

DIVISION 1

PROCEDURAL RULES

837-001-0000 Notice of Proposed Rule
837-001-0005 Model Rules of Procedure

Refund of Moneys

837-001-0010 Purpose and Scope
837-001-0015 Authorized Representatives in Contested Case Hearings Contemplated Under ORS 453.382, 453.404, 480.355, 480.385, and 183.310

DIVISION 12

PUBLIC DISPLAY OF FIREWORKS IN OREGON

837-012-0021 Special Effects

Agricultural Use of Fireworks in Oregon

837-012-0305 Application for Permit
837-012-0310 Receipt of Application and Issuance of Permit
837-012-0315 Qualification of Operators
837-012-0320 Storage of Agriculture Fireworks
837-012-0325 Revocation of Permit
837-012-0330 Contested Cases

Wholesale Sales and Storage of Pyrotechnics in Oregon

837-012-0500 Purpose and Scope
837-012-0505 Effective Dates
837-012-0510 Definitions
837-012-0515 General
837-012-0520 Wholesale Permit Applications
837-012-0525 Wholesale Permits
837-012-0530 Permit Fees
837-012-0535 Permit Denial, Suspension and/or Revocation
837-012-0540 Storage and Sales Sites in Oregon
837-012-0545 Sales and Records — General
837-012-0550 Sales to Out-of-State Residents by In-State Wholesalers
837-012-0555 Prohibited Acts and Limitations
837-012-0560 Civil and Criminal Enforcement Actions
837-012-0565 Transportation
837-012-0570 Hazardous Materials Reporting for Wholesalers with Oregon Storage Sites

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

837-012-0600 Purpose and Scope
837-012-0605 Effective Dates
837-012-0610 Definitions
837-012-0615 General
837-012-0620 Permits — General
837-012-0625 Retail Permit Fees
837-012-0630 Issuance of Retail Permits
837-012-0635 Purchase of Retail Fireworks by Retail Permit Holder
837-012-0640 Permits — Denial, Suspension and/or Revocation
837-012-0645 Sales and Storage of Retail Fireworks
837-012-0650 Outside Sales
837-012-0655 Inside Sales
837-012-0660 Records and Postings
837-012-0665 Advertisements
837-012-0670 Prohibited Acts and Limitations
837-012-0675 Civil and Criminal Enforcement Actions
837-012-0700 Purpose and Scope
837-012-0710 Effective Dates
837-012-0720 Definitions
837-012-0730 General
837-012-0740 Permits — General

837-012-0750 Permit Investigations and Approvals
837-012-0760 General Public Fireworks Display Permit Requirements
837-012-0770 Limited Public Fireworks Display Permit Requirements
837-012-0780 Public Fireworks Display Permit Applications
837-012-0790 Operator Certification
837-012-0800 Renewal of Operator Certification
837-012-0810 Operator and Assistant Qualifications and Restrictions
837-012-0820 Permit Fees, Payment Issuance and Approval
837-012-0830 Permit Denial, Suspension and/or Revocation
837-012-0840 Public Fireworks Display Conduct (General Display)
837-012-0850 Site Selection and Set-Up (Local Approval Criteria)
837-012-0860 Operation of the Public Fireworks Display
837-012-0870 Loading and Firing of Shells
837-012-0880 Ground Public Fireworks Display Pyrotechnics
837-012-0890 Site Clean-Up
837-012-0900 Transportation and Storage
837-012-0910 Prohibited Acts and Limitations
837-012-0920 Records Keeping
837-012-0930 Advertisements
837-012-0940 Civil and Criminal Enforcement Actions
837-012-0950 Insurance Requirements
837-012-0960 Fire Protection
837-012-0970 Reports for General Displays

Fireworks Citations and Civil Penalty Assessments

837-012-1000 Authority and Application
837-012-1010 Purpose and Scope
837-012-1020 Effective Dates
837-012-1030 Definitions
837-012-1040 General
837-012-1050 Violation Types, Instances, and Penalty Assessments
837-012-1060 Issuance of Civil Penalty Citation and Forwarding to the Office of State Fire Marshal
837-012-1070 Hearings
837-012-1080 Informal Conference
837-012-1090 Formal Hearing
837-012-1100 Penalty Adjustments
837-012-1110 Judicial Review
837-012-1120 Payment of Civil Penalty
837-012-1130 Type I Violations
837-012-1140 Type II Violations
837-012-1150 Type III Violations
837-012-1160 Type IV Violations

Explosives

837-012-1200 Purpose and Scope
837-012-1210 Definitions
837-012-1220 General
837-012-1230 Fees
837-012-1240 Applications
837-012-1250 Eligibility for a Certificate of Possession
837-012-1260 Certificate of Possession — Examination
837-012-1270 Certificate of Possession — Issuance
837-012-1280 Certificate of Possession — Renewal
837-012-1290 Explosives Storage
837-012-1300 Magazine Registration and Inspection
837-012-1310 State Fire Marshal Inspection of Magazines
837-012-1320 Certificate of Registration of Magazine — With Bureau of Alcohol, Tobacco and Firearms Inspection
837-012-1330 Certificate of Registration of Magazine — Renewal
837-012-1340 Fire and Life Safety Standards
837-012-1350 Removal/Confiscation of Explosives

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

837-012-1360	Magazine Re-location — Reporting
837-012-1370	Record Keeping Requirements for Explosives
837-012-1380	Hazardous Materials Reporting
837-012-1390	Denial, Suspension or Revocation
837-012-1400	Contested Cases
837-012-1410	Informal Conference
837-012-1420	Formal Hearing

DIVISION 20

FLAMMABLE AND COMBUSTIBLE LIQUIDS

Flammable Liquid Dispensing Regulations

837-020-0025	Scope and Application
837-020-0035	Definitions
837-020-0040	Nonretail and Conditional Use Operations — General
837-020-0045	Operation of Flammable Liquid Dispensing Device by Public Prohibited
837-020-0050	Conditions for Operation of Dispensing Device by Nonretail Customers
837-020-0055	Fire Safety Training
837-020-0060	Quantity of Purchase Criteria
837-020-0065	Certification and Record Keeping
837-020-0070	Nonretail and Conditional Use Customer Agreements
837-020-0075	Complaint and Enforcement Procedures
837-020-0085	Nonretail Facility License
837-020-0095	Nonretail Facility Conditional Use License
837-020-0105	License Refusals, Revocations and Suspensions; Appeals
837-020-0110	Dual Operations Facility License
837-020-0115	Application and Annual Fees
837-020-0125	Penalties

DIVISION 30

LIQUEFIED PETROLEUM GAS

837-030-0100	Purpose and Scope
837-030-0110	Effective Dates
837-030-0120	Definitions
837-030-0130	Fire and Life Safety Standards
837-030-0140	Licenses Required
837-030-0150	Company License (Company Representative)
837-030-0160	Fitter License
837-030-0170	Truck Equipment Operator License
837-030-0180	Probationary Status (On-the-Job Training)
837-030-0190	Examinations
837-030-0200	License Application, Approval, Issuance
837-030-0210	License Revocation, Suspension and/or Denial
837-030-0220	License Renewal
837-030-0230	Motor Fuel Installations (Conversions)/Plan Approval
837-030-0240	Reporting Tank Installations
837-030-0250	Inspection of Tank Installations
837-030-0260	Bulk Storage Sites: Inspections/Notifications
837-030-0270	Delivery Units: Inspections/Notifications
837-030-0280	Fees/Penalties

DIVISION 39

ADMINISTRATION OF FIRE PREVENTION PROGRAMS

837-039-0001	Scope and Application
837-039-0003	Definitions
837-039-0010	Applications for Exempt Status
837-039-0015	Minimum Fire Code Requirements
837-039-0030	Fire Code Administration
837-039-0040	Exemption Criteria
837-039-0050	Programs Eligible for Delegation
837-039-0060	Nonexempt Jurisdictions

837-039-0070	Nonexempt Response to Imminent Life or Property Threats
837-039-0080	Inspections or Other Activities by Nonexempt Jurisdictions
837-039-0090	Routine Referrals by Nonexempt Jurisdictions
837-039-0110	Certification Requirements for Plan Review

DIVISION 40

FIRE AND LIFE SAFETY REGULATIONS

837-040-0001	Scope
837-040-0010	Adoption of the Uniform Fire Code
837-040-0140	Adoption of the Oregon Structural Specialty Code and Mechanical Specialty Code

DIVISION 41

FIRE PROTECTION REGULATIONS RELATING TO INSTITUTIONAL CARE FACILITIES

Exitway Protection

837-041-0050	Exitway Protection — General Provisions
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DIVISION 45

SMOKE DETECTORS

837-045-0040	Purpose and Scope
837-045-0045	Definitions
837-045-0050	Installation and Location of Smoke Alarms and Smoke Detectors
837-045-0055	Hotels with Approved Sprinkler Fire Suppression Systems
837-045-0060	Power Source
837-045-0065	Smoke Alarms for Hearing Impaired Persons or Smoke Detectors for Hearing Impaired Persons
837-045-0070	Issuance of Notice of Deficiency Citations
837-045-0075	Forwarding Notice of Deficiency Citation to the Office of State Fire Marshal
837-045-0080	Assessment of Civil Penalty and Issuance of Notice of Civil Penalty
837-045-0085	Schedule of Civil Penalties
837-045-0090	Contested Cases
837-045-0095	Informal Conference
837-045-0100	Formal Hearing
837-045-0105	Adjustment of Civil Penalty
837-045-0110	Payment of Civil Penalty

DIVISION 61

FIRE FIGHTING

Standardization of Fire Protection Equipment

837-061-0005	Purpose
837-061-0010	Threaded Couplings and Fittings
837-061-0015	Exemptions

DIVISION 85

COMMUNITY RIGHT-TO-KNOW SURVEY AND COMPLIANCE PROGRAMS

837-085-0010	Authority and Application
837-085-0020	Purpose and Scope
837-085-0030	Covered Employers, Owners, Operators and Standard Industrial Classifications (SICs)
837-085-0040	Definitions
837-085-0050	Hazardous Substance Survey — General
837-085-0060	Hazardous Substance Survey — Substance Determinations

837-085-0070	Hazardous Substance Survey — Reportable Quantities
837-085-0080	Hazardous Substance Survey — Quantity Determinations
837-085-0090	Hazardous Substance Survey — Reporting Requirements
837-085-0100	Hazardous Substance Survey — Substantive Changes
837-085-0110	Record Keeping Requirements
837-085-0120	Application for an Exemption
837-085-0130	Administrative Action on Exemption Application
837-085-0140	Trade Secrets — General
837-085-0150	Trade Secrets — Claim Submissions
837-085-0160	Trade Secrets — Determinations and Response
837-085-0170	Trade Secrets — Disclosures
837-085-0180	Trade Secrets — Refusal to Disclose
837-085-0190	Hazardous Substance Survey — Availability of Survey Information
837-085-0200	Compliance Audit Program — General
837-085-0210	Scheduling and Selection of Compliance Audits
837-085-0220	Right of Entry
837-085-0230	Compliance Audit Warrants
837-085-0240	Compliance Audit Activities
837-085-0250	Notice of Noncompliance and Proposed/Final Penalty Assessment
837-085-0260	Covered Employer, Owner or Operator Response to Notice of Noncompliance and Proposed/Final Penalty Assessment Order
837-085-0270	Penalty Criteria for Noncompliance — General
837-085-0280	Noncompliance Classifications
837-085-0290	Penalties for Class I through V Noncompliance
837-085-0300	Penalties for Class VI Noncompliance
837-085-0310	Penalty Suspensions and Daily Penalty Accrual
837-085-0320	Payment of Penalties
837-085-0330	Appeals Process — General
837-085-0340	Filing an Appeal
837-085-0350	Informal Conference
837-085-0360	Formal Hearing
837-085-0370	Manifest Injustice
837-085-0380	Incident Reporting System
837-085-0390	Annual Summaries

DIVISION 90

HAZARDOUS SUBSTANCE POSSESSION FEES

837-090-1000	Coverage
837-090-1005	General
837-090-1010	Effective Dates
837-090-1015	Definitions
837-090-1020	Hazardous Classification
837-090-1025	Payments and Billings
837-090-1030	State Fee Schedules
837-090-1035	Records
837-090-1040	Exemptions
837-090-1045	Local Government Fees
837-090-1145	Petroleum Load Fee

DIVISION 110

FIELD BURNING AND PROPANING RULES

837-110-0005	Purpose and Scope
837-110-0010	Field Preparation
837-110-0020	Firefighting Water Supplies
837-110-0030	Firefighting Equipment
837-110-0040	Ignition Criteria
837-110-0050	Prohibited Use
837-110-0060	Communication
837-110-0070	Fire Safety Watch
837-110-0080	Fire Safety Buffer Zones
837-110-0090	Ban on Burning

Propaning

837-110-0110	Field Preparation
837-110-0120	Firefighting Water Supplies
837-110-0130	Firefighting Equipment
837-110-0140	Communication
837-110-0150	Fire Safety Watch
837-110-0160	Ban on Burning

DIVISION 120

HAZARDOUS MATERIALS EMERGENCY RESPONSE SYSTEM

837-120-0001	Purpose and Scope
837-120-0005	Effective Dates
837-120-0010	Definitions
837-120-0020	Hazardous Materials Response System and Response Team Contracts
837-120-0030	Emergency Response Criteria
837-120-0040	Dispatch Process
837-120-0050	Regional and Limited Response Team Services
837-120-0060	Regional and Limited Response Team Performance Conditions
837-120-0070	Emergency Preplanning
837-120-0080	Response Fee Schedules
837-120-0090	Response Costs and Financial Liability
837-120-0100	Defenses Against Liability
837-120-0110	Disputed Emergency Response Billings
837-120-0120	Government Liability for Emergency Responses
837-120-0140	Notification and Reporting

Regional Hazardous Materials Emergency Response Team Training Programs

837-120-0301	Purpose
837-120-0310	Definitions
837-120-0320	Requests for Training Program Approval
837-120-0330	Review Process
837-120-0340	Decision Process
837-120-0350	Terms and Conditions of Approval
837-120-0360	Grounds for Revocation of Approval
837-120-0370	Procedure for Revocation of Approval
837-120-0380	Appeal of Order Revoking Approval; Reapplication
837-120-0390	Requirements of an Applicant Following Program Approval
837-120-0400	Examinations

DIVISION 130

STANDARDIZED-COSTS SCHEDULES

837-130-0000	Purpose and Scope
837-130-0010	Definitions
837-130-0020	Schedules

DIVISION 1

PROCEDURAL RULES

837-001-0000

Notice of Proposed Rule

Before adopting, amending or repealing any permanent rule, the State Fire Marshal will give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the State Fire Marshal's mailing list established pursuant to ORS 183.335 (7) at least 28 days before the effective date of the rule;

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and

(4) By mailing or furnishing a copy of the notice to:

(a) The 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 183.360 & ORS 476.030
 Stats. Implemented: ORS 183.335, ORS 183.360 & ORS 476.030
 Hist.: FM 72, f. & ef. 1-26-76; OSFM 11-2000, f. 9-22-00, cert. ef. 11-13-00

837-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the State Fire Marshal adopts by reference the 2000 Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 through 137-001-0085 and OAR 137-003-0000 through 137-003-0700 and OAR 137-004-0010 through 137-004-0080 and OAR 137-005-0010 through 137-005-0070, under the Administrative Procedures Act effective January 1, 2000.

