of their request.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0380

Incident Reporting System

(1) Emergency service personnel responding to an incident of threatened or actual injury to a human, wildlife, domestic animal, or in which damage to the environment, or any property loss occurs resulting from a chemical substance or waste incident shall make a written report of the incident to the Office of State Fire Marshal:

(a) This report shall be on a form approved by the Office of State Fire Marshal (Form #814-440-170);

(b) Only one written incident report for each incident is required. Responsibility for completing the written report shall be in the following order:

(A) Where fire department unit(s) have responded to the incident, the fire department having jurisdiction shall be responsible for completing and forwarding the written report;

(B) Where no fire department unit(s) has responded to the incident and where one or more law enforcement agency(s) is at the scene, the first law enforcement agency to have arrived at the scene shall be responsible for completing and forwarding the written report;

(C) Where no fire department unit(s) or law enforcement agency(s) has responded to the incident and where health professional(s), including emergency medical technicians or ambulance personnel, are at the scene, the first health professional to arrive at the scene shall be responsible for completing and forwarding the written report; and

(D) Where no fire department unit(s), law enforcement agency(s) or health professional(s) has responded to the incident, any other emergency service agency, including agencies of this state, who are at the scene shall confer and determine who shall be responsible for completing and forwarding the written report.

(2) The written report required under section (1) of this rule should be submitted to the Office of State Fire Marshal no later than ten working days after the incident occurs.

(3) The following incidents are exempted from the reporting requirements of section (1) of this rule:

(a) Motor fuels which are spilled in quantities of less than 42 gallons from a vehicle, unless it enters a waterway; or is determined to endanger the public safety or immediate or surrounding environment, including groundwater; or

(b) Sewage overflows; or

(c) Structure fires or other emergencies where hazardous substances are involved as exposures, if the quantities exposed are less than 42 gallons. This means that a Hazardous Materials Incident Report would not be required for a structure fire or other emergency if consumer quantities of hazardous substances did not directly relate to the cause of the emergency or to injuries or death. If these consumer quantities caused the incident or contributed to an injury or death, a written Oregon State Fire Marshal Hazardous Materials Incident Report would be required. As with any fire, a State Fire Marshal Fire Report (Form #814-440-10) is required.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0390

Annual Summaries

The Office of State Fire Marshal shall annually summarize all incidents reported and information received from the Hazardous Substance Survey. Copies of these summaries will be distributed at no charge to:

- (1) Governor;
- (2) Legislative Assembly;
- (3) Department of Environmental Quality;
- (4) Workers' Compensation Division;
- (5) Department of Transportation;
- (6) Health Division of the Department of Human Resources;
- (7) Environmental Health Sciences Center at Oregon State University;
- (8) Poison Control Center at Oregon Health Sciences University;
- (9) Oregon Emergency Management Division of the Department of State Police;
- (10) Oregon State Police;
- (11) Every public library as defined in ORS 357.400;
- (12) Public fire departments;
- (13) Local law enforcement agencies.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

DIVISION 90

HAZARDOUS MATERIALS

837-090-0900 [Renumbered to 837-090-1030]

Hazardous Substance Possession Fees

837-090-1000

Coverage

(1) Persons with facilities covered by ORS 453.317 (1) and OAR 837-090-0001 through 837-090-0590 shall be subject to a fee assessment for those hazardous substances classified as minimally, generally, very hazardous, or subject only to a registration fee.

(2) Each facility site shall have a separate fee assessed based upon the amounts and classification of hazardous substances possessed.

(3) Hazardous Substance Possession Fees assessed by local governments based on quantity or the Hazardous Substance Survey shall be billed and collected only through contract with the Office of State Fire Marshal.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

(corrected 6-19-92)

837-090-1005

General

(1) Annually any person possessing a hazardous substance at a covered facility in this state shall pay a fee for each facility site.

(2) The annual fee shall be due following the requirement for submission of a Hazardous Substance Survey. See OAR 837-090-0001 to 837-090-0590.

(3) The annual fee shall be in accordance with the fee schedules in OAR 837-090-1030 unless the substance is subject only to a registration fee.

(4) The assessment of a Hazardous Substance Possession Fee does not relieve any person from any other duty or responsibility imposed by law or rule.

(5) The Hazardous Substance Possession Fee imposed by these rules is in addition to all other state, county, or municipal fees on hazardous substances.

(6) Local government Hazardous Substance Possession Fees shall be in accordance with fee schedules established by local government rule or ordinance.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (corrected 6-19-92)

837-090-1010

Effective Dates

(1) OAR 837-090-1000 through 837-090-1045 are effective upon date of filing.

(2) Local government Hazardous Substance Possession Fee programs shall be in compliance with these rules on or before July 1, 1992.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (corrected 6-19-92)

837-090-1015

Definitions

(1) "Aerosol" means any material which is dispensed from its container as a mist, spray or foam by propellant under pressure.

(2) "Blasting Agent" means any material or mixture consisting of a fuel and oxidizer intended for blasting, not otherwise classified as an explosive, in which none of the ingredients are classified as explosives, provided that the finished product as mixed and packaged for use or shipment cannot be detonated by means of a No. 8 test blasting cap when unconfined. Materials or mixtures classified as nitrocarbonitrates by the Department of Transportation regulations shall be included in this definition.

(3) "Carcinogen" means any substance that causes the development of cancerous growths in living tissue. A chemical is considered to be a carcinogen if:

(a) It has been evaluated by the International Agency for Research on Cancer (IARC) and found to be a carcinogen or potential carcinogen; or

(b) It is listed as a carcinogen or potential carcinogen in the latest edition of the **Annual Report on Carcinogens** published by the National Toxicology Program (NTP); or

(c) It is regulated by the Occupational Safety and Health Administration (OSHA) as a carcinogen.

(4) "Combustible Liquid" means any liquid having a flash point at or above 100° F. Combustible liquids shall be subdivided as follows:

(a) Class II liquids shall include those having flash points at or above 100° F. and below 140° F.;

(b) Class III-A liquids shall include those having flash points at or above 140° F. and below 200° F.;

(c) Class III-B liquids shall include those having flash points at or above 200° F.

(5) "Compressed Gas" means:

(a) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70° F.; or

(b) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130° F. regardless of the pressure at 70° F.; or

(c) A liquid having a vapor pressure exceeding 40 psi at 100° F. as determined by **U.F.C. Standard No. 9-5**.

(6) "Corrosive" means any chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. A chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described in the U.S. Department of Transportation in **Appendix A to CFR 49 Part 173**, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

(7) "Corrosive Liquid" means any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action. Examples include acid, alkaline or caustic materials.

(8) "Cryogenic Fluids" means those fluids having a normal boiling point below 150° F. (See **Table No. 75.102-B** of the **Uniform Fire Code**).

(9) "Cutaneous Hazard" means a substance that causes or causes sensitization of the dermal layer of the body.

(10) "Department" means the Department of Revenue.

(11) "Dust" means pulverized particles which, if mixed with air in the proper proportions, become explosive and may be ignited by a flame or spark or other source of ignition.

(12) "Entity" means any individual, trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the Federal Government and any agency thereof.

(13) "Explosive" means:

(a) A chemical which causes a sudden, almost instantaneous release of pressure, gas and heat when subjected to sudden shock, pressure, or high temperatures; or

(b) A material or chemical, other than a blasting agent, that is commonly used or intended to be used for the purpose of producing an explosive effect and is regulated by **Article 77** of the **Uniform Fire Code**.

(14) "Eye Hazard" means a substance that causes damage to the eyes, except those that cause damage by mechanical means.

(15) "Facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by or under common control with such person.

(16) "Fire Hazard" means any thing or act which increases or may cause an increase in the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire; or which may obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire.

(17) "Firework" means any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedoes, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like construction and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance, except that the term "fireworks" shall not include auto flares, paper caps containing not in excess of an average of 25/100 of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps.

(18) "Fissile Materials" means radioisotopes which may undergo a nuclear fission reaction and are usually found only at

reactor sites or as part of a nuclear weapon.

(19) "Flammable Anesthetic" means a compressed gas which is flammable and administered as an anesthetic and shall include among others, cyclopropane, divinyl ether, ethyl chloride, ethyl ether and ethylene.

(20) "Flammable Gas" means a gas which is flammable at a mixture of 13 percent or less (by volume) with air, or the flammable range with air is wider than 12 percent, regardless of the lower limit.

(21) "Flammable Liquefied Gas" means a liquefied compressed gas which under the charged pressure is partially liquid at a temperature of 70° F. and which is flammable.

(22) "Flammable Liquid" means any liquid having a flash point below 100° F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100° F. Flammable liquids shall be subdivided as follows:

(a) Class I-A shall include those having flash points below 73° F. and having a boiling point below 100° F.;

(b) Class I-B shall include those having flash points below 73° F. and having a boiling point at or above 100° F.;

(c) Class I-C shall include those having flash points at or above 73° F. and below 100° F.

(23) "Flammable Solid" means a solid substance, other than one which is defined in **Article 9** of the **Uniform Fire Code** as a blasting agent or explosive, that is liable to cause fire through friction or as a result of retained heat from manufacture, or which has an ignition temperature below 212° F., or which burns so vigorously or persistently when ignited so as to create a serious hazard. Finely divided solid materials which when dispersed in air as a cloud may be ignited and cause an explosion are flammable solids.

(24) "Generally Hazardous" means hazardous substances which present a hazard to public health, welfare or safety or the environment.

(25) "Hazardous Substance" means:

(a) Any substance or waste known to present a physical or health hazard to employees, emergency response personnel, or the public under normal conditions of use and/or during an emergency situation; or

(b) Any hazardous chemical which is required to have a Material Safety Data Sheet pursuant to OAR Chapter 437, Division 155, the Hazard Communication rules of the Oregon Occupational Safety and Health Division of the Department of Insurance and Finance; or

(c) Any radioactive substance as defined by ORS 453.005(7);

or

(d) Any radioactive waste as defined by ORS 469.300; or

(e) Any substance or waste designated as hazardous by the Director of the Department of Insurance and Finance or the State Fire Marshal.

(26) "Hematopoietic Toxin" means a substance which damages or disrupts the blood system.

(27) "Hepatotoxin" means a substance that causes damage to the liver.

(28) "Highly Toxic Material" means a material which produces a lethal dose or lethal concentration which falls within any of the following categories:

(a) A chemical that has a median lethal dose (LD₅₀) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;

(b) A chemical that has a median lethal dose (LD₅₀) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each;

(c) A chemical that has a median lethal concentration (LC₅₀) in air of 200 parts per million by volume or less of gas or vapor, or two milligrams per liter of less of mist, fume or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each;

(d) Mixture of these materials with ordinary materials, such

as water, may not warrant a classification of highly toxic. While this system is basically simple in application, any hazard evaluation which is required for the precise categorization of this type of material shall be performed by experienced, technically competent persons.

(29) "Licensed Vehicle" means a motorized vehicle licensed by the State of Oregon for travel using its own power on public highways.

(30) "Hypergolic Materials" means any materials which are capable of igniting spontaneously upon contact with another substance.

(31) "Highly Hazardous" means and is equivalent to very hazardous. See section (56) of this rule.

(32) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of pressure and/or cryogenic conditions.

(33) "Liquefied Petroleum Gas" means any material which is composed predominantly of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or isobutane) and butylenes.

(34) "Material Safety Data Sheet" means written or printed material concerning a hazardous chemical which is prepared pursuant to rules OAR Chapter 437, Division 155, the Hazard Communication Rules of the Oregon OSHA Occupational Safety and Health Division of the Department of Insurance and Finance.

(35) "Minimally Hazardous" means hazardous substances which present little hazard to public health, welfare, safety or the environment.

(36) "Mutagen" means a substance that causes genetic (heritable) changes in the DNA of chromosomes.

(37) "Nephrotoxin" means a substance that is poisonous to the kidneys.

(38) "Neurotoxin" means a substance that causes damage to the nervous system.

(39) "Non-hazardous" means a substance which presents no hazard to public health, welfare, safety or the environment.

(40) "Organic Peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms have been replaced by an organic radical. Organic peroxides may present an explosion hazard (detonation or deflagration) or they may be shock sensitive. They may also decompose into various unstable compounds over an extended period of time.

(41) "Oxidizer" means a chemical other than a blasting agent or explosive as defined in **Article 9** of the **Uniform Fire Code** that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

(42) "Peroxide-Forming Chemical" means a chemical which, when exposed to air, will form explosive peroxides which are shock, pressure or heat sensitive.

(43) "Person" means:

(a) Any entity including, but not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the Federal Government and any agency thereof;

(b) Any entity operating a facility that is included in one or more of the standard industrial classification categories identified by the State Fire Marshal under ORS 453.408(2).

(44) "Pesticide" means any substance or mixture of substances, including fungicides, intended for preventing, destroying, repelling or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. Products defined as drugs in the Federal Food, Drug and Cosmetic Act are exempt.

(45) "Possess" or "Possession" means the physical possession of a hazardous substance within the state.

(46) "Pyrophoric" means a chemical that will spontaneously ignite in air at or below a temperature of 130° F. (54.4° C.).

(47) "Quantity Range(s)" means a range of values assigned for reporting the quantities of hazardous materials. It is equivalent

to the term Reporting Range. See OAR 837-090-0010(71) and 837-90-040.

(48) "Radioactive Material" means any material or combination of materials that spontaneously emits ionizing radiation.

(49) "Reactive Materials" means those materials which can enter into a hazardous chemical reaction with other stable or unstable materials.

(50) "Registration Fee" means a Hazardous Substance Possession Fee assessed in lieu of that set by a fee schedule.

(51) "Respiratory Hazard" means those materials which cause damage to the respiratory system.

(52) "Sensitizer" means a chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

(53) "Toxic Material" means a material which produces a lethal dose or a lethal concentration within any of the following categories:

(a) A chemical or substance that has a median lethal dose (LD₅₀) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;

(b) A chemical or substance that has a median lethal dose (LD₅₀) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 20 hours) with the bare skin of albino rabbits weighing between 2 and 3 kilograms each;

(c) A chemical or substance that has a median lethal concentration (LC₅₀) in air more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

(54) "Unstable (reactive) Liquid" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shock, pressure or temperature.

(55) "Unstable Materials" means those materials, other than explosives, which in the pure state or as commercially produced will vigorously polymerize, decompose, condense or become self-reactive and undergo other violent chemical changes, including explosion, when exposed to heat, friction, shock, or in the absence of an inhibitor or in the presence of contaminants or in contact with non-compatible materials.

(56) "Very Hazardous" means hazardous substances which present a significant hazard to public health, welfare or safety or the environment.

(57) "Water-Reactive Materials" means materials which explode violently, react, produce flammable, toxic or other hazardous gases, or evolve enough heat to cause self-ignition or ignition of nearby combustibles upon exposure to water or moisture.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (corrected 6-19-92); FM 5-1994, f. 12-14-94, cert. ef. 12-15-94

837-090-1020 Hazardous Classification

(1) Hazardous substances shall be classified according to the hazard(s) they present.

(2) Hazardous substances shall be classified as generally hazardous unless they meet the criteria for classification as minimally, very hazardous or are subject only to a registration fee.

(3) For purposes of the Hazardous Substance Possession Fee, the most hazardous classification that can be assigned to a substance will be used.

(4) A hazardous substance shall be classified as subject only

to a registration fee if, under normal or reasonably expected conditions:

(a) Its primary hazard is that only of a nuisance dust and/or minor irritant; and

(b) It has no other hazard that would classify it as a minimally, generally or very hazardous substance; or

(c) It is classified as such by the Office of State Fire Marshal.

(5) A hazardous substance may be classified as minimally hazardous if, under normal or reasonably expected conditions:

(a) It has a National Fire Protection Association (NFPA) 704 rating of 1 or less; and

(b) It is not required to have either the signal Words Danger or Warning on container labels; and

(c) It does not have a Threshold Limit Value (TLV), Permissible Exposure Limit (PEL) or Recommended Exposure (REL) less than 10 mg/m³ of total particulate, 5,000 ppm of gas or vapor or 10 fibers/cc; and

(d) There has been not one reliable animal or human study showing that it is a hepatotoxin, nephrotoxin, neurotoxin, carcinogen, sensitizer, corrosive, hematopoietic toxin, respiratory hazard, reproductive toxin, mutagen, eye hazard, or cutaneous hazard; and

(e) It is not a hazardous waste; and

(f) It is not an aerosol, blasting agent, combustible liquid, compressed gas, corrosive, corrosive liquid, cryogenic fluid, dust, explosive, fire hazard, fireworks, fissile materials, flammable anesthetic flammable gas, flammable liquefied gas, flammable liquid, flammable solid or metal, highly toxic material, highly toxic pesticide, hypergolic material, liquefied petroleum gas, natural gas, organic peroxide, oxidizer, peroxide, peroxide-forming chemical, pesticide, pyrometric, radioactive material, reactive material, sensitizer, toxic material, unstable (reactive) liquid, unstable material or water-reactive material; or

(g) It is classified as such by the Office of State Fire Marshal.

(6) A hazardous substance will be classified as very hazardous if, under normal or reasonably expected conditions:

(a) It has a National Fire Protection Association (NFPA), 704 health and/or reactivity rating of 4; or

(b) It is required to have the signal word Danger on container labels; or

(c) It is a highly toxic material, human carcinogen, high explosive, highly combustible dust or metal, Class 4 oxidizer, Class I organic peroxide, pyrophoric, Class 4 unstable (reactive) material, Class 3 water-reactive material, radioactive material, hypergolic; or

(d) It is classified as such by the Office of State Fire Marshal.

(7) The Office of State Fire Marshal shall make an initial hazard classification of hazardous substances:

(a) In the absence of information to support classification as minimally, very hazardous or subject only to a registration fee, each hazardous substance shall be classified as generally hazardous;

(b) Requests for changes in hazard classifications shall be made according to the appeal process in OAR 837-090-0380 through 837-090-0390.

(8) If a mixture of hazardous substances has been tested as a whole to determine its hazards, the results of such testing shall be used to determine the mixture's hazard classification.

(9) If a mixture of hazardous substances has not been tested as a whole to determine the mixture's health hazards, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen.

(10) If a mixture of hazardous substances has not been tested as a whole to determine whether the mixture is a physical hazard, the Office of State Fire Marshal may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture and its hazard classification.

(11) If there is evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the

case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established Permissible Exposure Limit, ACGIH Threshold Limit Value, or Recommended Exposure Limit, or could present a health hazard in those concentrations, the mixture shall be assumed to present the same hazard as the component.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (corrected 6-19-92); FM 5-1994, f. 12-14-94, cert. ef. 12-15-94

837-090-1025

Payments and Billings

(1) Hazardous Substance Possession Fee payments are due by January 1 unless otherwise specified on the fee assessment statement.

(2) Hazardous Substance Possession Fees shall be due retroactively to January 1 of each year, for those persons who had been notified but failed to previously submit required complete and accurate Hazardous Substance Surveys. See OAR 837-090-0001 to 837-090-0080.