[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, ORS 183.360 & ORS 476.030
 Stats. Implemented: ORS 183.335, ORS 476.030 & ORS 183.341
 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; OSFM 2-2000, f. 2-3-00, cert. ef. 3-22-00; OSFM 16-2000, f. 12-8-00, cert. ef. 1-26-01

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 293, ORS 476 & ORS 480
 Stats. Implemented: ORS 293.445
 Hist.: FM 2-1987, f. & ef. 6-16-87

837-001-0015

Authorized Representatives in Contested Case Hearings Contemplated Under ORS 453.382, 453.404, 480.355, 480.385, and 183.310

(1) A partnership, corporation, association, organized group or governmental authority other than a state agency may appear in a contested case by an authorized representative if the Fire Marshal has determined that appearance by an authorized representative will not hinder the orderly and timely development of the record in the con-

tested case. This rule applies to the types of contested cases contemplated under ORS 453.382, 453.404, 480.355, 480.385, and 183.310.

(2) For purposes of this rule, "authorized representative" means a member of a participating partnership, an authorized officer or employee or a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency.

Stat. Auth.: ORS 183.455(2)

Stats. Implemented: ORS 183.455(2), ORS 453.382, ORS 453.404, ORS 480.355, ORS 480.385 & ORS 183.310

Hist.: OSFM 2-1998(Temp), f. & cert. ef. 6-25-98 thru 12-18-98; OSFM 4-1998, f. 11-24-98, cert. ef. 12-18-98

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 referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

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

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 480.122 & ORS 480.124

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0005

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 480.122 & ORS 480.124

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0010

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 480.122 & ORS 480.124

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0015

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 480.122 & ORS 480.124

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0020

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 480.122 & ORS 480.124

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0025

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 480.122 & ORS 480.124

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0030

Wholesale Sales and Storage of Pyrotechnics in Oregon

837-012-0500

Purpose and Scope

These rules establish permit and other requirements for Persons who Sell, or intend to Sell, at wholesale, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks in or into Oregon, or from Oregon for delivery into another state.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0505

Effective Dates

837-012-0505 OAR 837-012-0500 through 837-012-0570 are effective upon date of filing.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0510

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-012-0500 through 837-012-0570, the following definitions apply:

(1) "Agricultural Fireworks" shall mean Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(2) "BATF" shall mean the Bureau of Alcohol, Tobacco and Firearms.

(3) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other package used to hold or contain Fireworks Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for purposes of transportation and/or storage. The term does not include:

(a) The wrapping and/or packaging used to hold or contain a single or small number of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks,

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(4) "Domicile" shall mean a Person's legal home; the particular place that a Person intends to make the Person's fixed and permanent home and abode.

(5) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(6) "Fireworks" shall have the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks and Agricultural Fireworks. The term does not include Exempt Fireworks.

(7) "Individual" shall mean a single human being.

(8) "Individual Member of the General Public" shall mean:

(a) For Persons in Oregon, any Person who has not been issued a Wholesale Permit, a general, limited or special effects public display permit, a retail permit, or an agricultural permit by the Office of State Fire Marshal.

(b) For Persons outside of Oregon, any Person who has not been issued a license and/or permit when such a license and/or permit is required, authorizing the Person to Sell, purchase, transport, possess, use or discharge Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(9) "In-state Wholesaler" shall mean a Wholesaler who owns, possesses, or occupies a Wholesale Site located in Oregon.

(10) "Local Fire Authority" shall mean the local fire official having jurisdiction over the Wholesale Site and Wholesale Operations.

(11) "Manager" shall mean the Individual identified on the Permit Application who is responsible for, and directs the operations at, the Wholesale Site.

(12) "NFPA" shall mean the National Fire Protection Association.

(13) "Novelties and Trick Noisemakers" shall mean those items described in ORS 480.110(1)(a) and (b) and NFPA 1124, Section 1.4, 1998 Edition. It also means Exempt Fireworks.

(14) "Out-of-State Wholesaler" shall mean a Wholesaler who owns, occupies, or possesses a Wholesale Site located outside of Oregon.

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

(16) "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.

(17) "Public Display Fireworks" shall mean Fireworks that are authorized under a general, limited, or special effects public display permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(18) "Residence" shall mean the particular dwelling place where a Person lives and has a present intent to remain for a period of time.

(19) "Resident" shall mean any Person who occupies a dwelling in a state and has a present intent to remain in the state for a period of time.

(20) "Retail Fireworks" shall mean those items described in ORS 480.127(4).

(21) "Retailer" shall mean any Person who, Sells, transfers, or provides by any other means Retail Fireworks to Individual Members of the General Public.

(22) "Sales Representative" shall mean an Individual who is an employee of the Wholesale Permit holder and is authorized to conduct sales for the Wholesale Permit holder.

(23) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration.

(24) "Wholesale Operations" shall mean the sale of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks and related activities, including the purchase, possession, storage and transportation of such Fireworks.

(25) "Wholesale Permit" shall mean the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks when otherwise in compliance with all applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other federal, state and local laws, rules and regulations.

(26) "Wholesale Site" shall mean the location where a Wholesaler's sales and storage facilities are operated and maintained.

(27) "Wholesaler" shall mean any Person who Sells or provides by any other means, or intends to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0515

General

(1) Wholesalers desiring to engage in other types of Fireworks activities including retail sales, agricultural use, or public displays must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12 including those pertaining to obtaining permits for such activities from local, federal, and state authorities.

(2) A Wholesaler shall not Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural

Fireworks for shipment or transport in or into the State of Oregon, to any Person who does not possess and present to the Wholesaler for inspection at the time of sale, a valid permit issued by the Office of State Fire Marshal authorizing the holder of the permit to purchase, possess, use, discharge, transport, store, distribute, or Sell Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(3) A Wholesaler shall not Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for shipment or transport out of the State of Oregon and for 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 by the laws of such other state to purchase, possess, use, discharge, transport, store, distribute, or Sell Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(4) The burden of determining whether the sale or provision of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks is lawful shall be entirely on the Wholesaler.

(5) Wholesale Permit holders shall comply with all applicable federal, state, and local laws, rules and regulations, including without limitation;

(a) ORS 480.110 through 480.165;

(b) All applicable requirements of OAR chapter 837, division 12;

(c) Oregon Uniform Fire Code, 1998 Edition; and

(d) Oregon Structural Specialty Code, 1998 Edition.

(6) Wholesale Permit holders shall notify the Office of State Fire Marshal, in writing, within two weeks of the date of change of:

(a) Identity of the Manager;

(b) The Wholesale Permit holder's mailing address or telephone number;

(c) Ownership of the Wholesale Site;

(d) Ownership of the Wholesale Operation; or

(e) The addition, or subtraction, of a Sales Representative for the Wholesale Permit holder.

(7) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR chapter 837, division 12. Exempt Fireworks may be sold and purchased without either the seller or purchaser having first obtained a permit issued by the Office of State Fire Marshal.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 480.110 - ORS 480.165

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; Renumbered from 837-012-0125; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0520

Wholesale Permit Applications

(1) Any In-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, within Oregon, or from Oregon for delivery into another state, shall apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(2) Any Out-of-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, in or into Oregon shall apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(3) A separate Wholesale Permit shall be applied for and obtained for each Wholesale Site that may conduct Wholesale Operations within, from, or into Oregon.

(4) The application for a Wholesale Permit shall be made on a form provided by the Office of State Fire Marshal.

(5) All information provided by the applicant on the Permit Application shall be true and correct to the applicant's knowledge.

(6) In addition to completion of the Wholesale Permit application forms, applicants shall submit:

(a) A copy of a current photographic identification card of the applicant(s). The Office of State Fire Marshal shall accept only photo identification issued by the Department of Motor Vehicles in the applicant's state of residency. For purposes of this rule, if the applicant is a corporation, the applicant shall submit copies of photographic identification of all the corporate officers. If the applicant is a partnership, the applicant shall submit copies of the photographic identification of all partners.

(b) A description of the types, pursuant to United States Department of Transportation classification, and the maximum quantities, by total gross weight, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to be stored at the Wholesale Site for which a Wholesale Permit has been applied;

(c) Copies of all required federal, state and local business, land use and zoning licenses, permits and/or approvals;

(d) A copy of any lease or sub-lease agreement for the Wholesale Site if applicable, and

(e) If the applicant is a corporation, proof of incorporation, in the form of a corporate seal or a copy of the articles of incorporation.

(7) It is the responsibility of the Wholesale Permit applicant to apply for and obtain all required federal, state and local permits, licenses and/or approvals prior to submission of the Permit Application to the Local Fire Authority and the Office of State Fire Marshal.

(8) As part of the Permit Application process, the applicant shall apply for and obtain, in writing:

(a) All required local and state building code, fire code, and business licensing investigations, approvals, and/or permits; and

(b) All required land use and zoning permits, licenses and/or approvals for the Wholesale Site from state and/or local government official(s).

(9) If the applicant's Wholesale Site was continuous and unchanged during the year preceding the year for which the Wholesale Permit renewal is sought, the applicant is not required to resubmit to the Office of State Fire Marshal, as part of the Wholesale Permit renewal application, the land use and zoning permits, licenses and/or approvals for the Wholesale Site. However, the applicant shall submit the required local and state business licenses.

(10) As part of the Permit Application, Wholesale Permit applicants who intend to Sell or provide 1.3G Fireworks shall submit to the Office of State Fire Marshal a copy of their appropriate license issued by BATF.

(11) Applicants shall submit the completed Permit Application to the Local Fire Authority for review and signature approving the Wholesale Site prior to submission of the Permit Application to the Office of State Fire Marshal.

(12) Permit Applications shall be signed by the applicant in the presence of a notary public and such signatures shall be notarized.

(a) If the applicant is a partnership, the application shall be signed by every partner.

(b) If the applicant is a corporation, the application shall be signed by an officer of the corporation.

(c) If the applicant is an Out-of-State Wholesaler, the application shall be signed by the applicant and the Manager responsible for Wholesale Operations.

(13) Permit Applications shall not be submitted to the Office of State Fire Marshal prior to October 1 of the year preceding the year for which the Wholesale Permit is sought.

(14) Permit Applications shall be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, not later than November 1 of the year preceding the year for which the Wholesale Permit is sought. If November 1 falls on a Saturday, Sunday or legal holiday, applications shall be postmarked or received at the Office of State Fire Marshal on the preceding business day.

(15) Relocation of the Wholesale Site shall require submission of a new Permit Application, and Wholesale Permit fee.

(16) Only one Wholesale Permit shall be applied for or issued for each Wholesale Site.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

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; Renumbered from 837-012-0120; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0525

Wholesale Permits

(1) Within 60 days of receipt of a properly completed and timely submitted Permit Application and Wholesale Permit fee, the Office of State Fire Marshal shall either grant or deny the application.

(2) The Office of State Fire Marshal shall not approve a Permit Application or issue a Wholesale Permit without the prior approval of the Local Fire Authority.

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

(4) The Office of State Fire Marshal shall mail the original Wholesale Permit to the applicant at the mailing address listed on the Permit Application.

(5) Wholesale Permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen or destroyed. Written requests shall be signed and dated by the applicant pursuant to OAR 837-012-0520(12).

(6) The issuance of a Wholesale Permit does not in any way constitute approval by the Office of State Fire Marshal of any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks purchased, sold or provided by any other means pursuant to the permit.

(7) A Wholesale Permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, when those activities are otherwise in conformance with applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations.

(8) A Wholesale Permit authorizes the holder of the permit to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, within or into Oregon, to holders of:

(a) General, limited, or special effects public display permits;

(b) Retail permits;

(c) Wholesale permits; or

(d) Agricultural use permits.

(9) A Wholesale Permit does not authorize the sale or provision by any other means, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to Individual Members of the General Public.

(10) The Wholesale Permit and permit number issued by the Office of State Fire Marshal are valid from January 1 to December 31 of the year for which they are issued. All Wholesale Permits and permit numbers expire on December 31 of the year in which they are valid. A Wholesale Permit holder may be issued the same permit number every year if the permit holder applies for and obtains a Wholesale Permit in consecutive years.

(11) The Wholesale Permit is not transferable to another Person nor can another Person perform any activities authorized by the Wholesale Permit unless that Person is listed in the Permit Application.

(12) Only the Wholesale Permit holder and the employees of the Wholesale Permit holder may engage in Wholesale Operations authorized by the Wholesale Permit.

(13) The Wholesale Permit holder's name, mailing address and Wholesale Permit number shall be imprinted or affixed by the Wholesale Permit holder to:

(a) All sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the Wholesale Permit holder in conducting its Wholesale Operations; and

(b) The outside of all Cartons, Containers, or Cases of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural

Fireworks being shipped, transported, or otherwise provided by the Wholesale Permit holder.

(14) All shipments by a Wholesale Permit holder of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks must show on the outside of each Carton, Container or Case, sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the Wholesale Permit holder the full name and permit number of the Permit Holder to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being provided.

(a) If the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being shipped, transported or otherwise provided in or into Oregon, the shipment must show an Office of State Fire Marshal-issued permit number.

(b) If the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being shipped, transported or otherwise provided from Oregon for delivery into another state, the shipment must show the appropriate license or permit number, if the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being provided is required under the laws of the other state to possess a license or permit.

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

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 837-012-0120; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0530 Permit Fees

(1) Permit fees shall be paid at, or mailed to, the Office of State Fire Marshal.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Permit Application until the check has cleared the bank.

(3) The permit fee shall be:

(a) In-State Wholesaler — \$1,000;

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

(4) Permit fees are non-refundable and non-transferable.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0535

Permit Denial, Suspension and/or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a Wholesale Permit if a Wholesale Permit holder, or an applicant for a Wholesale Permit, fails to comply with OAR 837-12-515(5).

(2) The period of denial, suspension or revocation shall not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety, particularly whether the circumstances of the violation(s) presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Wholesale Permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(3) Suspension or revocation of a Wholesale Permit may include suspension or revocation of the current permit and the right to apply for a renewal permit.

(4) The Office of State Fire Marshal may deny, suspend or revoke all Wholesale Permits issued to a Wholesale Permit holder or applicant for each of the permit holder's or applicant's Wholesale Sites pursuant to OAR 837-012-0520(3).

(5) At any time, after the expiration of any period of denial, suspension or revocation of a Wholesale Permit imposed by the Office of State Fire Marshal, the permit holder subject to the denial, suspension or revocation may submit to the Office of State Fire Marshal an application for a Wholesale Permit. The Office of State Fire Marshal shall either grant or deny the application pursuant to OAR 837-12-525(1). If granted, the Wholesale Permit shall be valid for the remainder of the calendar year.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0540

Storage and Sales Sites in Oregon

(1) The location of a Wholesale Site shall not present a significant risk to surrounding life and property or to the ability of local emergency response agencies to respond.

(2) An In-state Wholesaler shall have both storage and sales facilities at the same Wholesale Site.

(3) The Wholesale Site shall be designed, constructed, operated, maintained and separated in conformance with the applicable requirements of:

(a) NFPA 1124, 1998 Edition, Code for the Manufacture, Transportation, and Storage of Fireworks;

(b) NFPA 68, 1998 Edition, Guide for Explosion Venting;

(c) Oregon Structural Specialty Code, 1998 Edition;

(d) Oregon Uniform Fire Code, 1998 Edition;

(e) Pursuant to the Oregon Structural Specialty Code, 1998 Edition, the occupancy designation for the storage facility shall be H-1;

(f) Pursuant to the Oregon Structural Specialty Code, 1998 Edition, the occupancy designation for the sales facility shall be B-2;

(g) Any other federal, state or local laws, rules, ordinances or regulations; and

(h) BATF requirements ATFP 5400.7, 1999 Edition for 1.3G Fireworks storage.

NOTE: Wholesale Sites that are currently approved may not be required to be altered or updated to comply with these standards unless the presently approved use of the site changes.

(4) Temporary structures, including tents, vehicles and/or trailers of less than 10,000 pound gross carrying capacity, and buildings, structures, vehicles, or trailers not approved by the Local Fire Authority and Office of State Fire Marshal shall not be used as Wholesale Sites.

(5) Security for storage facilities shall be provided by construction and maintenance of a solid or chain-link fence, at least six feet high with locking gates, that surrounds the facility. Security may be provided by an alternative means only if first approved by the Local Fire Authority.

(6) Smoking, other ignition sources, or the use of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks shall not be allowed within 100 feet of the storage or sales facilities.

(7) "No Smoking" signs shall be posted and readily visible to all employees, customers and others entering the storage or sales facilities.

(8) Fire extinguishers shall be placed throughout the Wholesale Site in locations and numbers in accordance with the standards set forth in subsection (3) of this rule.

(9) Electrical wiring, lighting and other electrical fixtures and installations at the Wholesale Site shall be in accordance with the Oregon Electrical Code, 1999 Edition.

(10) Fire protection and safe handling procedures, prepared in cooperation with the Local Fire Authority, shall be posted at the Wholesale Site in areas readily visible to any Person located at the site. Those procedures shall be followed by all Persons located at the Wholesale Site.

(11) The separation distances required by NFPA 1124, 1998 Edition shall be determined by the total weight of the Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fire-

works including any packaging materials to be stored at the Wholesale Site.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476, ORS 478 & ORS 480
Stats. Implemented: ORS 480.110 - ORS 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0545

Sales and Records — General

(1) All Individuals involved in Wholesale Operations shall be at least 18 years of age. See OAR 837-012-0555(5) and (6).

(2) The Manager or a Sales Representative shall be present at the Wholesale Site during the business hours of the site.

(3) A copy of the Wholesale Permit issued by the Office of State Fire Marshal shall be posted in an area readily visible to all Individuals entering the sales facility.

(4) Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, may be displayed in the sales facility in accordance with the following requirements:

(a) 1.3G Public Display Fireworks shall not be displayed;

(b) 1.4G Public Display Fireworks may be displayed. Only one of each type of Firework shall be displayed unless multiples of one type of Firework are contained in a single package. In that case, only the smallest available package shall be displayed and in accordance with Local Fire Authority and Office of State Fire Marshal requirements.

(5) All sales or provision of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, including donation, by Wholesale Permit holders shall be recorded on a form provided by the Office of State Fire Marshal or, for sales of 1.3G Fireworks, the BATF form P5400.4. Sales or provision of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks may be recorded on an alternative form if approved, in writing, by the Office of State Fire Marshal or the BATF.

(6) The records described in subsection (5) of this rule shall include, at a minimum;

(a) The name, address, and license and/or permit number, if required, of the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being sold or otherwise provided, including the state that issued the license and/or permit, the date of issuance and the expiration date of the license and/or permit;

(b) The address, including street number, city and state, and telephone number of the destination for the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks;

(c) The permit number of the Wholesale Permit holder, including the date of issuance and expiration date; and

(d) A list of the types, trade names and quantity of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks sold or otherwise provided.

(7) The record form described under subsection (5) of this rule shall be completed in full by the Wholesale Permit holder and signed by the Person purchasing or obtaining the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(8) All records described under subsection (5) of this rule, whether originals or copies, shall be clear legible and accurate.

(9) Records described under subsection (5) of this rule shall be maintained at the Wholesale Site. Records shall be retained for five years from the date of sale or provision. Upon request, records shall be immediately provided to the Local Fire Authority, law enforcement authority or representative of the Office of State Fire Marshal.

(10) Wholesale Permit holders shall maintain at the Wholesale Site at all times a list of all employees involved in the Wholesale Operations, including their names, ages, addresses, phone numbers, (including home), driver's license numbers, and birth dates. A legible copy of the list shall be provided immediately upon request to the Office of State Fire Marshal.

(11) Wholesale Permit holders shall maintain at the Wholesale Site at all times a list of all vehicles used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, including year, make, model, license number and lease agree-

ment, if applicable. A legible copy of the list shall be provided immediately to the Office of State Fire Marshal, upon request.

Stat. Auth.: ORS 476, ORS 478 & ORS 480
Stats. Implemented: ORS 480.110 - ORS 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0550

Sales to Out-of-State Residents by In-State Wholesalers

(1) In addition to any other requirements set forth in these rules, the sale, or provision by any other means, of Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks to out-of-state Residents shall comply with the laws of the state where the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are to be sold or provided resides and the laws of the state where the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are to be transported or shipped, if the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are to be transported or shipped to a state other than where the Person resides.

(2) The Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are sold or otherwise provided shall present to the Wholesaler for inspection, at the time of sale or provision, the original or a certified copy of the Person's valid license and/or permit when such license and/or permit is required by the laws of the other state.

(3) The Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are sold or otherwise provided shall present to the Wholesaler for inspection, at the time of sale, proof of the Person's identity. 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.

(4) Wholesale Permit holders with Wholesale Sites located 50 driving miles or less from the borders of the State of Oregon, shall make a good faith effort to determine if customers are Oregon residents or out-of-state residents.

(5) Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks shall not be sold or otherwise provided to out-of-state Residents whose state of residency prohibits the sale, possession, or use of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

Stat. Auth.: ORS 476, ORS 478 & ORS 480
Stats. Implemented: ORS 480.110 - ORS 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0555

Prohibited Acts and Limitations

(1) Wholesale Permit holders shall not create, maintain, or allow the existence of a fire hazard at any location under their control where Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are stored, transported, sold, or used.

(2) No Wholesale Permit holder shall Sell or provide by any other means, including donation:

(a) Fireworks or Public Display Fireworks to any Individual under 21 years of age;

(b) Retail Fireworks or Agricultural Fireworks to any Individual under 18 years of age if the sale or provision of Retail Fireworks, or Agricultural Fireworks, is to an Individual in Oregon;

(c) Fireworks Retail Fireworks, Public Display Fireworks or Agricultural Fireworks to any Person who does not possess a valid permit for such Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks issued by the Office of State Fire Marshal, or if required, a valid license and/or permit issued by the equivalent agency in the Person's state of residency or the state of destination for the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks;

(d) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks which have been altered in any manner.

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12, or who

has had any Fireworks permit or pyrotechnician certification suspended, denied or revoked, shall participate in any manner in Wholesale Operations, for a period not to exceed three years.

(4) A Wholesale Permit Holder shall not employ, or have direct business ties with, any Person whose Fireworks permit or pyrotechnician certification has been revoked, denied or suspended within the last three years.

(5) No Individual under 18 years of age shall participate in any manner in Wholesale Operations involving Fireworks, Retail Fireworks, or Agricultural Fireworks.

(6) No Individual under 21 years of age shall participate in any manner in Wholesale Operations involving Public Display Fireworks.

(7) A Wholesale Permit holder shall not fill out, complete or submit a general, limited, or special effects public display permit, retail permit, or agricultural use permit previously filled out or completed by a different Wholesaler unless the Wholesale Permit holder has applied for and received approval from the Office of State Fire Marshal to do so.

(8) Wholesale Permit holders shall not sell, provide, ship, transport, keep, offer for sale, expose for sale, possess, use, explode or have exploded any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks that have not been approved, certified or listed for transport by the United States Department of Transportation and/or the United States Consumer Product Safety Commission, or if the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks do not have a United States Bureau of Explosives Temporary Transfer Permit.

(9) A Wholesale Permit or permit number that has expired or has not been issued, shall not authorize the purchase, use, discharge, transportation, storage, possession, sale or provision by any other means, including donation of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(10) Every Person who knows of, engages in, allows, or is otherwise a party to, Wholesale Operations not in conformance with ORS 480.110 through 480.165 and OAR chapter 837, division 12, may be subject to denial, revocation, or suspension of the Person's Fireworks permit issued by the Office of State Fire Marshal, and/or a civil penalty.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0560

Civil and Criminal Enforcement Actions

(1) The Office of State Fire Marshal, Local Fire Authority, or law enforcement authority may confiscate, remove or have removed any Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks offered for sale, sold, provided, transported, stored, possessed, used or discharged in violation of OAR 837-012-0515(5).

(2) The Wholesale Permit holder shall be responsible for payment of the agency's costs in confiscating or removing any Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks pursuant to subsection (1) of this rule.

(3) Upon finding a violation, the Office of State Fire Marshal may order that any confiscated Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks be:

(a) Returned to the manufacturer of the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural fireworks; or

(b) Disposed of in any manner approved by the Office of State Fire Marshal, including destruction of the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0565

Transportation

(1) All shipments of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks within or into Oregon, or from

Oregon for delivery, to another state shall be transported only by Persons who comply with all applicable United States Department of Transportation requirements and any other federal, state, or local laws, rules, or regulations pertaining to the transportation of Fireworks.

(2) All Persons engaged in the transportation of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks within, into or out of Oregon shall verify that the outside of all Cartons, Containers or Cases, containing such Fireworks and any accompanying documentation, are marked with all the information required under OAR 837-012-0525(13) and (14).

(3) Wholesale Permit holders shall not sell or provide Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to any Person for transport when the permit holder knows or should know that the Person cannot or will not transport such Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks in accordance with United States Department of Transportation requirements or any other applicable federal, state or local laws, rules or regulations.

(4) Common carriers shall immediately notify, verbally or in writing, the Local Fire Authority or the Office of State Fire Marshal of all shipments of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to be delivered within or into Oregon.

(5) Common carriers of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks shipments to be delivered to Persons in Oregon shall hold for at least 24 hours, or until released by the Local Fire Authority or the Office of State Fire Marshal, all such shipments. Such shipments shall be subject to examination by the Local Fire Authority and/or the Office of State Fire Marshal to determine compliance with all applicable federal, state and local laws, rules, and regulations pertaining to Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks. If necessary, the Consumer Product Safety Commission, United States Customs, the United States Department of Transportation and/or the Oregon Department of Transportation may be contacted for assistance.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00

837-012-0570

Hazardous Materials Reporting for Wholesalers with Oregon Storage Sites

All Persons possessing more than ten pounds of 1.3G or 1.4G Fireworks, as classified by the United States Department of Transportation, must annually complete the Hazardous Substance Survey pursuant to ORS 453.307 to 453.372 and OAR chapter 837, division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

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

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 15-2000, f. & cert. ef. 12-4-00

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

837-012-0600

Purpose and Scope

These rules establish permit and other requirements for Persons who Sell or intend to Sell, Retail Fireworks to **Individual Members of the General Public**.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0605

Effective Dates

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

Stat. Auth.: ORS 476 & ORS 480
 Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165
 Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0610

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-12-600 through 837-12-675, the following definitions apply:

(1) "Agricultural Fireworks" shall mean Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(2) "BATF" shall mean the Bureau of Alcohol, Tobacco and Firearms.

(3) "Building" shall have the meaning provided in the Oregon Structural Specialty Code, 1998 Edition. The term does not include a tent, canopy, stand or trailer.

(4) "Canopy" shall mean a temporary structure, enclosure or shelter; constructed of fabric or pliable materials; supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter.