(3) In the absence of other data, current survey data will be used to assess the fee(s) for the previous year(s) when a firm was subject to the Hazardous Substance Survey and assessed fees.

(4) Persons who fail to pay the assessed fee within 60 days of the due date shall be assessed a late penalty fee of five percent of the fee amount.

(5) Persons who pay the assessed fee 60 days or more after the due date on the fee assessment statement shall be subject to payment of interest at the rate prescribed under ORS 305.220.

(6) Persons subject to retroactive fee assessments shall be subject to payment of interest at the rate prescribed under ORS 305.220.

(7) The Office of State Fire Marshal shall, for each year a fee is due, send a statement to each person subject to the fee indicating the amount of fee due and the due date.

(8) The Office of State Fire Marshal may extend for good cause, up to one month, the due date for fee payment:

(a) The extension may be granted at any time if a written request is filed with the State Fire Marshal within or prior to the period for which the extension may be granted;

(b) If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid.

(9) If the person fails to pay the amount due, the State Fire Marshal may either:

(a) Bring an action for the recovery of the fee due; or

(b) Initiate a contested case hearing according to the applicable provisions of ORS 183.310 to 183.550.

(10) Notwithstanding any provision of ORS 183.310 to 183.550, nothing in section (9) of this rule shall be considered to require the State Fire Marshal to conduct a contested case hearing as a prerequisite to bringing an action under subsection (9)(a) of this rule.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (and corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-090-1030

State Fee Schedules

(1) Three state fee schedules shall be developed annually as the basis for assessing each person returning a Hazardous Substance Survey (see OAR 837-090-0001 to 837-090-0080) a Hazardous Substance Possession Fee.

(2) The annual fee assessed under each schedule shall be based upon the single largest maximum aggregate quantity of substance reported in the Hazardous Substance Survey, that is manufactured, stored, or otherwise possessed by a facility during

the survey year.

(3) The programs to be funded from fees collected under ORS 453.396 to 453.414 and these rules, and the range of the fee schedules that may be considered, beginning July 1989, are as follows:

(a) For funding the Community Right to Know and Protection Act, not less than \$25 and not more than \$2,000 per facility;

(b) For funding the Toxics Use Reduction and Hazardous Waste Reduction Act, not less than \$25 and not more than \$2,000 per facility;

(c) For each employer's share of a total of up to \$1 million to be deposited into the Orphan Site Account established under ORS 465.380, not less than zero and not more than \$9,000 per facility. This schedule shall not require an employer to pay a total more than \$25,000 for all facilities.

(4) Any dispute as to the amount or validity of a hazardous substance fee assessment shall be resolved in accordance with the contested case procedure described in OAR 837-090-0380 to 837-090-0410.

(5) The Hazardous Substance Possession Fee schedules for the 1989 billing cycle are available from the agency.

(6) The Hazardous Substance Possession Fee schedules for the 1989 - 1990 billing cycle are available from the agency.

(7) For 1990 the Hazardous Substance Possession Fee for propane shall be assessed as follows:

(a) If the amount of propane reported is less than 500 cubic feet or less than Quantity Range 11 the fee assessed shall be according to OAR 837-090-1025(6);

(b) If the amount of propane reported is more than 500 cubic feet and less than 10,000 cubic feet or Quantity Range 30, the assessed fee shall be the greater of \$50 or the fee that would be assessed according to OAR 837-090-1025(6) for the next highest quantity of reported hazardous substance;

(c) If the amount of propane reported is equal to or greater than 10,000 cubic feet or Quantity Range 30, the assessed fee shall be according to OAR 837-090-1025(6):

(A) If a person can provide evidence that all or part of their propane is derived from the refining of crude oil, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly;

(B) If a person can provide evidence that all or part of their propane is used to power motor vehicles licensed for public highway use, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly.

(8) For 1991 the Hazardous Substance Possession Fee for propane shall be assessed as follows:

(a) If the amount of propane reported is less than 500 cubic feet or less than Quantity Range 11 the fee assessed shall be according to OAR 837-090-1025(9);

(b) If the amount of propane reported is more than 500 cubic feet and less than 250,000 cubic feet or Quantity Range 41, the assessed fee shall be the greater of a registration fee of \$25 or the fee that would be assessed according to OAR 837-090-1025(9) for the next highest quantity of reported hazardous substance;

(c) If the amount of propane reported is equal to or greater than 250,000 cubic feet or Quantity Range 41, the assessed fee shall be according to OAR 837-090-1025(9):

(A) If a person can provide evidence that all or part of their propane is derived from the refining of crude oil, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly;

(B) If a person can provide evidence that all or part of their propane is used to power motor vehicles licensed for public highway use, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly.

(9) The Hazardous Substance Possession Fee schedules for the 1990 - 1991 billing cycle are available from the agency.

(10) The Hazardous Substance Possession Registration Fee for the 1990 - 1991 billing cycle shall be \$25.

(11) Orphan Site Account hazardous substance possession fee assessments for the 1991 billing cycle shall not be assessed until bonds have been authorized pursuant to ORS 465.380,

468.195 and 468.215.

(12) The Hazardous Substance Possession Fee schedules for the 1991 - 1992 billing cycle are available from the agency.

(13) For 1991 - 1992 the Hazardous Substance Possession Fee for liquefied gases including propane will be assessed based on reporting the quantity range(s) in gallons.

(14) The Hazardous Substance Possession Registration Fee for the 1991 - 1992 billing cycle shall be \$25.

Stat. Auth.: ORS 453.408, Ch. 833 & 1071

Stats. Implemented: ORS

Hist.: FM 4-1989, f. & cert. ef. 8-31-89; FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92); Renumbered from 837-90-900; FM 9-1992(Temp), f. & cert. ef. 9-28-92

837-090-1035

Records

(1) Every person who possesses a hazardous substance shall keep at the registered place of business complete and accurate records for each facility of any hazardous substance purchased by, or brought in or caused to be brought in to the facility, or stored, used, or manufactured at the facility.

(2) The State Fire Marshal or an authorized representative of the State Fire Marshal, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 453.396 to 453.414 and these rules.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (and corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-090-1040

Exemptions

(1) Units of local government are exempted from the assessment of Hazardous Substance Possession Fees for those substances which the unit of local government:

(a) Is specifically required to use by a state or federal law or rule; or

(b) Uses to meet a standard imposed by state or federal law or rule; or

(c) Produces as a by-product of processes employed to meet a standard imposed by state or federal law or rule.

(2) Unit of local government exemption requests shall be made on forms or by methods specified by the Office of State Fire Marshal.

(3) The following substances are exempt from the Hazardous Substance Possession Fee:

(a) Crude oil and petroleum products derived from the refining of crude oil, including plant condensate, gasoline, diesel motor fuel, aviation fuel, lubrication oil, crankcase motor oil, kerosene, benzol, fuel oil, residual fuel, petroleum coke, asphalt base, liquefied or liquefiable gases such as butane, ethane and propane and other products described during petroleum processing, but not including derivatives, such as petroleum jellies, cleaning solvents or asphalt paving;

(b) Solid waste as defined in ORS 459.005;

(c) Hazardous waste as defined in ORS 466.005;

(d) Any substance or activity which the Constitution or laws of the United States prohibit the state from taxing;

(e) Propane used to power licensed motor vehicles;

(f) Propane when possessed by public schools;

(g) Natural gas unless stored in liquefied form for non-vehicular use in quantities greater than 200 cubic feet.

(4) Persons whose property is exempt from taxation under ORS 307.090 are exempt from that portion of the Hazardous Substance Possession Fee assessed for funding the Orphan Site Account under ORS 453.402(2)(c).

(5) The State Fire Marshal by rule may add persons or substances to or exempt persons or substances from liability for the fee imposed under ORS 453.396 to 453.414 to conform to the

reporting requirements established by the State Fire Marshal under the Community Right to Know and Protection Act. See OAR 837-090-0001 to 837-090-0590. Requests for such exemptions shall be made according to the exemption provisions in OAR 837-090-0430 to 837-090-0500.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91 (and corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-090-1045

Local Government Fees

(1) Local government Hazardous Substance Possession Fees based on quantity or the Hazardous Substance Survey shall be used solely to supplement and not to duplicate the Office of State Fire Marshal's programs under ORS 453.307 to 453.372.

(2) Local government Hazardous Substance Possession Fees based on quantity or the Hazardous Substance Survey (See OAR 837-090-0001 to 837-090-0590), shall be billed and collected only through contract with the Office of State Fire Marshal.

(3) Local governments shall not assess a hazardous Substance Possession Fee for the same substance to persons who are assessed a Hazardous Substance Possession Registration Fee by the Office of State Fire Marshal.

(4) The Office of State Fire Marshal shall not enter into a contract with a local government under OAR 837-090-1000(3) or section (2) of this rule, unless the local government meets the following requirements:

(a) The local government certifies that the revenue from the local Hazardous Substance Fee will be used solely to supplement and not duplicate the Office of State Fire Marshal's programs under ORS 453.307 to 453.372; and

(b) The local Hazardous Substance Fee system is structured to be compatible with the fee schedules adopted by OAR 837-090-1030; and

(c) The local Hazardous Substance Possession Fee assessment program will not raise moneys in excess of that needed to carry out the local government's supplemental Community Right-To-Know programs.

(5) The contract under these rules shall include:

(a) Provisions that assure that the local government pays the portion of the costs that may be attributed to its fee assessment program; and

(b) Conditions that require the local government to bear all costs related to collection of its fee, including but not limited to costs associated with conducting hearings or appeals on the fee;

(c) If appropriate, provisions to allow local government to conduct hearings or appeals on its fees.