(5) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other package used to hold or contain Fireworks Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for purposes of transportation and/or storage. The term does not include:

(a) The wrapping and/or packaging used to hold or contain a single or small number of, Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(6) "Combination Item" shall mean a device that contains combinations of two or more of the effects described in ORS 480.127(4)(b) to (g). Reference ORS 480.127(4)(a).

(7) "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. Reference ORS 480.127(4)(b).

(8) "Cylindrical Fountain" shall mean a cylindrical tube not more than three-fourths inch (19mm) 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. Reference ORS 480.127(4)(c).

(9) "Employee" shall mean an Individual hired by a Retail Permit holder to Sell Retail Fireworks from a Retail Sales Outlet, or to otherwise engage in Retail Operations.

(10) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(11) "Exit" shall mean an opening or passageway that:

(a) Provides a means of leaving an enclosed space or area; and

(b) Is required to be constructed and/or maintained by the Oregon Structural Specialty Code, 1998 Edition. The term may include a checkstand Exit.

(12) "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. Reference ORS 480.110(2).

(13) "Fireworks" shall have the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks, and Agricultural Fireworks. The term does not include Exempt Fireworks.

(14) "Flutter 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. Reference ORS 480.127(4)(d).

(15) "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. Reference ORS 480.127(4)(e). The term does not include "Crazy Jacks", "Jumping Jacks" and similar spinning devices that do not have a means to prevent Uncontrolled and Unpredictable Behavior during discharge, because such devices are not similar to a Wheel in design and effect. Due to Uncontrolled and Unpredictable Behavior, such devices present a severe hazard of fire and injury and the sale of such devices is therefore prohibited.

(16) "Illegal Fireworks" shall mean any Fireworks other than those described in ORS 480.127(4) including but not limited to, any Firework that flies into the air, explodes or behaves in an Uncontrolled and Unpredictable manner.

(17) "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. Reference ORS 480.127(4)(f).

(18) "Individual" shall mean a single human being.

(19) "Individual Member of the General Public" shall mean any Person who has not been issued a wholesale permit, a general, limited or special effects public display permit, a Retail Permit or an agricultural permit by the Office of State Fire Marshal.

(20) "Individual Responsible for Sales" shall mean the Individual identified on the Permit Application who is responsible for the operation of the Retail Sales Outlet listed on the Permit Application.

(21) "Indoor Sales" shall mean sales of Retail Fireworks inside a Building or Tent.

(22) "Local Fire Authority" shall mean the local fire official having jurisdiction over the Retail Site and/or the Retail Fireworks storage location.

(23) "NFPA" shall mean the National Fire Protection Association.

(24) "Novelties and Trick Noisemakers" shall mean those items described in ORS 480.110(1)(a) through 480.110(1) and (b) and NFPA 1124, Section 1.4, 1998 Edition. It also means Exempt Fireworks.

(25) "Outdoor Sales" shall mean sales of Retail Fireworks from a Canopy, Stand or trailer.

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

(27) "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.

(28) "Public Display Fireworks" shall mean Fireworks that are authorized under a general, limited, or special effects public display permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(29) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flutter Sparklers, Ground Spinners, Illuminating Torches, and Wheels.

(30) "Retail Operations" shall mean the sale of Retail Fireworks from a Retail Sales Outlet to Individual Members of the General Public and related activities, including the purchase, possession, storage and transportation of Retail Fireworks.

(31) "Retail Permit" shall mean the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storage and sale of Retail Fireworks, at retail, when otherwise in conformance with all applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other federal, state and local laws, rules and regulations.

(32) "Retail Sales Outlet" shall mean a permanently or temporarily erected structure or enclosure located at the Retail Site and

from which Retail Fireworks are sold to Individual Members of the General Public. The term includes Stands, Tents, Canopies, Buildings, and trailers.

(33) "Retail Site" shall mean the physical location or address of the Retail Sales Outlet listed on the Retail Permit where Retail Fireworks are sold.

(34) "Retailer" shall mean any Person who Sells, transfers, or provides by any other means Retail Fireworks to Individual Members of the General Public.

(35) "Sales Display" shall mean the placement at a Retail Sales Outlet of Retail Fireworks to allow Individual Members of the General Public to view, handle and purchase the Retail Fireworks.

(36) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration;

(37) "Stand" shall mean a booth temporarily erected and used for the sale of Retail Fireworks to Individual Members of the General Public.

(38) "Tent" shall mean a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects and is in compliance with Uniform Fire Code requirements for tents.

(39) "Uncontrolled and Unpredictable Behavior" shall mean movement of a portion of a Firework more than six feet horizontally and/or twelve inches vertically from the point of ignition. The term does not include a Firework designed with the means to roll or move, while remaining on the ground, that travels up to 12 feet horizontally on smooth surfaces.

(40) "Volunteer" shall mean a member of a non-profit organization that has applied for and obtained a Retail Permit.

(41) "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. Reference ORS 480.127(4)(g).

(42) "Wholesaler" shall mean any Person who Sells or provides by any other means, or intends to Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0615

General

(1) Retailers desiring to engage in other types of Fireworks activities, including wholesale sales, public displays or agricultural use, must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12, including those pertaining to obtaining permits for such activities from local and state authorities.

(2) Retail Permit Holders shall comply with all applicable federal, state and local laws, rules and regulations including, without limitation:

(a) ORS 480.110 through 480.165;

(b) All applicable requirements of OAR chapter 837, division 12;

(c) Oregon Uniform Fire Code, 1998 Edition; and

(d) Oregon Structural Specialty Code, 1998 Edition.

(3) Retail Permit holders shall notify the Office of State Fire Marshal, verbally or in writing, within 24 hours of the date of change, of:

(a) The Retail Permit holder's mailing address or telephone number; or

(b) The mailing address or 24-hour contact number for the Individual Responsible for Sales.

(4) Retail Permit holders shall notify the Office of State Fire Marshal and the Local Fire Authority, in writing of a change in the identity of the Individual Responsible for Sales at least 24 hours before the new Individual becomes the Individual Responsible for Sales.

(5) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR chapter 837, division 12. Exempt Fireworks may be sold and purchased without either the seller or purchaser having to first obtain a permit issued by the Office of State Fire Marshal.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

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 sites.

(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 837-012-0650 and 837-012-0655.

(3) Prior to acceptance of pyrotechnics from a wholesaler, the Permit Holder shall confirm that all cartons, containers, cases and associated paperwork are imprinted and/or affixed with the wholesaler's permit number. Permit Holders should not accept any pyrotechnics without the wholesaler's permit number affixed.

(4) The full name, and permit number of the Permit Holder to whom the permit was issued shall be affixed by the wholesaler and shall appear on all pyrotechnic cartons, containers, cases and associated paperwork. Permit Holders should not accept any pyrotechnics without their permit number affixed.

(5) Retail permits are specifically for the sales of allowed fireworks by the Permit Holder named on the retail permit. Retail permits are not transferable. Permit Holders shall contract directly with the wholesaler named on their permit for purchase of the fireworks to be sold at retail to individual members of the general public for personal use. Permit Holders are prohibited from contracting, sub-contracting, leasing, sub-leasing or in any other way conveying the retail permitted rights to or with other persons. Individuals, who are not a direct employee of an Oregon permitted wholesaler, who act as intermediaries between permitted wholesalers and retailers are considered to be wholesalers and shall meet wholesale permit requirements.

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

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

(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 retail 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 or when there is question of who has authority for the sales location from the property owner.

(9) The retail permits and permit numbers issued by the Office of State Fire Marshal are valid for the sale of fireworks from June 23 through July 6 of the year in which the permit was issued.

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; Administrative correction 6-14-01

837-012-0625

Retail Permit Fees

(1) Permit fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Permit Application.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Permit Application until the check has cleared the bank.

(3) The permit fee for each Permit Application shall be \$25.

(4) Permit fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0630

Issuance of Retail Permits

(1) The Office of State Fire Marshal shall not approve an application, or issue a Retail Permit, without the prior approval of the Local Fire Authority.

(2) The Office of State Fire Marshal shall assign a unique number to each Retail Permit issued.

(3) Only one Retail Permit shall be issued for each Retail Site with the following exception: More than one Retail Sales Outlet may be erected and operated at the same Retail Site, whether indoors or outdoors, when there is sufficient space to allow each Retail Sales Outlet to conform to the requirements of ORS 480.110 to 480.165 and these rules. For example, Retail Permits may be issued for both Outdoor Sales and Indoor Sales located at the same Retail Site.

(4) The Office of State Fire Marshal shall mail the original Retail Permit to the applicant at the mailing address listed on the Permit Application.

(5) Retail Permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen, or destroyed. Written requests shall be signed and dated by the Retail Permit holder.

(6) The issuance of a Retail Permit does not in any way constitute approval by the Office of State Fire Marshal of any Retail Fireworks purchased, sold or provided pursuant to the Retail Permit.

(7) A Retail Permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of Retail Fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12 and any other federal, state or local laws, rules or regulations.

(8) A Retail Permit holder is authorized to Sell or otherwise provide only Retail Fireworks to Individual Members of the General Public.

(9) A Retail Permit does not authorize the:

(a) Purchase, possession or sale of Illegal Fireworks by or to any Person; or

(b) Sale or provision of Retail Fireworks to any Person other than an Individual Member of the General Public.

(10) The Retail Permit and permit number issued by the Office of State Fire Marshal are valid for the sale of Retail Fireworks from June 23 through July 6 of the year in which the permit was issued.

(11) A Retail Permit is valid only for the Retail Site listed on the permit.

(12) Only the Retail Permit holder, and any Employees or Volunteers of the Retail Permit holder, may engage in Retail Operations authorized by the Retail Permit.

(13) Retail Permits, and the rights conveyed by the permits, are not transferable.

(14) Retail Permit holders shall contract directly with the Wholesaler listed on the Retail Sales Permit for purchase of Retail Fireworks.

(15) Retail Permit Holders shall not contract, subcontract, lease, or sub-lease or convey by any other means to another Person any rights granted under the Retail Permit.

(16) The Retail Permit issued by the Office of State Fire Marshal does not require property owners or others to allow sales of Retail Fireworks on their property. The Office of State Fire Marshal will not intercede on the behalf of Retail Permit holders with property owners who refuse to allow sales of Retail Fireworks on their property, or in the case of two Permit Applications submitted or two Retail Permits inadvertently issued for the same Retail Site, when there is a question of which applicant or Retail Permit holder has permission from the property owner to conduct sales at the Retail Site.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; FM 1-1997, f. & cert. ef. 1-28-97; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0635

Purchase of Retail Fireworks by Retail Permit Holder

(1) Retail Permit holders shall purchase or otherwise obtain Retail Fireworks only from Wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal.

(2) A Retail Permit holder shall purchase or otherwise obtain Retail Fireworks only from the Wholesaler listed on the Retail Permit.

(3) If the Wholesaler who supplies the Retail Fireworks to the Retail Permit holder is different from the Wholesaler listed on the Retail Permit, the Retail Permit holder shall notify, in writing, the Office of State Fire Marshal and Local Fire Authority of the change at least 24 hours prior to purchasing the Retail Fireworks from the Wholesaler.

(4) Prior to acceptance of Retail Fireworks from a Wholesaler, the Retail Permit holder shall confirm that the outside of all Cartons, Containers, or Cases of Retail Fireworks, and any accompanying documentation are imprinted and/or affixed with the Wholesale permit number pursuant to OAR 837-012-0520(13).

(5) Prior to acceptance of Retail Fireworks from a Wholesaler, the Retail Permit holder shall confirm that the outside of all Cartons, Containers, or Cases of Retail Fireworks or any accompany documentation with the full name and Retail Permit number of the Retail Permit holder.

(6) Retail Permit Holders shall not accept any Cartons, Containers, or Cases of Retail Fireworks and accompanying documentation that does not show the information required pursuant to sub-sections (4) and (5) of this rule.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0640

Permits — Denial, Suspension and/or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a Retail Permit if a Retail Permit holder, or an applicant, fails:

(a) To comply with OAR 837-012-0615(2);

(b) There is knowing employment of, or direct business ties with, any Person whose wholesale, retail, agricultural, or public display permit or pyrotechnician certification has been revoked, denied or suspended within the last three years.

(2) The period of denial, suspension or revocation shall not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety, particularly whether the circumstances of the violations presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations; alleged to have been committed in the current transaction or occurrence;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Retail Permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(3) Suspension or revocation of a Retail Permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

(4) The Office of State Fire Marshal may deny, suspend, or revoke all Retail Permits issued to a Retail Permit holder for each of the permit holder's or applicant's Retail Sales Outlets pursuant to OAR 837-012-0620(2).

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0645

Sales and Storage of Retail Fireworks

(1) A Retail Sales Outlet shall never be left unattended during the business hours of the outlet. Any Retail Sales Outlet in violation of these rules may be subject to closure.

(2) The Retail Permit holder or the Individual Responsible for Sales shall be present at the Retail Sales Outlet at least 50% of the outlet's business hours. The Individual Responsible for Sales shall not be absent from the Retail Sales Outlet for more than 48 consecutive hours. When not present at the outlet, the Individual Responsible for Sales shall be readily available, day or night, by telephone or other reliable means of communication. Only one absence from the Retail Sales Outlet of up to 48 consecutive hours shall be allowed during the period of time the Retail Permit is valid.

(3) Any time the Individual Responsible for Sales is not present at the Retail Sales Outlet during the business hours of the outlet, at least one Individual, 18 years of age or older, shall be present at the outlet. Such Individual shall be an Employee or Volunteer of the Retail Permit holder's volunteer non-profit organization. Such Individual shall be directly responsible for and in charge of the Retail Sales Outlet and shall be in the Retail Sales Outlet at all times.

(4) The Individual(s) Responsible for Sales shall be:

(a) The Retail Permit Holder listed on the Retail Sales Permit; or

(b) An Employee of the Retail Permit holder; or

(c) If the Retail Permit holder is a volunteer, non-profit organization, an Individual who is a member of the Retail permit holder's volunteer non-profit organization.

(5) The Individual Responsible for Sales shall be responsible for only one Retail Sales Outlet. The Office of State Fire Marshal shall be notified 24 hours prior to a change in the identity of the Individual Responsible for Sales.

(6) The Retail Site or the Individual Responsible for Sales may be changed if:

(a) The new Retail Site is located in the same fire jurisdiction as the Retail Site listed in the Retail Permit;

(b) The Local Fire Authority approves the new Retail Site or the new Individual Responsible for Sales in writing; and

(c) The Office of State Fire Marshal is notified of the change at least 24 hours prior to the commencement of retail sales.

(7) Retail Fireworks shall be sold only at a Retail Sales Outlet for which a Retail Permit has been issued.

(8) Retail Fireworks shall not be sold or otherwise provided from an establishment or business that serves alcoholic beverages, single or multi-family residences, an Internet site, or automobiles.

(9) All Retail Sales Outlets shall comply with all applicable federal, state and local laws, rules and regulations including, without limitation:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

(c) Oregon Structural Specialty Code, 1998 Edition; and

(d) Oregon Uniform Fire code, 1998 Edition.

(10) All Retail Fireworks not sold during the time the permit is valid, shall be returned to the supplying Wholesaler no later than July 31 of the year in which the Retail Permit is valid.

(11) 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.

(12) At all times during the business hours of the Retail Sales Outlet, no Exits shall be locked or blocked and all exits shall be passable.

(13) No Fireworks shall be discharged within 50 feet of any Retail Sales Outlet.

(14) The Retail Permit holder, Individual Responsible for Sales, and any Employees or Volunteers of the Retail Permit holder shall ensure that all Retail Fireworks sold or otherwise provided, possessed, transported, stored or offered for sale comply with ORS 480.110 through 480.165 and these rules.

(15) The type of Retail Sales Outlet, (Tent, Stand, Canopy or other outside sales structure) to be utilized shall be described on the Permit Application, including its outside dimensions. The dimensions of the Retail Sales Outlet listed on the Permit Application shall not increase, but they may decrease, after the Permit Application is submitted to the Office of State Fire Marshal.

(16) No Tent, Stand, Canopy or other sales structure shall be erected without the approval of the Local Fire Authority having jurisdiction. Tents and canopies shall not be utilized as sales structures unless they are listed on the retail sales application. Tent and Canopy sizes listed on the retail sales application may be decreased, but shall not increase.

(17) All Buildings shall be in conformance with Uniform Fire Codes and Uniform Building Codes requirements.

(18) Retail Permit holders may store their Retail Fireworks from June 1 through July 31 of the year in which their Retail Permit is valid. The Local Fire Authority shall approve the storage and storage location of the Retail Fireworks and indicate that approval by signing the Permit Application.

(19) The storage of Retail Fireworks shall comply with the Oregon Structural Specialty Code, 1998 Edition. Storage that does not comply with these requirements is allowed only if the storage complies with the requirements for an explosives magazine pursuant to NFPA 495, 1996 Edition.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0650

Outside Sales

(1) The location of an Outdoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks, Individual Members of the General Public, other Persons, or surrounding property.

(2) Every Outdoor Retail Sales Outlet shall maintain 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 Fire Authority having jurisdiction.

(3) Trailers used for Sales of Retail Fireworks, shall have their wheels blocked, or removed, or the tongue locked and the trailer disconnected from any power source which can move it. Any fuel tanks or other ignition sources, including those for propane, shall be

removed. Once removed, they shall be moved a minimum of 20 feet from the trailer.

(4) Tents, Canopies or Stands may be erected and operated as outdoor Retail Sales Outlets if they comply with OAR 837-012-0645(8):

(a) Tent and Canopy fabrics and any materials used on the floor of the Tent or Canopy, such as sawdust, shall be treated to be fire retardant;

(b) Tents or canopies having three or more enclosing sides and where entered by Individual Members of the General Public to view and/or purchase Retail Fireworks are considered indoor Retail Sales Outlets and subject to the requirements of OAR 837-012-0645(8).

(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 approved by the Local Fire Authority having jurisdiction.

(6) Electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the Oregon Electrical Code, 1999 Edition and any local requirements.

(7) Retail Sales Outlets that operate at night shall erect and maintain sufficient fixtures light to enable customers and those Individuals selling Retail Fireworks to see all areas of the outlet. 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 Retail Sales Outlets 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 any combustible structures;

(d) At least 10 feet from any entrances to, or Exits and openings from, any surrounding Buildings or structures;

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

(9) An outdoor Retail Sales Outlet, including any 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 the outside of all enclosing sides of an Outdoor Retail Sales Outlet. The signs shall be readily visible. Sign lettering shall be red and at least 2-1/2 inches high on a white background.

(11) Smoking, open flames, other such ignition sources or the use of Fireworks shall not be allowed within 50 feet of the Retail Sales Outlet.

NOTE: Smoking at a Retail Sales Outlet by the Permit holder, or an Employee or Volunteer of the Permit holder may be grounds for suspension and/or revocation of the Retail Permit.

(12) All fuel used to power electrical generators shall be stored in containers listed and approved by Underwriter's Laboratories.

(13) Heaters having exposed electrical elements or open flames shall not be used at any Outdoor Retail Sales Outlet.

(14) Outdoor Retail Sales Outlets and parking for customers of the Retail Sales Outlet shall not impede or endanger the normal flow of traffic on public streets or highways, or parking lots.

(15) The Retail Permit holder shall be responsible for maintaining the grounds within 20 feet of the Retail Sales Outlet in a clean and orderly manner.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0655

Inside Sales

(1) A specific area inside the Retail Sales Outlet shall be designated and maintained as the Sales Display area. The location of an Indoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks,

Individual Members of the General Public or to other Persons or surrounding property.

(2) The Sales Display area 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 Sales shall regularly monitor and oversee Retail Operations at the Retail Sales Outlet to ensure the Sales Display and storage areas are orderly and maintained in accordance with these rules.

(4) If the Individual Responsible for Sales does not personally handle or Sell the Retail Fireworks, then at least one other Employee or Volunteer present at the Retail Sales Outlet during the business hours of the outlet shall be assigned that task. These Employees or Volunteers shall be knowledgeable about federal, state, and local laws, rules, and regulations pertaining to the use, possession, transportation, storage and sale of Retail Fireworks.

(5) Retail Fireworks, in excess of those needed for the Sales Display, shall be stored inside the Retail Sales Outlet only if they are separated from all Sales Display areas, Exits, flammable and highly combustible materials and access to the Retail Sales Outlet by Individual Members of the General Public, and in accordance with Local Fire Authority requirements and these rules. This subsection does not apply to sales of Retail Fireworks from Tents.

(6) Fire extinguishers shall be provided throughout the indoor Retail Sales Outlet in quantities and locations as required by NFPA 10 and any applicable local ordinances and rules. At a minimum, at least one 2A rated water type fire extinguisher, or an equivalent water type fire extinguishing systems, approved by the Local Fire Authority shall be provided in the Retail Sales Outlet.

(7) "No Smoking" signs shall be posted and readily visible at the Retail Sales Outlet. Sign lettering shall be read and at least 2" inches high on a white background.

(8) Smoking at an indoor Retail Sales Outlet by the Retail Permit holder, an Employee or Volunteer of the Retail Permit Holder, or an Individual Member of the General Public may be the basis for suspension and/or revocation of the Retail Sales Permit.

(9) All trash, rubbish, empty boxes and discarded Retail Fireworks wrapping or packaging shall be removed daily or as often as needed to maintain the Sales Display and storage areas in a neat and clean manner.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0660

Records and Postings

(1) The Retail Permit shall be posted at the Sales Display area and shall be readily visible:

(a) A copy of the Retail Permit may be posted instead of the original if the original is maintained and immediately available for inspection by the Local Fire Authority or the Office of State Fire Marshal upon request, at the Retail Sales Outlet;

(b) For Indoor Sales, the Retail Permit need not be posted, but it must be immediately available for inspection by Individual Members of the General Public, the Local Fire Authority or the Office of State Fire Marshal, upon request.

(2) Retail Permit holders shall maintain a record of each shipment of Retail Fireworks received. The record shall include the Wholesalers name, address and wholesale permit number, the Retail Permit holder's name and permit number, and a complete list of the names and quantities of each type of Retail Firework received.

(3) All records described under subsection (2) of this rule shall be maintained by either the Retail Permit holder or the Wholesaler who supplied the particular shipment of Retail Fireworks. The records shall be maintained for three years from the date of receipt of the shipment.

(4) Upon request the records described in subsection (2) of this rule, shall be readily available for review and inspection by the Local Fire Authority or representatives of the Office of State Fire Marshal. All records shall be clear, legible, and accurate.

(5) Retail Permit holders shall maintain at all times a list of Employees, or Volunteers, including their names, addresses, ages, and phone numbers. Upon request, a legible copy of the list shall be provided immediately to the Office of State Fire Marshal

(6) All Persons possessing, for 30 days or more, more than ten pounds of Retail Fireworks shall annually complete and submit the Hazardous Substance Survey pursuant to ORS 453.307 to 435.372 and OAR chapter 837, division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

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

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0665

Advertisements

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

(a) Any advertisement, for distribution to Individual Members of the General Public, concerning the sale of Fireworks which have been declared unlawful by ORS 480.110 to 480.165, or these rules, for Individual Members of the General Public 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.

(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 though some secondary distributions of that media may occur into areas which prohibit these Fireworks.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0670

Prohibited Acts and Limitations

(1) Retail Permit holders shall not create, maintain or allow the existence of a fire hazard at any location under their control where Retail Fireworks are stored, transported, sold, or used.

(2) No Retail Permit holder shall Sell or provide by any other means including donation:

(a) Retail Fireworks to any Individual Members of the General Public under 16 years of age;

(b) Illegal Fireworks to any Individual Members of the General Public;

(c) Any Retail Fireworks that have been altered;

(d) Any Retail Fireworks not supplied and/or distributed to the Retail Permit holder by a Wholesaler who possesses a valid and current wholesale permit issued by the Office of State Fire Marshal.

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12, or who has had any Fireworks permit or pyrotechnician certification suspended, denied or revoked shall participate in any manner in the storage, distribution, transportation or sale of Retail Fireworks for a period not to exceed three years.

(4) Retail Permit holders shall not Sell, provide, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any Retail Firework that has not been approved, certified or listed for transport by the United States Department of Transportation and/or the United State Consumer Product Safety Commission, or does not

have a United States Bureau of Explosives Temporary Transfer Permit.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00

837-012-0675

Civil and Criminal Enforcement Actions

(1) The Office of State Fire Marshal, Local Fire Authority or, law enforcement officials may confiscate, remove or have removed any Retail Fireworks offered for sale, sold, provided, transported, stored, or possessed in violation of ORS 480.110 through 480.165 or these rules.

(2) The Retail Permit holder, or Person responsible for the violation(s), shall be responsible for payment of the agency's costs in confiscating or removing any Retail Fireworks pursuant to subsection (1) of this rule.

(3) Upon finding a violation, the Office of State Fire Marshal may order that any confiscated Retail Fireworks be:

(a) Returned to the Wholesaler who supplied the Retail Fireworks; or

(b) Disposed of in any manner approved by the Office of State Fire Marshal, including destruction of the Retail Fireworks.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00

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

Stat. Auth.: ORS 476 & ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 012.

(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, coun-

ties, municipal corporations, school districts and other public corporations or subdivision.

(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, firecrackers 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. Wholesalers are not permitted to sell fireworks to any person notwithstanding the state in which they reside.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 agency.

(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 perform 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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 837-012-0820(1) — \$25.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 agency 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 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 480.110 - ORS 480.165

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 012. 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 480.110 - ORS 480.165

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 837-012-0790 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 012. Any such revocation, suspension, refusal, actions shall be in conformance with ORS 183.310 to 183.550

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 480.110 - ORS 480.165
 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 480.110 - ORS 480.165
 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 fireworks; 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 480.110 - ORS 480.165
 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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

Shell Size	Minimum Radius of Display Site for 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 (1,200' 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.

[ED. NOTE: Figures referenced in this rule are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 837-012-0740.

(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 480.110 - ORS 480.165

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 electric

cal 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 shall 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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 subcontractors of the person.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 480.110 - ORS 480.165

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 OAR chapter 837, division 12.

(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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

837-012-1020

Effective Dates

OAR 837-012-1000 through 837-012-1110 are effective upon date of filing.

Stat. Auth.: ORS 183.090 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

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 OAR chapter 837, division 12. A Citation may include, but is not limited to, a description of the Violation(s) and a notice of civil penalty assessment.

(2) "Exempt Fireworks" shall mean Novelties and Trick Noise-makers.

(3) "Fireworks" shall mean those 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) "Individual" shall mean a single human being.

(8) "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.

(9) "Instance" means the number of times a Person has been cited. These are identified as 1st, 2nd, and 3rd Instances.

(10) "Local Fire Authority" shall mean the local fire official having jurisdiction.

(11) "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.

(12) "Retail Permit" shall mean the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storing and sale

of Retail Fireworks, at retail, when otherwise in conformance with all applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other federal, state and local laws, rules and regulations.

(13) "State Fire Marshal" means the State Fire Marshal or his/her administrative designee.

(14) "Type" means the classification of Violation, i.e., least, minimal, moderate, or severe. These are identified as Type I, II, III or IV.

(15) "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.

(16) "Wholesale Permit" shall mean the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of Fireworks, retail fireworks, public display fireworks, or agricultural fireworks when otherwise in compliance with all applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other federal, state and local laws, rules and regulations.

(17) "Wholesaler" shall mean any Person who sells or provides by any other means, or intends to sell or provide by any other means, Fireworks, retail fireworks, public display fireworks, or agricultural fireworks.

Stat. Auth.: ORS 183.090 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 non-compliance 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 837-12-560(1)(a) and 837-12-675(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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 837-12-1130 through 837-12-1160, except as provided in OAR 837-12-1100.

(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. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 183.090 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 8-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 1-2001, f. & cert. ef. 1-23-01

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 837-12-1050, 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.

[ED. NOTE: Tables and Forms referenced are available from the agency.]