(6) Any local government operating a Hazardous Substance Fee assessment program shall comply with these rules on or before July 1, 1992.

(7) Local government programs funded by Hazardous Substance Possession Fees will be reviewed by the Office of State Fire Marshal to ensure against duplication, in accordance with ORS 453.402(7)(b).

(8) Failure of a local government to comply with section (4) of this rule will result in cancellation of the Office of State Fire Marshal's contract and the local government's Hazardous Substance Possession Fee assessment program.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS

Hist.: FM 3-1991(Temp), f. & cert. ef. 12-23-91 (and corrected 1-30-92); FM 7-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-19-92)

837-090-1145

Petroleum Load Fee

(1) As provided in ORS 465.101 to 465.127, the petroleum load withdrawal fee is established for the 1993-95 biennium at the rate of \$4.75 per load to carry out the state's oil, hazardous materials and hazardous substance emergency response program as it relates to the maintenance, operation, and use of the public highways, roads, streets, and roadside rest areas.

(2) Fee collection by the Department of Revenue will begin October 1, 1993.

Stat. Auth.: ORS Ch. 707

Stats. Implemented: ORS

Hist.: FM 5-1993, f. & cert. ef. 11-1-93

DIVISION 100

ACCREDITATION OF FIRE SERVICE PERSONNEL

837-100-0001

Definitions

(1) "Administrator" shall mean the Administrator of the State Fire Marshal's Office.

(2) "Board" shall mean the Fire Standards and Accreditation Board.

(3) "Chairperson" shall mean the presiding officer of the Board.

(4) "Class" shall mean a single meeting or session devoted to a specific fire service training objective.

(5) "Conditions" shall mean anything called for as a requirement before the performance, completion, or effectiveness of something else.

(6) "Course" shall mean any grouping of classes or series of lessons or lectures combined to attain a particular education or fire service training objective.

(7) "Demonstrate" shall mean to show by actual use, illustration, simulation, or explanation.

(8) "Department" shall mean a fire department as defined in section (12) of this rule.

(9) "Department Head" shall mean the Chief Officer of the fire department.

(10) "Educational Credits" shall mean credits earned for studies satisfactorily completed at an institution of higher learning or community college that is accredited by either a nationally recognized accreditation authority or the Fire Standards and Accreditation Board.

(11) "Employed" shall mean active participation in fire prevention, fire investigation, or fire control, and on the membership roll of a public fire department.

(12) "Fire Department" shall mean a public organization of the state, city, county, or special district, whose primary duty is fire prevention and/or control.

(13) "Identify" shall mean to physically select, indicate, or explain verbally or in writing, using standard terms recognized by the fire service.

(14) "IFSTA" shall mean the International Fire Service Training Association.

(15) "Live Fire" shall mean any structural, flammable liquid, or flammable gas fire purposely ignited to provide firefighter training.

(16) "Safely" shall mean to perform the objective without injury to self or others.

(17) "School" shall mean any school, college, university, academy, or training facility which offers fire service training or education and includes the combination of course curriculum, instructors, and facilities.

(18) "Term" shall mean a period of time having definite limits; time during which anything lasts.

(19) "The Act" shall mean the Fire Standards and Accreditation Board enabling legislation.

(20) "With Competence" shall mean to possess knowledge, skills, and judgment needed to satisfactorily perform.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

837-100-0010

Purpose

The purpose of these rules is to develop competent and reliable fire service personnel by accrediting fire service personnel who have met the uniform minimum training standards established by the fire Standards and Accreditation Board. These

rules establish the terms and conditions of such accreditation.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

837-100-0020

Continuing Education Requirements

(1) The State Fire Marshal makes the following recommendations:

(2) Accredited fire personnel should annually complete the following prescribed hours of accredited education and/or training in the discipline in which they are accredited and performing as a primary duty:

(a) Basic Firefighter, Driver, and Apparatus Operator I 3 0 hours/year;

(b) Firefighter I, II, and III; Aircraft Firefighter I, II, and III; and Apparatus Operator II and III; 60 hours/year;

(c) Instructor personnel should complete four (4) hours of accredited training per year in instructor subjects or eight (8) hours per year of successful teaching;

(d) All other accreditation levels, 12 hours/year.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86; Suspended by FM 3-1987(Temp), f. & ef. 8-12-87; FM 1-1988, f. & cert. ef. 1-11-88

837-100-0030

Lapse of Accreditation

Personnel accreditation shall lapse one year after the date of termination of employment from a fire department. Personnel accreditation may be reinstated upon written application to the State Fire Marshal and by:

(1) Providing evidence of re-employment;

(2) Providing evidence of continuing education that would have been required had employment been continuous; and

(3) Completion of all task performance evaluations required to reach the level of accreditation.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

837-100-0040

Training Program Accreditation

Accreditation of fire department training shall remain in effect until surrendered or revoked. The training program should be re-evaluated at least once every two years. The training program may also be re-evaluated when there is reason to believe the intent of the requirements for accreditation of fire department training programs are not being met.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

837-100-0050

Notification of Termination of Employment

The training officer for an accredited fire department training program shall notify the State Fire Marshal of the resignation, retirement, or termination of any accredited personnel within 30 days of the termination date. Such notification shall include date of termination, the individual's mailing address, the individual's full name and Social Security number.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

837-100-0060

Course Accreditation

The State Fire Marshal may grant accreditation for the following terms:

(1) A course may be accredited for one specific date; or

(2) A course may be accredited on a continual basis. The course shall be re-evaluated at least once every two years. The course may also be re-evaluated when there is reason to believe the intent of the requirements are not being met.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

837-100-0070

Revocation of Accreditation

The State Fire Marshal may revoke Training Program or Course accreditation if he finds, after written notice and hearing as provided for in ORS 476.830, that the training program no longer meets the requirements for accreditation.

Stat. Auth.: ORS Ch. 476

Hist.: FM 8-1986, f. & ef. 8-12-86

DIVISION 110

FIELD BURNING AND PROPANING RULES

837-110-0005

Purpose and Scope

The purpose of these rules is to increase the degree of public safety by preventing unwanted wild fires and smoke from field burning and propaning near highways and freeways within the State of Oregon. These rules shall apply to that area west of the crest of the Cascade Range and south to the Douglas/Lane County lines.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0010

Field Preparation

(1) Prior to burning, all fields shall be prepared by providing a barrier around the perimeter free of combustibles.

(2) The barrier shall prevent any fire spread and shall be prepared by using one or more of the following methods:

(a) Plowing or disking a 17-foot strip around the field perimeter; or

(b) Plowing or disking a 5-foot strip around the field perimeter and the removal of loose, combustible straw from a 12-foot strip immediately adjacent to the 5-foot strip; or

(c) Having a 17-foot strip of green cover crop or bare earth; or

(d) Retaining a least a 50 foot strip of green cover crop or bare earth in the immediately adjacent field(s) at the time of burning; or

(e) Other alternatives may be used with the specific written approval of the State Fire Marshal.

(3) The barrier need not be provided where the perimeter of the field lies adjacent to a field that meets the provision of this section.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0020

Firefighting Water Supplies

(1) When burning acreage, the following firefighting vehicles shall be provided:

(a) Up to 50 acres — At least two water tank vehicles with a minimum of 1,000 gallon water capacity shall be on site;

(b) 50 to 200 acres — At least three water tank vehicles with a minimum of 1,500 gallon water capacity shall be on site;

(c) Over 200 acres — At least four water tank vehicles with a minimum of 3,000 gallon water capacity shall be on site.

(2) Refill Requirements: During actual firefighting operations the water requirements described in this section shall be maintained at or above 25 percent of the specified amount. Within the buffer zone described in OAR 837-110-0080, this requirement shall be raised to at least 50 percent.

NOTE: Vehicles with smaller capacity water tanks may be used to meet the total gallonage capacity required by subsections (1)(a) through (c) of this rule.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-

11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0030

Firefighting Equipment

The person(s) responsible for the acreage to be burned shall use firefighting equipment that meets or exceeds the following standards:

(1) All water tank vehicles shall be equipped with a pump in working order with a pumping capability of 30 gallons per minute or more and capable of extinguishing a flame at a distance of at least 40 feet.

(2) All required firefighting vehicles shall be adequately staffed to assure proper operation. It is recommended that at least two employees who have received basic safety training be assigned to each firefighting vehicle.

(3) All water tanks shall be filled to 90 percent of their capacity prior to ignition of the field.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0040

Ignition Criteria

(1) To ensure an adequate, complete, and even burn over the entire field to be burned, a minimum of two drip torches, propane lighters, or other pressurized fuel torches shall be on the burn site at the time of ignition.

(2) Whenever possible ignition shall cause the edges of the field to burn first and the burn to continue toward the field's center.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0050

Prohibited Use

The use of pitch forks, harrows, or the dragging of burning tires to ignite the fire is prohibited.

Stat. Auth.: ORS Ch. 476 & 478

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89

837-110-0060

Communication

Radio communications shall be maintained between:

(1) All firefighting equipment utilized in the burning of the field(s).

(2) The crew at the burn site and a constantly manned base station or home that will receive a call for assistance and summon help from an appropriate emergency response agency.

Stat. Auth.: ORS Ch. 476 & 478

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89

837-110-0070

Fire Safety Watch

In addition to the firefighting equipment required by OAR 837-110-0020 and 837-110-0030, a continuous fire safety watch shall be provided. The fire safety watch:

(1) Shall patrol the perimeter of the field during burning operations.

(2) Shall begin prior to the ignition of the field and continue for at least 30 minutes after open flame ceases. However, the fire watch shall not leave until it is confirmed that the fire is completely out.