Stat. Auth.: ORS 183.090 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 837-12-1050(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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 with in 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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

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 1.4g Fireworks;

(b) Sale of any amount of 1.4g 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 children less than 16 years of age;

(d) The purchase of Fireworks by an Oregon Retail Permit holder from an unlicensed Wholesaler;

(e) Purchase of any amount of 1.4g 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 1.3g 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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 8-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 1-2001, f. & cert. ef. 1-23-01

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 1.3g 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 1.3g 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 1.3g 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 & ORS 480.110 - ORS 480.165

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01

Explosives

837-012-1200

Purpose and Scope

(1) The purpose of these rules is to establish standards, policies, and procedures for the Possession, storage, and use of Explosives for the protection and safety of the public, first responders, and Individuals purchasing, possessing, storing, using, and transporting Explosives.

(2) The scope of these rules applies to the implementation of ORS 480.200 through 480.290.

Stat. Auth.: ORS 476.030 & ORS 480.280

Stats. Implemented: ORS 480.200 - ORS 480.290

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1210

Definitions

For purposes of OAR 837-12-1200 through 837-12-1420 the following definitions apply:

(1) "Authorized Agent" as referenced in ORS 480.210 means an employee or representative of a Manufacturer of Explosives or Dealer in Explosives licensed by BATF who possesses Explosives for purposes of manufacturing or dealing. The term does not include an employee or representative who uses or possesses Explosives for other purposes.

(2) "BATF" means the Bureau of Alcohol, Tobacco, and Firearms.

(3) "Certificate of Possession" has the meaning provided in ORS 480.200(1).

(4) "Certificate of Registration" has the meaning provided in ORS 480.200(2).

(5) "Day Box" means:

(a) a structure or container used for the temporary transport or temporary keeping of explosives for present use;

(b) that is always attended and in the line of sight vision of a holder of a Certificate of Possession; and

(c) that complies with the construction requirements of NFPA 495, Explosive Materials Code, 1996 Edition, 6-6.3(a) and (b).

(6) "Dealer" as referenced in ORS 480.210 means any Person engaged in the business of distributing Explosives at wholesale or retail.

(7) "Detonator" means any device containing an initiating or primary Explosive that is used for initiating detonation, and not containing more than 10g of total Explosive material per unit, excluding ignition or delay charges. The term includes, but is not limited to, electric Detonators of the instantaneous and delay types, Detonators for use with safety fuses, detonating cord delay connectors, and nonelectric Detonators of the instantaneous and delay types that consist of a detonating cord, a shock tube, or any other replacement for electric leg wires according to NFPA 495, Explosive Materials Code, 1996 Edition.

(8) "Expire" as referenced in ORS 480.239 and 480.244 means a renewal Certificate of Possession or renewal of Certificate of Registration has not been issued by the Office of State Fire Marshal on or before the expiration date of the current certificate.

(9) "Explosive" or "Explosives" has the meaning provided in ORS 480.200(3).

(10) "Facility" means a single building, structure, or container used or intended to be used for the storage of Explosives. A Day Box is not a Facility.

(11) "Fertilizer" means any substance, or any combination or mixture of substances, designed for use principally as a source of plant food, in inducing increased crop yields or plant growth, or producing any physical or chemical change in the soil and Shall contain five percent or more of available nitrogen, phosphorus pentoxide (phosphoric acid) or potassium oxide (potash), singly, collectively or in combination, except hays, straws, peat and leaf mold, and unfertilized animal manures according to ORS 633.310(5).

(12) "Formal Hearing" means a proceeding before a hearings officer conducted pursuant to the Administrative Procedures Act (APA), ORS chapter 183.

(13) "Individual" means a single human being.

(14) "Informal Conference" means a meeting between the party(ies) and the Office of State Fire Marshal, prior to a Formal Hearing, that may include a discussion about whether a basis exists for informal disposition of a contested case by stipulation, agreed settlement, consent order or other means.

(15) "Lapse" as referenced in ORS 480.239 and 480.244, has the meaning provided in subsection (h) of this rule.

(16) "Magazine" has the meaning provided in ORS 480.200(5). (Refer to OAR 837-012-1210(j) for a definition of Facility).

(17) "Manufacturer" as referenced in ORS 480.210 means any Person engaged in the business of manufacturing Explosives for purposes of sale or distribution or for the Person's own use.

(18) "NFPA" means the National Fire Protection Association.

(19) "Owner" means a Person with a vested ownership interest in the Magazine. The term does not mean a renter, lessor, or sublessor of the Magazine.

(20) "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.

(21) "Possession" means to own, to have physical Possession of, or otherwise to exercise dominion or control over Explosives.

(22) "Re-location" for purposes of ORS 480.244 and OAR 837-012-1360 means moving a Magazine any distance.

(23) "Request for Hearing" means a written request for a Formal Hearing.

(24) "Shall" means that the rule establishes a mandatory requirement.

(25) "Small arms ammunition" has the meaning provided in ORS 480.200(6).

(26) "Small arms ammunition primers" has the meaning provided in ORS 480.200(7).

(27) "Store" means to deposit and place Explosives in a Magazine for safekeeping and future use.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 - ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1220

General

(1) A Certificate of Possession allows the holder of the certificate to engage in those activities including the purchase, Possession, storage and transportation of Explosives when those activities are otherwise in conformance with the requirements of these rules and any other applicable federal, state and local laws, rules and regulations.

(2) Holders of a Certificate of Possession Shall comply with the following:

(a) ORS 480.200 through 480.290;

(b) OAR 837-012-1200 through 837-012-1420;

(c) All applicable regulations in the Oregon Uniform Fire Code, 1997 Edition, and Oregon Structural Specialty Code, 1998 Edition;

(d) NFPA 495, Explosive Materials Code, 1996 Edition, as adopted in OAR 837-12-1340; and

(e) All applicable federal, state and local laws, rules, and regulations governing Explosives.

(3) Holders of a Certificate of Possession Shall purchase Explosives only from those Persons who have a BATF license to sell Explosives.

(4) Pursuant to ORS 480.210(1)(b), a BATF Dealer or Manufacturer license authorizes the holder of such a license to possess Explosives only when the Possession is for purposes of a use or activity expressly authorized by the license, namely the business of manufacturing or dealing in Explosives.

(5) Proof pursuant to ORS 480.210(3)(b) Shall be:

(a) A certified copy of a Manufacturer or Dealer license issued by the BATF; or

(b) A written certification signed by a Person that holds the license referred to in subsection (a) that certifies under penalty of perjury that the Person charged under ORS 480.210(1) is an employee or representative of the licensed Person and is engaged in the business of manufacturing or dealing in Explosives.

(6) Holders of a Certificate of Possession or a Certificate of Registration Shall notify the Office of State Fire Marshal in writing of a change in their address within two weeks of the date of the change.

(7) Holders of a Certificate of Registration Shall notify the Office of State Fire Marshal in writing of a change in ownership of a Magazine within two weeks of the date of the change.

(8) Holders of an unexpired Certificate of Possession or Certificate of Registration may request a duplicate copy of their certificate by certifying in writing to the Office of State Fire Marshal that their certificate has been lost, stolen or destroyed. Written requests shall be signed and dated by the holder of the certificate.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 - ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1230

Fees

- (1) Fees Shall be payable to the Office of State Fire Marshal.
- (2) Fees Shall be paid at, or mailed to, the Office of State Fire Marshal and Shall accompany the appropriate application.
- (3) Payment Shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal Shall not take any action on the application until the check has cleared the bank.
- (4) Fees are:
 - (a) \$50 — Certificate of Possession
 - (b) \$30 — Examination
 - (c) \$125 — Magazine Registration with Office of State Fire Marshal inspection
 - (d) \$50 Magazine Registration with acceptance of BATF inspection
- (5) Fees are non-refundable and non-transferable.
 Stat. Auth.: ORS 476 & ORS 480
 Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)
 Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1240

Applications

- (1) Applications for the examination required under ORS 480.225(1)(j), a Certificate of Possession, and a Certificate of Registration Shall be on forms provided by the Office of State Fire Marshal.
- (2) Applicants Shall complete the applications in full and pay the applicable fees before the Office of State Fire Marshal will process the applications.
- (3) The Office of State Fire Marshal Shall request disclosure of the applicant's social security number on the applications. Any social security number disclosed on an application may be used for identification purposes only and Shall be kept confidential unless otherwise provided by law.
- (4) Application for the examination required under ORS 480.225(1)(j):
 - (a) The application Shall be completed by the Individual who will be taking the required examination.
 - (b) The application and fee Shall be received by the Office of State Fire Marshal a minimum of fourteen days before the applicant intends to complete the examination to:
 - (i) Allow time for the fee payment to clear the bank; and
 - (ii) Allow time for the Office of State Fire Marshal to notify the applicant of the acceptance of the application and fee payment.
- (5) Application for a Certificate of Possession under ORS 480.210:
 - (a) The Individual who intends to possess Explosives Shall complete the application.
 - (b) A separate application and fee Shall be submitted for each Certificate of Possession to be issued.
 - (c) Applicants Shall submit with their application a fingerprint card compatible with the processing requirements of the Oregon State Police Identification Services Division.
 - (6) Application for a Certificate of Registration of Magazine under ORS 480.244:
 - (a) The Owner of the Magazine Shall complete the application.
 - (b) A separate application and fee Shall be submitted for each Magazine to be registered.
 - (c) Applicants Shall specify on their applications whether:
 - (i) They request the Office of State Fire Marshal to inspect the Magazine to be registered; or
 - (ii) They request the Office of State Fire Marshal to accept a BATF inspection of the Magazine to be registered in lieu of the Office of State Fire Marshal inspection.

Stat. Auth.: ORS 476 & ORS 480
 Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1250

Eligibility for a Certificate of Possession

To be eligible for a Certificate of Possession, applicants Shall meet the requirements under ORS 480.225 and 480.230.

Stat. Auth.: ORS 476 & ORS 480
 Stats. Implemented: ORS 480.200 – ORS 480.290 and ORS 480.990(6)
 Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1260

Certificate of Possession – Examination

- (1) Upon receipt and processing of a completed application, the Office of State Fire Marshal Shall notify the applicant of the date, time and place for the examination.
- (2) Applicants Shall provide photo identification at the time they appear to take the examination. The Office of State Fire Marshal Shall only accept photo identification issued by the Department of Motor Vehicles in the applicant's state of residency.
- (3) The examination is based upon, and Shall examine the applicant's knowledge of:
 - (a) NFPA 495, Explosive Materials Code, 1996 Edition as adopted in OAR 837-012-1340; and
 - (b) ORS 480.200 through 480.290.
- (4) The examination Shall be open book.
 - (a) Applicants are responsible for providing their own copy of NFPA 495, Explosive Materials Code, 1996 Edition, to use during the examination.
 - (b) The Office of State Fire Marshal Shall provide a copy of ORS 480.200 through 480.290 for use during the examination.
- (5) To pass the examination, the applicant must answer correctly 80% or more of the examination questions.
- (6) The Office of State Fire Marshal Shall notify applicants of the results of their examination at the address listed on their examination application.
- (7) If an applicant fails to arrive at the scheduled examination appointment, fails to complete the examination, or fails to pass the examination, to reschedule the examination or to take the examination again, the applicant Shall submit to the Office of State Fire Marshal a new application and fee pursuant to OAR 837-012-1230 and 837-012-1240.
- (8) Passing examination scores Shall remain valid for two years from the date the examination was completed. If the examinee has not applied for and been issued a Certificate of Possession within two years from the date of completion of the examination in which the passing score was received, the examination score Shall be invalid and the applicant Shall re-take and pass the examination.

Stat. Auth.: ORS 476 & ORS 480
 Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)
 Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1270

Certificate of Possession - Issuance

- (1) Upon receipt of a properly completed application, application fee, and fingerprint card, the Office of State Fire Marshal Shall conduct an investigation to ensure the applicant meets the requirements of ORS 480.225 and 480.230.
- (2) The investigation Shall include, but is not limited to:
 - (a) Electronic processing of fingerprint cards through the Law Enforcement Data System.
 - (b) Accessing records at Mental Health and Developmental Disability Services Division pursuant to ORS 480.225(1)(d).
- (3) Upon its approval of an application, the Office of State Fire Marshal Shall issue a Certificate of Possession to the applicant.
- (4) The Office of State Fire Marshal Shall assign a unique number to each Certificate of Possession issued.
- (5) The issuance of a Certificate of Possession does not in any way constitute an approval by the Office of State Fire Marshal of any Explosives possessed under the certificate.

(6) The Office of State Fire Marshal Shall mail the original Certificate of Possession to the applicant at the address listed on the application.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1280

Certificate of Possession - Renewal

(1) A Certificate of Possession Shall be renewed every three years.

(2) The holder of the Certificate of Possession is not required to retake the examination required under ORS 480.225(1)(j) unless the current certificate Expires or Lapses.

(3) All other requirements for the issuance of a renewal of Certificate of Possession Shall be the same as for the issuance of the original certificate.

(4) Applications for the renewal of a Certificate of Possession Shall not be submitted to the Office of State Fire Marshal more than 90 days prior to the expiration date of the current certificate.

(5) Applications for the renewal of a Certificate of Possession should be received by the Office of State Fire Marshal at least 60 days prior to the expiration date of the current certificate. This allows the Office of State Fire Marshal adequate time to process the application prior to the expiration date of the current certificate.

(6) Applications not received by the Office of State Fire Marshal at least 60 days prior to the expiration date of the current Certificate of Possession may not allow adequate processing time and could result in the expiration, or Lapse, of the current certificate.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 and ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1290

Explosives Storage

(1) Explosives Shall be Stored only in a Magazine that has been issued a Certificate of Registration by the Office of State Fire Marshal.

(2) The storage of Explosives Shall be in compliance with all applicable requirements of:

(a) NFPA 495, Explosive Materials Code, 1996 Edition as adopted in OAR 837-12-1340;

(b) Oregon Uniform Fire Code, 1997 Edition;

(c) Oregon Structural Specialty Code, 1998 Edition; and

(d) All applicable federal, state and local laws, rules and regulations.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1300

Magazine Registration and Inspection

(1) Magazines not issued a Certificate of Registration Shall not be used for the storage of Explosives.

(2) To be eligible for a Certificate of Registration, a Magazine Shall comply with the requirements of:

(a) ORS 480.200 through 480.290;

(b) OAR 837-012-1200 through OAR 837-012-1240;

(c) Oregon Uniform Fire Code, 1997 Edition;

(d) Oregon Structural Specialty Code, 1998 Edition;

(e) NFPA 495, Explosive Materials Code, 1996 Edition as adopted in OAR 837-012-1340; and

(f) All applicable federal, state and local laws, rules and regulations.

(3) Prior to the issuance of a Certificate of Registration, the Magazine Shall be inspected for compliance with these rules.

(4) The inspection Shall:

(a) Be completed by the Office of State Fire Marshal; or

(b) Be completed by the BATF pursuant to OAR 837-012-1320.

(5) A Certificate of Registration allows the holder of the certificate to Store Explosives in the registered Magazine when otherwise in conformance with the requirements of these rules.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1310

State Fire Marshal Inspection of Magazines

(1) The State Fire Marshal may complete an inspection of a Magazine prior to the issuance of a Certificate of Registration pursuant to OAR 837-012-1300(3) and (4).

(2) Upon receipt of information that a Magazine is not in compliance with the requirements of these rules, the Office of State Fire Marshal may conduct an inspection of the Magazine.

(3) If, upon its inspection, the Office of State Fire Marshal determines that the Magazine is not in compliance, the Office of State Fire Marshal may issue a Notice of Correction to the Owner of the Magazine.

(4) The Notice of Correction Shall be on a form provided by the Office of State Fire Marshal.

(5) The Notice of Correction Shall specify the deficiencies required to be corrected prior to the Magazine being issued a Certificate of Registration.

(6) The Notice of Correction Shall specify the date by which the deficiencies are to be corrected.

(7) The Office of State Fire Marshal Shall present a copy of the Notice of Correction to the Owner of the Magazine by:

(a) Personal service;

(b) Service by certified mail; or

(c) Service by regular mail.

(8) After presenting a copy of the Notice of Correction to the Owner of the Magazine, the Office of State Fire Marshal Shall retain all remaining copies of the notice until the reinspection of the Magazine is completed.

(9) At the end of the time allowed for correction of the deficiencies, as stated in the Notice of Correction, the Office of State Fire Marshal Shall:

(a) Reinspect the Magazine to determine if the deficiencies specified in the Notice of Correction have been corrected; and

(b) Complete the reinspection section of the Notice of Correction.

(10) Upon reinspection of the Magazine, the Office of State Fire Marshal shall provide a copy of the completed Notice of Correction to the Owner of the Magazine pursuant to subsection (7) of this rule.

(11) Failure to correct the deficiencies noted in the Notice of Correction will result in the following, until such time as the deficiencies are corrected:

(a) The Magazine Shall not be issued a Certificate of Registration;

(b) The Magazine Shall not be issued a renewal Certificate of Registration; or

(c) The Certificate of Registration for the Magazine Shall be suspended or revoked.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1320

Certificate of Registration of Magazine — With Bureau of Alcohol, Tobacco and Firearms Inspection

(1) The Office of State Fire Marshal may accept an inspection completed by BATF in lieu of the Office of State Fire Marshal inspection.

(2) The decision to accept or not accept the BATF inspection rests solely with the Office of State Fire Marshal.

(3) The Office of State Fire Marshal Shall consider, but is not limited to, the following criteria in deciding whether to accept a BATF inspection:

(a) The inspection Shall be completed not more than three months prior to the date of the application for a Certificate of Registration;

(b) The inspection Shall show the Magazine is in compliance with these rules.

(c) If deficiencies are noted on the BATF inspection, the Office of State Fire Marshal may decide to conduct its own inspection. Should the Office State Fire Marshal decide to complete its own inspection, the applicant Shall submit payment of the additional fee amount of \$75 required for a Certificate of Registration with a State Fire Marshal inspection prior to the Office of State Fire Marshal conducting its inspection.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1330

Certificate of Registration of Magazine — Renewal

(1) All requirements for the issuance of a Certificate of Registration Shall be met before a certificate is renewed.

(2) A Certificate of Registration Shall be renewed every two years.

(3) Applications for the renewal of a Certificate of Registration Shall not be submitted to the Office of State Fire Marshal more than 120 days prior to the expiration date of the current certificate.

(4) Applications for the renewal of a Certificate of Registration should be received by the Office of State Fire Marshal at least 90 days prior to the expiration date of the current certificate. This allows the Office of State Fire Marshal adequate time to process the application, including inspection by the State Fire Marshal of the Magazine, prior to the expiration date of the current certificate.

(5) Applications not received by the Office of State Fire Marshal at least 90 days prior to the expiration date of the current Certificate of Registration may not allow adequate processing time and could result in the expiration, or Lapse, of the current certificate.

(6) If a current Certificate of Registration Expires, or Lapses, Explosives Shall no longer be Stored in the Magazine until the Magazine is issued a renewal Certificate of Registration.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1340

Fire and Life Safety Standards

NFPA 495, Explosive Materials Code, 1996 Edition, is hereby adopted with the following exceptions:

(1) Chapter two is not adopted;

(2) Although NFPA 495, Explosive Materials Code, 1996 Edition, requires Magazines to be opened and inspected at intervals of three days, the Office of State Fire Marshal requires Magazines to be opened and inspected at intervals of seven days. (See NFPA 495, Explosive Materials Code, 1996 Edition, 6-7.2);

(3) NFPA standards regarding the manufacture of Explosives are not adopted; and

(4) NFPA standards regarding the transportation of Explosives are hereby adopted for purposes of the examination required under ORS 480.225(1)(j).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1350

Removal/Confiscation of Explosives

(1) Explosives Shall not be Stored in a Magazine, or possessed by an Individual if:

(a) An application for a Certificate of Registration, or Certificate of Possession, is denied;

(b) A Certificate of Registration, or Certificate of Possession, is suspended or revoked pursuant to ORS 480.244(9) or 480.270 or these rules; or

(c) A Certificate of Registration, or Certificate of Possession, Expires or Lapses.

(2) The Office of State Fire Marshal may confiscate Explosives possessed or Stored in violation of ORS 480.200 to 480.290 or these rules.

(3) Any confiscation of Explosives by the Office of State Fire Marshal Shall be done pursuant to a warrant.

(4) Upon finding a violation, the Office of State Fire Marshal may order that any Explosives be:

(a) Transferred to a Magazine that has been issued a Certificate of Registration by the Office of State Fire Marshal;

(b) Returned to the supplier of the Explosives; or

(c) Disposed of in any manner the Office of State Fire Marshal sees fit, including destruction of the explosives.

Stat. Auth.: ORS 476.030 & ORS 480.280

Stats. Implemented: ORS 480.239

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1360

Magazine Re-location — Reporting

(1) Re-location of any Magazine required to be registered under ORS 480.244 Shall be reported to the Office of State Fire Marshal within 24 hours of its Relocation.

(2) The Owner, or the Individual with physical Possession and/or control of the Magazine, Shall be the Individual responsible for reporting the Relocation of the Magazine.

(3) The toll free reporting number for reporting Relocation of the Magazine is 1-877-459-9366.

(4) A report of Relocation of the Magazine Shall include the following information:

(a) Certificate of Registration number issued to the Magazine;

(b) New location of the Magazine including the street address, city, and state;

(c) The name and phone number of the Individual reporting the Relocation of the Magazine; and

(d) The name of the fire department having jurisdiction, if known.

(3) There is no fee for the reporting of the Relocation of a Magazine.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 - ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1370

Record Keeping Requirements for Explosives

(1) Holders of a Certificate of Possession Shall maintain a record of the type and quantity of all Explosives possessed.

(2) The Office of State Fire Marshal may inspect the records required to be maintained under ORS 480.235(5) and subsection (1) of this rule:

(a) At the time of the Magazine inspection by the Office of State Fire Marshal; or

(b) Upon demand by the Office of State Fire Marshal.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1380

Hazardous Materials Reporting

Persons possessing 10 pounds or more of Explosives, as classified by the United States Department of Transportation, Shall annually complete the Hazardous Substance Survey pursuant to ORS 453.307 to 453.372 and OAR chapter 837, division 85.

Stat. Auth.: ORS 453, ORS 476, ORS 478 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1390

Denial, Suspension or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a Certificate of Possession if:

(a) An Individual who has applied for, or who has been issued, a Certificate of Possession is ineligible for the certificate under ORS 480.225 or 480.230; or

(b) The Individual who has been issued a Certificate of Possession has been convicted of a violation under ORS 480.990(6).

(2) If an Individual to whom a Certificate of Possession was issued is found to be ineligible for the certificate under ORS 480.225 or 480.230, the Office of State Fire Marshal Shall revoke the certificate.

(a) An Individual is ineligible for a Certificate of Possession if, before or after being issued a certificate, the Individual fails to comply with ORS 480.225 or 480.230.

(b) An Individual is ineligible for a Certificate of Possession under ORS 480.225(1)(L) if the Individual fails to possess, use, Store or transport Explosives in accordance with these rules and all other applicable federal, state or local laws, rules or regulations.

(3) If an Individual to whom a Certificate of Possession was issued has been convicted of a violation under ORS 480.990(6), the Office of State Fire Marshal Shall consider the following guidelines:

(a) If the Individual has been convicted of one violation, the Office of State Fire Marshal may deny, suspend or revoke the Certificate of Possession for up to one year;

(b) If the Individual has been convicted of two violations, the Office of State Fire Marshal may deny, suspend or revoke the Certificate of Possession for up to two years;

(c) If the Individual has been convicted of three or more violations, the Office of State Fire Marshal may deny, suspend or revoke the Certificate of Possession for up to three years.

(4) The Office of State Fire Marshal may deny, suspend or revoke a Certificate of Registration:

(a) If the Magazine registered, or to be registered, is ineligible for registration under ORS 480.200 to 480.290 or these rules;

(b) For failure to comply with any provision of ORS 480.200 to 480.290 or these rules.

(5) If a Magazine that has been issued a Certificate of Registration is found to be ineligible, the Office of State Fire Marshal Shall revoke the certificate.

(6) A Magazine is ineligible for a Certificate of Registration if, before or after the Magazine is registered, the Magazine does not comply with ORS 480.244 or these rules.

(7) Suspension or revocation of a Certificate of Possession or a Certificate of Registration may include suspension or revocation of the current certificate and the right to apply for a renewal certificate.

(8) The period for denial, suspension or revocation of a Certificate of Possession or Certificate of Registration Shall not exceed three years, unless otherwise provided by law. In determining the appropriate sanction, the Office of State Fire Marshal Shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety;

(b) The number of similar or related violations;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Individual or Person; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(9) Any notice of denial, suspension or revocation issued by the Office of State Fire Marshal Shall be mailed by certified mail to the most recent address on file with the Office of State Fire Marshal pursuant to OAR 837-12-1220(6).

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

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1400

Contested Cases

(1) A Person may request a Formal Hearing regarding the suspension, revocation, or denial of a Certificate of Registration or a Certificate of Possession by the Office of State Fire Marshal.

(2) A Request for Hearing Shall be timely filed.

(3) A Request for Hearing is timely filed when the request is postmarked or received by the Office of State Fire Marshal within 20 days from the date of service of the notice of suspension, revocation, or denial, unless a 60-day deadline applies pursuant to ORS 183.435.

(4) If a Request for Hearing is not timely filed under section (3) of this rule, the Person Shall have waived the right to a contested case under ORS chapter 183.

(5) A Person may write to or call the Office of State Fire Marshal to informally discuss the notice of suspension, revocation, or denial, however, an informal communication Shall not extend the deadline established in subsection (3) of this rule.

(6) A contested case may include:

(a) An Informal Conference; and/or

(b) A Formal Hearing.

(7) A contested case Shall be conducted pursuant to the provisions of ORS chapter 183 and the rules adopted thereto.

Stat. Auth.: ORS 183, ORS 476, ORS 478 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1410

Informal Conference

(1) The Office of State Fire Marshal may provide an opportunity for an Informal Conference.

(2) A request for an Informal Conference may be made verbally or in writing; and Shall:

(a) Be made or addressed to the Office of State Fire Marshal; and

(b) Clearly state the issue(s) to be discussed.

(3) If the Office of State Fire Marshal and the party(ies) agree, an Informal Conference may be held by telephone.

(4) After an Informal Conference, the Office of State Fire Marshal may amend, withdraw, or reduce the suspension, revocation or denial. Such action Shall be taken in accordance with ORS chapter 183 and the rules adopted thereto.

Stat. Auth.: ORS 183, ORS 476, ORS 478 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 80.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

837-012-1420

Formal Hearing

(1) A Person may file a written Request for Hearing before or after an Informal Conference, at any time before the deadline established in OAR 837-012-1400(3).

(2) The Office of State Fire Marshal Shall arrange for a hearings officer to conduct the Formal Hearing.

(3) The Office of State Fire Marshal Shall set a date, time, and location for the Formal Hearing.

Stat. Auth.: ORS 183, ORS 476, ORS 478 & ORS 480

Stats. Implemented: ORS 480.200 – ORS 480.290 & ORS 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00

DIVISION 20

FLAMMABLE AND COMBUSTIBLE LIQUIDS

Flammable Liquid Dispensing Regulations

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 476 & ORS 480.380

Stats. Implemented: ORS 480.310 - ORS 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

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 employee 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - ORS 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; 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 - ORS 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; 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 nonretail facilities if such persons meet the requirements of this Division.