(3) Shall consist of at least one firefighting vehicle having a water tank with at least a 200 gallon water capacity and which meets the requirements of OAR 837-110-0030 and 837-110-0060.

(4) May allow a field to burn up to the edge of a secondary road as long as there is a fire watch at both ends of the road during the time that the burning is occurring, in order to assure driver safety and divert traffic if necessary.

(5) May allow burning of a field along a secondary road with fire watches, only if there are no combustibles or brush between the edge of the field and the secondary road.

NOTE: For purposes of these rules, secondary roads are rural minor collector roads and local roads as defined by the Federal Highway Administration and the Oregon Department of Transportation and quoted herein:

(a) Rural collector roads — Generally serve travel of primarily inter county rather than statewide importance and constitute those routes on which (regardless of traffic volume) predominant travel distances are shorter than on arterial routes.

(b) Rural minor collector roads — Roads that collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road, provide service to the remaining smaller communities, and link the locally important traffic generators with their rural hinterland.

(c) Rural local roads — Roads that serve primarily to provide access to adjacent land and provide service to travel over relatively short distances as compared to collectors or other highway systems.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0080

Fire Safety Buffer Zones

A fire safety buffer zone shall parallel both sides of all highways and roadways within the scope and application of these rules. The buffer zone shall extend 1/2 mile in a perpendicular direction from the outer edge of each highway or roadway right-of-way. No field burning shall be allowed in fire safety buffer zones except as provided in sections (1) and (2) of this rule:

(1) Interstate Highways west of the crest of the Cascade Range, south to the Douglas/Lane County lines:

(a) Field burning may be permitted in the fire safety buffer zone only where a 1/4 mile wide noncombustible ground surface is provided between the field to be burned and the nearest edge of the freeway right-of-way. Noncombustible ground surfaces shall meet the criteria described in section (3) of this rule;

(b) The 1/4 mile noncombustible ground surface shall extend 1/4 mile each direction beyond the permitted field boundaries parallel to the freeway right-of-way.

(2) Other Roadways:

(a) Field burning may be permitted in the fire safety buffer zone only where a 1/8 mile wide noncombustible ground surface is provided between the field to be burned and the nearest edge of the highway right-of-way. Noncombustible ground surfaces shall meet the criteria described in section (3) of this rule;

(b) The 1/8 mile noncombustible ground surface shall extend 1/8 mile in each direction beyond the permitted field boundaries parallel to the highway right-of-way;

(c) The designated roadways to which this section applies are:

(A) ORE 99 — The section from Junction City to Eugene;
(B) ORE 99E — The sections from Oregon City to Salem and from Albany to Junction City;

(C) ORE 99W — The entire section from Portland to Junction City;

(D) US 20 — The section from Philomath to Lebanon;

(E) ORE 22 — The section from ORE 18 to Mehama;

(F) US 26 — The section from ORE 47 inter-change to Portland;

(G) ORE 34 — The section from Corvallis to Lebanon.

(3) Noncombustible ground surfaces mentioned in subsections (1)(a) and (b) and (2)(a) and (b) of this rule may be provided by planting a noncombustible ground cover approved by the State Fire Marshal or by disking and plowing the surface. Other alternative methods may be recognized by the State Fire Marshal or designee.

(4) The Office of State Fire Marshal or designee with the

concurrence of the Office of State Fire Marshal may grant specific written approval:

(a) Not to provide the extensions required by subsections (2)(a) and (b) of this rule, when natural barriers such as rivers or other noncombustible surfaces exists; or

(b) For the use of alternative methods to provide the non-combustible ground surfaces required by subsections (1)(a) and (b) and (2)(a) and (b) of this rule.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0090

Ban on Burning

All field burning shall be banned when any two of the following criteria are present:

- (1) Temperature of 95 degrees Fahrenheit or above;
- (2) Relative humidity of 30 percent or below;
- (3) Wind speed of 15 miles per hour or higher.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

Propaning

837-110-0110

Field Preparation

(1) Prior to propaning, all fields shall be prepared by providing a barrier around the perimeter free of combustible materials.

(2) The barrier may be provided by green cover crop, bare earth, or other method(s) to prevent any fire spread, and shall be prepared by using one or more of the following methods:

(a) Plowing or disking a 10-foot strip around the field perimeter; or

(b) Plowing or disking a 5-foot strip around the field perimeter and removal of loose, combustible straw from a 12-foot strip immediately adjacent to the 5-foot strip; or

(c) Retaining at least a 50-foot strip of green crop or bare earth in the immediately adjacent field(s) at the time of propaning; or

(d) Having a 17-foot strip of green cover crop or bare earth; or

(e) Other alternatives may be used with the specific written approval of the State Fire Marshal.

(3) The barrier need not be provided where the perimeter of the field lies adjacent to a field that meets the provisions of this section.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0120

Firefighting Water Supplies

When propaning acreage, the following safety measures shall apply:

(1) At least one firefighting water tank vehicle meeting the equipment requirements of OAR 837-110-0120 through 837-110-0140 and which has a minimum water tank capacity of 200 gallons shall be on site.

(2) If additional firefighting assistance is more than five minutes from a burn site within a fire safety buffer zone, or ten minutes otherwise, then water tank capacity mentioned in section (1) of this rule shall be raised to 500 gallons.

(3) A means to refill the tanks mentioned in sections (1) and (2) of this rule shall be provided within a ten minute turn around time.

EXCEPTION: Water tank vehicles of smaller capacity may be used provided the total gallonage capacity complies with the above.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0130

Firefighting Equipment

The person(s) responsible for the acreage to be propaned shall use firefighting equipment that meets or exceeds the following standards:

(1) All water tank vehicles shall be equipped with a pump in working order with a pumping capability of 30 gallons per minute or more and capable of extinguishing a flame at a distance of at least 40 feet.

(2) All required water tank vehicles shall be adequately staffed to assure proper operation. It is recommended that at least two employees who have received basic safety training be assigned to each firefighting vehicle.

(3) All water tanks shall be filled to 90 percent of their capacity prior to ignition of the field.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0140

Communication

Radio communications shall be maintained:

(1) Between all firefighting equipment utilized in the propaning of the field(s);

(2) Between the crew at the propane site and a constantly manned base station or home that will receive a call for assistance and summon help from an appropriate emergency response agency.

Stat. Auth.: ORS Ch. 476 & 478

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89

837-110-0150

Fire Safety Watch

A fire watch:

(1) Shall begin following the propaning of the field and continue for at least 30 minutes after completion. However, the fire watch shall not leave until it is confirmed that the fire and all smoke sources are completely out.

(2) Shall consist of at least one firefighting vehicle with at least a 200 gallon water tank which is manned and equipped as stipulated in OAR 837-110-0020, 837-110-0030, and 837-110-0060.

(3) May allow a field to burn up to the edge of a secondary road as long as there is a fire watch at both ends of the road during the time that the burning is occurring, in order to assure driver safety or divert traffic if necessary.

(4) May allow burning of a field along a secondary road with fire watches, only if there are no combustibles or brush between the edge of the field and the secondary road.

NOTE: For purposes of these rules, secondary roads are rural minor collector roads and local roads as defined by the Federal Highway Administration and the Oregon Department of Transportation and quoted herein:

(a) Rural collector roads — Generally serve travel of primarily inter county rather than statewide importance and constitute those routes on which (regardless of traffic volume) predominant travel distances are shorter than on arterial routes.

(b) Rural minor collector roads — Roads that collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road, provide service to the remaining smaller communities, and link the locally important traffic generators with their rural hinterland.

(c) Rural local roads — Roads that serve primarily to provide access to adjacent land and provide service to travel over relatively short distances as compared to collectors or other highway systems.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-

11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0160

Ban on Burning

All propane shall be banned when any two of the following criteria are present:

- (1) Temperature of 95 degrees Fahrenheit or above.
- (2) Relative humidity of 25 percent or below.
- (3) Wind speed of 20 miles per hour or higher.

Stat. Auth.: ORS Ch. 476 & 478

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93

DIVISION 120

HAZARDOUS MATERIALS EMERGENCY RESPONSE SYSTEM

837-120-0001

Purpose and Scope

(1) These rules establish criteria and provisions for the implementation of a statewide hazardous materials emergency response system.

(2) These rules shall be used to assist and provide direction for owners of facilities, government officials, and officers of the court in the interpretation and application of ORS 453.374 through 453.990.

(3) These rules are intended to be consistent with agreements and contracts entered into by the State of Oregon, and regional and limited hazardous materials emergency response teams.

(4) These rules also provide for contract team operations and include, but are not limited to:

(a) Provisions for coordinating team dispatch, duties, and responsibilities;

(b) Criteria for the types of hazardous materials emergencies that qualify for regional or limited response team responses;

(c) Establishment of fee schedules for computing the reimbursement of contractor team response costs arising from hazardous materials emergencies; and

(d) Procedures for state recovery of emergency response costs from the person(s) responsible for causing a hazardous materials emergency.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0005

Effective Dates

OR 837-120-0001 through 837-120-0150 are effective upon date of filing.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0010

Definitions

For the purposes of these rules the following definitions apply:

(1) "Clean-Up" shall mean the measures taken after emergency response mitigation and which are intended to permanently remove the hazard from the incident site.

(2) "Contract" shall mean the entire written agreement between the State of Oregon and a Regional or Limited Hazardous Materials Emergency Response Team contractor.

(3) "Contractor" shall mean the local government agency(ies) which provide(s) regional or limited hazardous materials emergency response services under a state contract and this Division.

(4) "Documentation" shall mean the State Fire Marshal billing form, State Fire Marshal hazardous materials incident form, the team incident report, and the Decision Matrix if used, or a form incorporating these forms.

(5) "Emergency Response" shall mean those actions taken to

respond to a hazardous materials incident. See also OAR 837-120-0020(3).

(6) "Emergency Response Cost(s)" shall mean the total emergency response expenses arising from a hazardous materials incident. See also OAR 837-120-0090(2) and (3).

(7) "Extraordinary Response Cost(s)" shall mean and is equivalent to Team Response cost(s). See also section (28) of this rule and OAR 837-120-0090(4).

(8) "Facility" shall mean any building, structure, installation, equipment, pipe or pipelines, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, aircraft, or any other place where there is a release, or threatened release, of a hazardous material.

(9) "Hazardous Materials" shall mean "hazardous substance" as that term is defined in ORS 453.307(4).

(10) "Hazardous Materials Emergency Response" shall mean and be equivalent to emergency response as defined and described in section (5) of this rule and OAR 837-120-0020(3).

(11) "Hazardous Materials Emergency Response Team" shall mean an organized group of employees, designated by a contractor, who are expected to respond under state contract to control and/or stabilize actual or potential emergency releases of hazardous materials. Teams shall be designated according to staffing level, the type of personal protective equipment and training set forth in **CFR 29, Parts 1910.120(q)** and its **"Appendix A"**, as adopted by Oregon-OSHA's OAR 437-002-0100, and level of response.

(12) "Incident" shall mean any spill or release, or threat thereof, rupture, fire or accident that results, or has the potential to result, in the involvement, loss or escape of a hazardous material.

(13) "Incident Termination" shall mean the process of completing mitigation actions, securing supplies, equipment, materials, information and communication with command as it relates to a hazardous materials incident.

(14) "Limited Hazardous Materials Emergency Response Team or Limited Response Team" shall mean a hazardous materials emergency response team operating in conjunction with and providing assistance to a Regional Response Team in a limited manner or area of the state. See also section (23) of this rule.

(15) "Local Emergency Planning Committee (LEPC)" shall mean the statewide hazardous materials emergency planning committee designated by the Oregon Interagency Hazard Communication Council in its role as the State Emergency Response Commission under ORS 453.520 and the Emergency Planning and Community Right-to-Know Act (Public Law 99-499).

(16) "Local Government Agency" shall mean a city, county, special function district or subdivision thereof.

(17) "Local Response" shall mean a hazardous materials emergency response in the local governmental area where team members normally conduct emergency response activities and those areas where the local government has a hazardous materials mutual response agreement in place and the responding team does not respond as a state team.

(18) "Mitigation" shall mean actions taken to bring an emergency incident under control using fire suppression containment, confinement and other protocols.

(19) "Motor Vehicle" shall mean, but is not limited to, any vessel, aircraft or automobile, motorcycle or other conveyance driven upon public or private lands.

(20) "ORS" shall mean Oregon Revised Statutes.

(21) "Person" shall mean any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of this state, and interstate bodies.

(22) "Primary Response Area" shall mean that geographical region where a contractor is principally responsible for providing regional or limited hazardous materials emergency response services.

(23) "Regional Hazardous Materials Emergency Response Team or Regional Response Team" shall mean a contractor's hazardous materials emergency response team capable of operating within a region of the state using any of the personal

protective equipment safety limits set forth in **CFR 29, Parts 1910.120(q)** and its **“Appendix A”**, as adopted by Oregon-OSHA’s OAR 437-002-0100.

(24) “Release” shall mean the same as that term is defined in ORS 465.200(14).

(25) “Responsible Party” shall mean the person(s) responsible for causing the emergency incident. (See ORS 453.382.)

(26) “State” shall mean the State of Oregon acting by and through the State Fire Marshal.

(27) “State Spill Response Revolving Fund” shall mean the revolving fund established under ORS 453.390 et seq.

(28) “Team Response Cost(s)” shall mean those regional or limited hazardous materials emergency response team contractor expenses which are expressly allowed under the agreement and contract and approved by the state. This term is equivalent to “Extraordinary Response Cost(s)”. See also OAR 837-120-0090(4).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0020

Hazardous Materials Response System and Response Team Contracts

(1) The State Fire Marshal shall develop and implement a statewide hazardous materials emergency response system.

(2) The statewide hazardous materials emergency response system shall focus on response activities and augment emergency response systems at local, state and national levels.

(3) Emergency response(s) for hazardous materials incidents shall include:

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release;

(b) First aid, rescue or medical services; and

(c) Fire suppression, containment, confinement, or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release, or threatened spill or release, of a hazardous material if action is not taken.

(4) The statewide hazardous materials emergency response system shall include provisions for contracts for regional and limited hazardous materials emergency response teams.

(5) Regional and limited hazardous materials emergency response teams shall operate under intergovernmental agreement between the state and local government agencies.

(6) Regional and limited hazardous materials emergency response team contracts shall include:

(a) An applicable intergovernmental agreement and contract, together with all attachments, exhibits, and addenda, if any; and

(b) Referenced documents including but not limited to, correspondence between the state and contractor, contract proposals, and the state’s Request for Proposal including its specifications, terms and conditions, in that order of precedence.

(7) Contractor compensation shall generally include:

(a) Training for regional and limited response team members;

(b) Loans of state emergency response vehicles to contractors;

(c) Loans of state emergency operations equipment to contractors;

(d) Protection of regional and limited response team members from tort liability as set forth in ORS 453.384;

(e) Recovery of team response costs on behalf of contractors; and

(f) Payment of contractor’s team response costs under OAR 837-120-0090 when no payments are forthcoming from responsible person(s).

(8) Except as specifically agreed to by agreement and contract, a contractor’s compensation will not include:

(a) Personnel costs associated with non-emergency activities;

or

(b) Team response costs not directly arising from an actual or threatened release of a hazardous material or which do not

otherwise qualify under section (7) of this rule.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0030

Emergency Response Criteria

(1) Responses of regional and limited hazardous materials emergency response teams shall be controlled due to limited discretionary (State Spill Response Revolving Fund) operating monies.

(2) Regional and limited response teams will only be dispatched when the reported incident meets the minimum response criteria described in **Appendix 1** or the dispatch procedures in OAR 837-120-0040.

(3) The State Fire Marshal Hazardous Materials Duty Officer shall have final authority to determine whether an incident qualifies for a response by one or more regional or limited hazardous materials emergency response teams.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0040

Dispatch Process

(1) Before a regional or limited response team may respond to an incident, an initial assessment or size-up of the emergency shall be made.

(2) The initial assessment or size-up will usually be made by either local government officials (including team members), the County Sheriff, or Oregon State Police personnel.

(3) If, after making an assessment or size-up of the incident, the on-scene governmental official determines that the emergency involves a hazardous material and that it cannot be successfully controlled with local resources, the on-scene official may request assistance from the regional or limited response team in whose region the incident occurs.

(4) The general boundaries of the primary response areas for regional response teams are depicted on the map in **Appendix 1**.

(5) Emergency response requests shall be directed to the appropriate regional response team. A list of the teams and their contact numbers are included in **Appendix 1**.

(6) If contact with the appropriate regional response team dispatch center cannot be made, or if the incident occurs in an area outside of a primary response area, the requesting on-scene government official shall direct the response request to the Oregon Emergency Response System (OERS) at 1-800-452-0311 any time or day.

(7) Regional response team contractors, when acting under state authority, may respond outside of their local jurisdiction in accordance with the criteria established by OAR 837-120-0030(2) and (3), or under specific written or verbal approval of the State Fire Marshal Hazardous Materials Duty Officer.

(8) Granting of emergency response approval by the State Fire Marshal Hazardous Materials Duty Officer constitutes the State’s agreement to pay Contractor’s team expenses from the State Spill Response Revolving Fund if full recovery of emergency response costs from a responsible party(ies) is not possible under OAR 837-120-0090.

(9) The State Fire Marshal’s emergency response approval may take the form of written Standard Operating Guidelines wherein the State Fire Marshal grants regional and limited response team contractor pre-authorization to respond to well-defined types of emergency incidents when time is of the essence.

NOTE: To aid in understanding the dispatch process, a graphic depiction is provided in **Appendix 1**.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0050

Regional and Limited Response Team Services

(1) Regional and limited hazardous materials emergency response team activities shall be limited to emergency responses and the evaluation and documentation functions arising from hazardous materials emergency incidents which threaten life, property, or the environment.

(2) State regional or limited response teams may sample, test, analyze, treat, remove, recover, package, monitor or track the involvement of hazardous materials only if it is necessary and incidental for identifying; preventing a release, or threat of release, of a hazardous material; or to stabilize an emergency incident.

(3) Regional and limited hazardous materials emergency response teams shall respond to the best of their abilities, subject to the limitations of available equipment and personnel.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0060

Regional and Limited Response Team Performance Conditions

(1) Approved regional and limited hazardous materials emergency response team activities shall be limited to those which can be safely done to stabilize a hazardous materials emergency and, except as may be incidentally necessary, do not include the transport, storage, disposal, or remedial clean-up of hazardous materials.

(2) Regional and limited hazardous materials emergency response teams shall *not* be required to maintain general security and/or safety perimeters, locate underground utilities, insure appropriate traffic control services, conduct hydrological investigations and analysis, or to provide testing, removal and disposal of underground storage tank contamination at or near the hazardous materials incident to which the contract team is dispatched.

NOTE: These functions are generally the responsibility of the responsible party, the Oregon Department of Environmental Quality, or the local governmental jurisdiction in which the incident occurs. To be absolutely clear, regional and limited response teams shall not perform "clean-up activities" nor do they contract for the storage and/or disposal of hazardous materials; however, they do make contact with and request the Department of Environmental Quality to do these things.

(3) Regional and Limited response teams are *not* authorized to assume command of the hazardous materials emergency unless they are the only ones present and/or until a local on-scene Incident Commander arrives and/or if the on-scene Incident Commander has transferred the command authority to a regional or limited response team.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0070

Emergency Preplanning

(1) Government entities who expect to request assistance from a regional or limited response team shall be prepared to provide the regional or limited response team with the following information upon its arrival:

(a) Sufficient site-specific information, such as drainage locations, to support tactical decisions by the team officer; and

(b) Sufficient geographical and topological information to support tactical decisions by the team officer.

(2) In addition to the information described in section (1) of this rule, local government officials who wish to utilize regional or limited response team services shall also provide any other information the regional or limited response team officer reasonably requests in advance of an incident. Such preplanning data may include, but shall not be limited to:

(a) Facility site-specific floor plans and occupancy information;

(b) Local maps;

(c) Local resource information;

(d) The types and level of emergency operational support and resources available locally; and

(e) Any other necessary information.

(3) Regional and limited hazardous materials emergency response teams shall be supplied with the information contained in the state's Community Right-to-Know survey database.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0080

Response Fee Schedules

(1) The fee schedules agreed to by the state and contractors as part of the regional and limited hazardous materials emergency response team agreements and contracts, shall serve as the basis for assessment of response costs.

(2) The fee schedules shall be changed as necessary to accurately reflect response costs.

(3) Current regional and limited hazardous materials emergency response team agreements and contracts are available for review upon appointment at the central Offices of the State Fire Marshal between the hours of 8 a.m. and 5 p.m. weekdays.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0090

Response Costs and Financial Liability

(1) Notwithstanding any other provision of rule or law, whenever the State Fire Marshal dispatches a regional or limited hazardous materials emergency response team to an emergency involving hazardous materials, the State Fire Marshal may bill the person(s) responsible for causing the emergency for the costs of responding to the emergency.

(2) Emergency response costs include all response costs incurred as a result of a hazardous materials emergency. Such costs generally include, but are not limited to, all state and local government expenses that result from the assessment and emergency response phases of hazardous materials incidents.

(3) Emergency response costs do not include clean-up or disposal costs of hazardous materials, except as they may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous material or for stabilizing the emergency response incident.

(4) Team response costs do not include the wide range of emergency costs associated with a hazardous materials emergency, but shall be limited to those expenses agreed to by contract as directly related to regional hazardous materials emergency response team operations.

(5) The person(s) responsible for causing the emergency shall be liable for:

(a) All emergency response costs including, but not limited to, team expenses incurred by the regional or limited hazardous materials emergency response team, agencies of the State of Oregon, and the governmental jurisdiction in which the incident occurs; and

(b) Any other necessary and reasonable costs including the state's legal or collection expenses and the state's direct cost of administration of the hazardous materials emergency response system including duty officer personnel costs for coordination which arise as a result of the emergency.

(6) The State Fire Marshal, using documentation and reports of the regional or limited response team, will bill the person(s) that caused the hazardous materials emergency according to the requirements of ORS 453.382.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0100

Defenses Against Liability

Except for transporters of radioactive materials, there shall be no liability under OAR 837-120-0090 if the responsible person(s) can establish by a preponderance of the evidence that the release, or threat of release, of hazardous materials which led to the emergency response costs was caused solely by:

(1) An Act of God;

(2) An act of war; or

(3) An act or omission of a third person, other than an

employee or agent of the responsible person(s) or one whose act or omission occurred in connection with a contractual relationship, existing directly or indirectly, with the responsible person(s) if the defendant can establish by a preponderance of the evidence that:

(a) The responsible person(s) exercised due care with respect to the hazardous material concerned, taking into consideration the characteristics of such hazardous materials, in light of all relevant facts and circumstances; and

(b) The responsible person(s) took precautions against foreseeable acts and omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

(4) Liability for radioactive material incidents is established in ORS 469.615 and OAR 345-060-0045.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0110

Disputed Emergency Response Billings

(1) If the responsible party(ies) billed under OAR 837-120-0090 either fails to pay the costs set forth in the State Fire Marshal billing within 30 days or fails to request a hearing, a second billing which includes interest shall be sent.

(2) If the responsible party(ies) fail(s) to pay the costs set forth in the second billing within 30 days:

(a) The State Fire Marshal shall pay the regional or limited hazardous materials emergency response team's team response costs from the state revolving fund; and

(b) Contact the responsible person(s) and attempt to resolve the payment problem informally; or

(c) Initiate a contested case hearing under the applicable provisions of ORS 183.310 to 183.550 to recover any unpaid costs; or

(d) Bring a legal action for the recovery of any unpaid costs.

(3) Any state cost of collection or legal representation will be added to the outstanding disputed billing and shall become the legal obligation of the person(s) found responsible for causing the emergency.

(4) A regional or limited response team contractor which *has* agreed to operate only under state authority may bill the state for the costs of state approved responses to incidents within the contractor's local jurisdiction.

(5) A regional or limited response team contractor which *has not* agreed to operate only under state authority may bill the state for costs of responses to incidents within the contractor's local jurisdiction only were the responsible person(s) have been identified and have agreed to pay for all costs of emergency response, or there has been prior advance approval of such billing by the state.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0120

Government Liability for Emergency Responses

(1) Under the provisions of **42 U.S.C. § 9607(d)(2)**, no state or local government shall be liable under the **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 107** for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility owned by another person.

(2) State or local government shall not be precluded from liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For purpose of this rule, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) In addition to the federal protections from liability described under OAR 837-120-0120(1), regional or limited hazardous materials emergency response teams will function as an agent of the state solely for purposes of the Oregon Tort Claims Act, ORS 30.260 to 30.300 to the extent authorized under ORS 453.384. Contractors shall, therefore, not respond as state

sponsored regional or limited hazardous materials emergency response team except and unless they have been specifically authorized to do so by the State Fire Marshal.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0140

Notification and Reporting

Notification of hazardous materials incidents is mandatory under several state and federal statutes, not all of which are consistent as to their definitions of reportable materials:

(1) To ensure timely responses and recovery of costs, and comprehensive statistics, all hazardous materials incidents shall be promptly reported as required by OAR 837-090-000.

(2) A Hazardous Material Emergency Incident Report shall be completed and submitted for each incident.

Stat. Auth.: ORS 453.374 - 453.990

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

Regional Hazardous Materials Emergency Response Team Training Programs

837-120-0301

Purpose

The purpose of OAR 837-120-0301 through 837-120-0400 is to outline the requirements for approval of programs that provide training for Oregon's regional hazardous materials emergency response teams implemented under ORS 453.374 to 453.390. Funds designated for contract response teams' basic training conducted pursuant to these statutes are restricted to programs approved in accordance with the requirements in OAR 837-120-0320 through 837-120-0400. This document serves to facilitate the development of advanced hazardous materials training programs by public and private providers by identifying the procedure for submission of such programs for review and approval by the State Fire Marshal.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0310

Definitions

(1) "Applicant" shall mean any individual or organization considering itself capable of developing training programs as required in OAR 437-002-0100, **29 CFR 1910.120(q)(6)(iii)** and **(iv)** that wishes to apply for State Fire Marshal approval of its program(s) under this rule.

(2) "Training Program" shall mean an individual course, class, or instruction on a specific topic or subject area or a composite of individual courses, classes or instructions addressing all subject areas identified in OAR 837-120-0340(1).

(3) "Approval" and "Approved" shall mean only that the State Fire Marshal has identified an applicant's training program as having met the eligibility requirements identified in OAR 837-120-0320(1) for expenditure of state funds for training regional hazardous materials emergency response teams organized in accordance with ORS 453.374 and 453.380.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0320

Requests for Training Program Approval

Eligibility:

(1) The applicant shall provide, as a minimum, the following information:

(a) The applicant's name, address and telephone number;

(b) The name, title, address and telephone number of person who will act as liaison with the State Fire Marshal;

(c) Length of training in hours;

(d) Amount and type of hands-on training;

(e) The training program curriculum including the topics to be covered and the length, format, content and passing scores of examinations;

(f) A copy of all course materials (i.e., student manuals, instructor manual, lesson plans, and handout materials upon application; audiovisual aids, etc.) upon initial application for course approval; and second reviews, upon request of the State Fire Marshal. Proprietary and copyrighted course materials shall be denoted by the applicant. The State Fire Marshal shall not duplicate, copy, disseminate, or release course materials so designated without the written permission of the applicant;

(g) A table identifying all student performance objectives for each course submitted;

(h) A table identifying which training requirements in the following documents that the training program is targeted to meet and an analysis of how the training program meets them:

(A) OAR 437-002-0100, **29 CFR 1910.120(q)** Hazardous Waste Operations and Emergency Response;

(B) **NFPA 472** Standard for Professional Competence of Responders to Hazardous Materials Incidents; and

(C) OAR 838-010-0005(11) Accreditation Guide for Hazardous Materials Responders.

(i) A detailed statement about the development process of the examinations used in the training program, including skill demonstration examinations;

(j) The maximum number of students to be accepted into a given training program course;

(k) The ratio of instructors to students for each hands-on subject;

(l) Required qualifications for each instructor position by subject area. Instructors shall have completed an acceptable "train-the-trainer" type of training session for their subject training area or shall have the academic credentials, field experience or a combination of both and the training experience for the specific subject they are teaching. Instructors for "hands-on" skills training shall have actual field experience in the skills subject(s) they teach;

(m) A copy of the roster specified in OAR 837-120-0390(4) that would identify students who would attend and successfully complete the training program;

(n) A description of the applicant's experience in providing related training programs;

(o) Written certification by the applicant that the information submitted in the application is accurate and complete.

(2) Filing location. Applications shall be submitted to the headquarters of the Office of State Fire Marshal.

(3) Amendments and withdrawals:

(a) The applicant shall be permitted to revise an application any time prior to a final decision on the approval application;

(b) The applicant shall be permitted to withdraw an application, without prejudice, at any time prior to the final decision on the approval application.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0330

Review Process

Acknowledgement. The State Fire Marshal shall acknowledge in writing the receipt of all applications it receives. The State Fire Marshal may request additional information if the State Fire Marshal believes information relevant to the requirements for approval has been omitted or is incomplete. The State Fire Marshal may use an advisory group to review the applications for completeness, competency and adequacy of credentials.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0340

Decision Process

Requirements for approval. The requirements for approval are:

(1) That the applicant must demonstrate that it has a written training program that meets the applicable paragraphs of this section and its program will train students in topics required in the following:

(a) OAR 437-002-0100, **29 CFR 1910.120(q)(6) (iii)** and **(iv)**; and

(b) OAR 838-10-005(11):

(A) Section 3041 Hazardous Materials Technician/Specialist and Task Performance Criteria; or

(B) Section 3042 Hazardous Materials Team Leader.

(2) That its training program is capable of effectively training students in the topics required in the standards identified in section (1) of this rule;

(3) That it has an effective method of measuring whether the students have been adequately trained in the areas of required training;

(4) That it will maintain adequate records of the program and of employees who have successfully completed the program; and

(5) That its training program is capable of and will continue to meet the requirements for approval.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0350

Terms and Conditions of Approval

(1) Issuance of approval. If the State Fire Marshal finds that a training program, course or instruction thereof satisfies the minimum requirements established therefor pursuant to OAR 837-120-0340, the State Fire Marshal shall issue approval to the applicant of any such training program, course or instruction, for such a term and upon such conditions as the State Fire Marshal shall prescribe in accordance with subsection (2)(b) of this rule. An individual complies with any minimum requirement of ORS 476.850(1) when the individual receives training that is approved under this section.

(2) Approval of program. The following terms and conditions shall be part of every approval:

(a) The approval of each training program will be evidenced by a letter of approval from the State Fire Marshal. The letter will provide the specific details of the scope of the approval as well as any conditions imposed by the State Fire Marshal;

(b) The approval of each training program shall be valid for up to three years after the initial approval, and valid for up to five years for each subsequent renewal unless revoked for good cause. The dates of the period of approval will be stated in the approval letter;

(c) The applicant of an approved program shall continue to satisfy all the requirements of this section and the letter of approval during the period of approval.

(3) Revision of an approved program. The applicant may change elements of its approved training program by notifying the State Fire Marshal of the change, certifying that the reviewed program change meets the requirements of OAR 837-120-0340, that the entire approved program continues to meet the requirements of OAR 837-120-0340, and that supporting documentation is provided upon which its conclusions are based. The applicant may make the change upon notification to the State Fire Marshal. However, if on subsequent review, the State Fire Marshal determines the change is inconsistent with OAR 837-120-340 and so notifies the applicant, the applicant must revert to the original elements.

(4) Lapse of approval; reapplication. The approval of a training program shall automatically lapse on the date specified in accordance with subsection (2)(b) of this rule. An applicant of an approved program may renew its approval by filing a renewal request with the State Fire Marshal not less than 180 calendar days, nor more than one year, before the expiration date of its current approval. When the applicant has filed such a renewal request, the current approval will not expire until a final decision has been made on the renewal request. The renewal request will be processed in accordance with the procedures of OAR 837-120-

0320 through 837-120-0340.

(5) Transfer of an approved program. An applicant may not transfer the approval of its program to any other person or organization without prior written authorization from the State Fire Marshal.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0360

Grounds for Revocation of Approval

The State Fire Marshal may revoke the approval of a training program after written notice and hearing as provided in ORS 476.830, if the State Fire Marshal finds that the applicant of the approved program has failed to continue to satisfy the requirements of OAR 837-120-0340 or 837-120-0350 or the State Fire Marshal's letter of approval, or has misrepresented itself in its application.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0370

Procedure for Revocation of Approval

(1) If the State Fire Marshal believes that grounds exist under OAR 837-120-0360 for the revocation of approval of a training program approved under OAR 837-120-0350(1) and (2), the State Fire Marshal shall give notification to the applicant of intention to consider revocation of the approval. Each such notification shall include a statement of the basis for considering such revocation and a statement that, within ten days after the date of the notice, such applicant may request a hearing before the State Fire Marshal on the matter. (ORS 476.830(1))

(2) If any applicant to whom notice has been sent under section (1) of this rule requests a hearing before the State Fire Marshal within the periods indicated in that section, the State Fire Marshal shall hold a hearing on the matter within 30 days after the date of the request for such a hearing. The State Fire Marshal shall give notification of the time and place of a hearing held under this section. (ORS 476.830(2))

(3) A hearing held as provided in section (2) of this rule shall be limited to the basis for the proposed revocation as stated in the notification sent to the applicant under section (1) of this rule. Any applicant appearing before the State Fire Marshal at any such hearing is entitled to be present at such hearing and to be represented by counsel. (ORS 476.830(3))

(4) Within 20 days after the date of the completion of a hearing held as provided in section (2) of this rule, the State Fire Marshal shall give notification in writing of the decision to all parties to the hearing. If the State Fire Marshal finds grounds for the revocation of approval, the State Fire Marshal shall issue an order revoking such approval. If the State Fire Marshal finds that no grounds exist for such revocation, the State Fire Marshal shall dismiss the proceedings. (See ORS 476.830(4).)

(5) Any interested party may file a complaint stating that the applicant is not meeting the requirements of approval or of the State Fire Marshal's approval letter, or has misrepresented itself in its application. Such complaint shall contain specific information as to the deficiencies identified. The State Fire Marshal will acknowledge such complaints in writing and provide the applicant with a copy of the complaint subject to federal Privacy Act limitations.

(6) The State Fire Marshal will investigate such complaints and upon completion of such investigation may invoke the revocation procedures described in this section. If the decision is not to pursue revocation, the complainant will be notified in writing by the State Fire Marshal of the investigation findings and reasons why the approval remains valid.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0380

Appeal of Order Revoking Approval; Reapplication

(1) Within 60 days after receiving written notice of the findings of the State Fire Marshal, any applicant aggrieved by the

findings and order may file an appeal from the final order with the Oregon Court of Appeals in the manner provided for in ORS 183.482.

(2) Any applicant whose training program, course or instruction has suffered a loss of approval status pursuant to OAR 837-120-0350(4), 837-120-0360 or section (1) of this rule may reapply for approval at any time after the expiration of two years after the date on which the order revoking approval became final.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0390

Requirements of an Applicant Following Program Approval

Each applicant whose program has been approved shall:

(1) Allow the State Fire Marshal or his/her authorized representative(s) to attend, evaluate, and monitor any part of the approved training program without charge or cost to the State Fire Marshal. The State Fire Marshal need not give advance notice of attendance at the training program.

(2) Agree to modify the approved training program if the training requirements of this section or the referenced documents are changed or if any other applicable federal or state standard which is the subject of training is changed so that it will affect this section. The modification in the training program shall take place no later than 30 days after this section or other relevant standard becomes effective.

(3) Agree to modify the approved training program if the "state of the art" changes relative to any of the topics provided in the training program.

(4) Agree to provide the State Fire Marshal, no later than ten business days after the final date of delivery of each approved program, the name and location of each program given, the date given, the names, addresses, social security number, and employer of participants in each program, and the names of participants that were certified as having successfully completed each program. Such information shall be provided on a roster approved by the State Fire Marshal.

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0400

Examinations

Examinations shall cover the necessary skills and knowledge. Each examination shall adequately cover the important topics included in the training program and shall be based on the student performance objectives for that program as identified in OAR 837-120-0320(1)(g).

Stat. Auth.: ORS 453.374

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

DIVISION 130

STANDARDIZED-COSTS SCHEDULES

837-130-0000

Purpose and Scope

(1) The purpose of these rules is to adopt by reference standardized-costs schedules for fire protection agency response to emergency incidents in unprotected areas and on transportation routes.

(2) These rules are to assist fire protection agencies and local government officials in the application of ORS 476.290 and 478.310.

Stat. Auth.: ORS 476.290 & 478.310

Hist.: FM 1-1993, f. 5-13-93, cert. ef. 6-1-93

837-130-0010

Definitions

(1) "Unprotected Area" shall mean an area outside the boundaries of recognized public or private fire protection.

(2) "Transportation Route" shall mean a roadway, waterway, railroad right-of-way or airplane route against which no taxes or

assessments for fire protection are levied by the municipality, fire district, or fire protection agency.

Stat. Auth.: ORS 476.290 & 478.310

Hist.: FM 1-1993, f. 5-13-93, cert. ef. 6-1-93

837-130-0020

Schedules

(1) The State Fire Marshal adopts the standardized-costs schedules for transportation route response, unprotected area response, and apparatus cost that are contained in the State Fire Marshal's **Oregon Fire Service Mobilization Plan**.

(2) The State Fire Marshal adopts the volunteer firefighter reimbursement rate that is contained in the State Fire Marshal's **Oregon Fire Service Mobilization Plan**.

(3) All responses billed under these rules are subject to a 30-minute minimum response charge.

(4) Local agencies may determine their own billing cycle and any appropriate late charges and fees.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of State Fire Marshal.]

Stat. Auth.: ORS 476.290 & 478.310

Hist.: FM 1-1993, f. 5-13-93, cert. ef. 6-1-93