Stat. Auth.: ORS 476 & ORS 480.380

Stats. Implemented: ORS 480.330 & ORS 480.345

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

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers

Notwithstanding ORS 480.330 and 480.340 or OAR 837-020-0045, 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 480.345

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

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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480.380

Stats. Implemented: ORS 480.345

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

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 837-020-0060 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 837-020-0060 within 12 months after the account was established.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & ORS 480.360

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

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 476 & ORS 480.380

Stats. Implemented: ORS 480.345 - ORS 480.375

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

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 480.345 & 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

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 476 & ORS 480.380

Stats. Implemented: ORS 480.365 - ORS 480.375 & ORS 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

837-020-0085

Nonretail Facility License

(1) Except as provided in OAR 837-020-0005 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.350

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

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 effect 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; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95

837-020-0105

License Refusals, Revocations and Suspensions; 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 480.355, ORS 480.365 - ORS 480.375 & ORS 480.385

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

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; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95

837-020-0115

Application and Annual Fees

(1) 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 480.350 & ORS 480.355

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

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 480.380 & ORS 480.385

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)

DIVISION 30

LIQUEFIED PETROLEUM GAS

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 476 & ORS 480.

Stats. Implemented: ORS 480.410 - ORS 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. ef. 11-14-95; Renumbered from 837-030-0005

837-030-0110

Effective Dates

OAR 837-030-0100 through 837-030-0280 are effective upon date of filing for adoption.

Stat. Auth.: ORS 480.420

Stats. Implemented:

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 an individual who has passed the installation examination administered by the Office of State Fire Marshal and represents the 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 an individual 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) "Individual" shall mean one distinct, individual human being. It shall not mean person.

(9) Installation license means a license issued to a company or business (hereinafter referred to as a company license) 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 pertaining to or in connection with liquefied petroleum gas installations.

(10) License shall mean the official written permission granted by the State Fire Marshal for the purpose of working in the liquefied petroleum gas business.

(11) Liquefied petroleum gas means any liquid composed predominantly of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes.

(12) "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.

(13) Truck Equipment Operator license means a license issued to an individual who operates liquefied petroleum gas delivery equipment installed on a motorized vehicle.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.410

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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; (1999 edition), and

(b) NFPA 58 — Storage and Handling of Liquefied Petroleum Gases (1998 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 58-1998 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & ORS 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. ef. 11-14-95, Renumbered from 837-030-0010, 837-030-0015, 837-030-0020 & 837-030-0025; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

837-030-0140

Licenses Required

(1) A company 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 pertaining to or in connection with liquefied petroleum gas installations.

(2) A fitter license is required for any individual performing liquefied petroleum gas fitting, venting, installation or repair or remodel to any piping or venting, installs or repairs, connects, or disconnects any liquefied petroleum gas appliance.

(3) A Truck Equipment Operator license is required for any individual who operates liquefied petroleum gas delivery equipment installed on a motorized vehicle.

(4) Any individual required to have a Fitter and/or Truck Equipment Operator license is also required to have an Installation license unless the individual is an employee of an employer who has a company 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 as long as the license has not expired.

Stat. Auth.: ORS 476 & ORS 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 837-030-0030; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

837-030-0150

Company License (Company Representative)

(1) Each company business or dealership location shall obtain a separate company license.

(2) Each location shall have a company representative unique to that location.

(3) To qualify the company for a company license, an individual (company representative) at each location and unique to that 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.

(5) The new company representative shall meet examination requirements within 60 calendar days of the last date of employment of the preceding company representative.

(6) Exceptions to this requirement for a company license are as follows:

(a) This rule does not apply to liquefied petroleum gas installations made in a manufactured dwelling or recreational vehicle when those installations are made during the construction of the manufactured dwelling or recreational vehicle.

(b) This rule does not apply to warranty work for liquefied petroleum gas installations in a manufactured dwelling or recreational vehicle so long as the work performed falls in the scope of the original manufacturer's warranty issued at the time the home or recreational vehicle was manufactured.

(c) This rule does not apply to a person who holds a valid journeyman plumber's certificate that was issued under ORS 693.060 or who is in an approved journeyman plumber apprenticeship established under ORS 660.

Stat. Auth.: ORS 476 & ORS 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 837-030-0030; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

837-030-0160

Fitter License

(1) Any individual performing liquefied petroleum gas fitting, venting, installation or repair shall obtain a Fitter license.

(2) To qualify for a fitter license, an individual 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) An individual 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.

(6) Exceptions to this requirement for a fitter license are as follows:

(a) This rule does not apply to individuals who perform liquefied petroleum gas installations made in a manufactured dwelling or

recreational vehicle when those installations are made during the construction of the manufactured dwelling or recreational vehicle.

(b) This rule does not apply to individuals who perform warranty work for liquefied petroleum gas installations in a manufactured dwelling or recreational vehicle so long as the work performed falls in the scope of the original manufacturer's warranty issued at the time the home or recreational vehicle was manufactured.

(c) This rule does not apply to an individual who holds a valid journeyman plumber's certificate that was issued under ORS 693.060 or who is in an approved journeyman plumber apprenticeship established under ORS 660.

Stat. Auth.: ORS 476 & ORS 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 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

837-030-0170

Truck Equipment Operator License

(1) Any individual operating liquefied petroleum gas delivery equipment installed on a motorized vehicle shall obtain a Truck Equipment Operator license.

(2) To qualify for a truck equipment operator license, an individual 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) An individual 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 476 & ORS 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 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

837-030-0180

Probationary Status (On-the-Job Training)

(1) Individuals 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 an individual'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) Individuals 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 individual 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 476 & ORS 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 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 on each applicable section of the examination.

(2) Examinations for Fitter and Truck Equipment Operator licenses shall assess the individual's knowledge of liquefied petroleum gas, its properties, related equipment, and applicable codes, statutes and safety regulations.

(3) Examinations for the company representative shall assess the individual's knowledge of applicable codes, statutes, safety regulations, Oregon Revised Statutes and Oregon Administrative Rules that regulate and govern liquefied petroleum gas.

(4) License qualifying examinations shall have the following maximum time limits: Company Representative — 1 hour; Fitter — 2 hours; Truck Equipment Operator — 1.75 hours; Company Representative, Fitter, Truck Equipment Operator Combination — 3.75 hours; Company Representative, Fitter Combination — 2.5 hours; Company Representative, Truck Equipment Operator Combination — 2.25 hours; Fitter, Truck Equipment Operator Combination — 3.25 hours.

(5) 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 individual 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. Removal of the examination or the answer sheet from the examination site will result in automatic failure of the examination.

(6) 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.

(7) All applications to take examinations shall be made on a form provided by the Office of State Fire Marshal.

(8) Upon receipt of a properly completed application, the Office of State Fire Marshal will notify the applicant of a time and place for examination.

(9) 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.

(10) Notification of examination results will be mailed to the company following the completion of the examination process.

(11) The State Fire Marshal reserves the right to disqualify an applicant's examination score for valid cause.

Stat. Auth.: ORS 476 & ORS 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 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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(s) 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 two years from date of issue.

Stat. Auth.: ORS 476 & ORS 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 837-030-0030; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 476 & ORS 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 837-030-0030

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) Company license renewals shall be valid for a period of one year. Fitter and/or truck equipment operator licenses renewals shall be valid for a period of two years.

(4) Licenses not renewed by the specified date are subject to a late fee as follows: Company License — Instate: \$15.00; Company License — Out of State: \$22.00; Fitter License: \$15.00; Truck Equipment Operator License: \$15.00.

(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 476 & ORS 480

Stats. Implemented: ORS 480.436

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 Installation 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 fee of \$24 shall accompany the Notice of Installation.

EXCEPTION: This section shall not apply to liquefied petroleum gas installations made in manufactured dwellings or recreational vehicles performed during the construction of the manufactured dwelling or recreational vehicle, or the alteration or repair of the liquefied petroleum gas installation in a manufactured dwelling or recreational vehicle when they are made pursuant to the manufacturer's warranty. All repairs or alterations performed outside of the initial construction or the manufacturer's warranty shall be completed by a licensed company and a licensed fitter.

(14) Any vehicle or machinery manufactured or converted to use liquefied petroleum gas as motor fuel that is found to be in vio-

lation 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.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 476 & ORS 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. ef. 11-14-95, Renumbered from 837-030-0035; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 and contact phone number 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 including a map providing directions to the tank location.

(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. Refer to 837-030-0280 for fee schedule.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 \$24.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 476 & ORS 480

Stats. Implemented: ORS 480.440 & ORS 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 may 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 476 & ORS 480

Stats. Implemented: ORS 480.440 & ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

837-030-0280

Fees/Penalties

- (1) Fees are:
 - (a) Company License for businesses located in Oregon — \$75 Annually;
 - (b) Company License for businesses located outside Oregon — \$220 Annually;
 - (c) Fitter License (located inside or outside Oregon) — \$15 each Biennially;
 - (d) Truck Equipment Operator License (located inside or outside Oregon) — \$15 each. Biennially;
 - (e) Bulk Plant Inspection Fee — \$57.50 Per Inspection (Excludes initial inspection during plant construction);
 - (f) Delivery Unit Inspection Fee — \$24 Per Inspection.
- (2) Tank Installation Fees are:
 - (a) All tanks \$24 each;
 - (b) Multiple tanks at the site have a total combined capacity of 200 gallons or less — \$24.
 - (3) Reinspection Fees — \$24 each.
 - (4) Motor Fuel Tank Installation Fees for each motor fuel tank installed — \$24 each.
 - (5) 10-year tank inspection fee — \$24 each.
 - (6) Penalty Fees as follows: Company License — Instate: \$15.00; Company License — Out of State: \$22.00; Fitter License: \$15.00; Truck Equipment Operator License: \$15.00; Tank Installation Fee: \$15.00.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.436, ORS 480.440, ORS 480.450, & ORS 480.460
 Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00

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 provide fire prevention services; and
 - (c) Providing a procedure to assure that fire codes adopted and administered by local governmental subdivisions are consistent with the minimum standards established 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(3);
 - (b) The evaluation process to be used by the State Fire Marshal to assure that the adoption and administration of local fire codes equal or exceed those adopted and administered by the Office of State Fire Marshal;
 - (c) A description of those programs which will not be delegated to local jurisdictions under the exempt jurisdiction program;
 - (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(3) 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 statewide impact and are, therefore, more reasonably managed at the state level. See OAR 837-039-0050.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0003

Definitions

- (1) “Administration” (or “administrative”) means the inspection, enforcement and record-keeping systems used in the management of a fire prevention/investigation program.
- (2) “Appeal” means the administrative process which is offered to an aggrieved party by the authority having jurisdiction which:
 - (a) Assures the aggrieved party is given the 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 governmental 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;
 - (c) Water supply districts operating under ORS 264; or
 - (d) Public fire protection agencies not described above, and which are subject to the laws of the State of Oregon.
- (6) “DPSST” means the Department of Public Safety Standards and Training.
- (7) “Delegated Appeals Process” means an administrative procedure established by an exempt authority which the State Fire Marshal has found 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 Marshal” means an employee of the Office of State Fire Marshal as authorized in ORS 476.040.
- (9) “Enforcement” means the investigation, inspection, citation, and/or prosecution of alleged violations of state and local fire protection laws, rules and regulations.
- (10) “Exempt” means a local governmental subdivision which is partially exempt from statutes, rules and regulations administered by the State Fire Marshal as authorized in ORS 476.030(3) and as defined in the Division.
- (11) “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.
- (12) “Local Appeals Process” means the administrative procedure adopted and operated by a local government subdivision under local ordinance or resolution.
- (13) “Local Governmental 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 governmental 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 governmental subdivision which has received authorization from the State Fire Marshal under this Division to administer specified fire prevention programs within its legally established political boundary.
- (16) “Promulgate” means to lawfully develop and adopt an administrative rule, local ordinance, code or regulation authorized by law.
- (17) “Review Board” means an advisory committee consisting of five Exempt Jurisdiction Fire Marshals appointed by the State Fire Marshal for a term of three years.

NOTE: the term will have staggered expiration dates to start and then appointments will be for three years after initial expiration.

(18) "Service Area" means the geographic area contained within the municipal city limits, corporate boundaries of the fire district or areas to which the Exempt Jurisdiction provides fire protection and prevention services under contract.

(19) "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

Stats. Implemented: ORS 476

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0010

Applications for Exempt Status

(1) Local governmental subdivisions seeking exempt status shall submit a written request to the State Fire Marshal that describes in detail the scope of the proposed exemption.

(2) The request shall include a detailed explanation of the fire prevention and investigation programs to be provided by the requesting jurisdiction and how the programs will be provided. Such programs will include but are not limited to:

- (a) Fire code enforcement.
- (b) Fire cause determination.
- (c) Juvenile firesetter intervention.
- (d) Fire and life safety education.

NOTE: Submitting a business plan demonstrating measurable goals and objectives in each of the categories is the method of explaining the proposed programs preferred by the State Fire Marshal. However, other formats may be used and will be considered where they adequately demonstrate what will be done and how it is accomplished.

(3) The request shall include an explanation of the Delegated Appeals Process to be employed and how it generally conforms to ORS 476.113 and 476.115.

(4) The request shall include an explanation of how the jurisdiction satisfies the qualifications specified in these rules.

(5) The request shall include such documentation and supportive materials as may be necessary to support the exemption request, including a copy of any locally adopted fire code and intergovernmental agreements.

(6) The State Fire Marshal will distribute copies of the request(s) to each of the review board members, requesting an advisory by them within 60 days of receiving the material as to the sufficiency of the application. Such advisories, both individually and collectively, shall not be binding on the State Fire Marshal but will be considered by the State Fire Marshal in deciding whether to grant the exemption.

(7) The State Fire Marshal will make a determination as to granting the exemption and notify the applicant accordingly within 30 days of receipt of the board's written advisory.

(8) Once granted, exempt status shall remain in effect:

- (a) Unless terminated by the State Fire Marshal for cause pursuant to ORS 476.030(3) and OAR 837-039-0100; or
- (b) Upon 90 days written termination notice to the State Fire Marshal at the discretion of the local jurisdiction; or
- (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

Stats. Implemented: ORS 476.030(3)

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; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0015

Minimum Fire Code Requirements

(1) Under ORS 476.030 and ORS 476.120, the State Fire Marshal is responsible for promulgating 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 locally adopted fire codes are consistent with minimum state fire code standards. Therefore, in adopting a fire code, local governmental subdivisions will:

(a) Adopt by reference the fire code promulgated by the State Fire Marshal; or

(b) Adopt a code that 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 governmental subdivision to adopt a fire code.

(4) Nothing in this Division shall prevent a local governmental subdivision from adopting a fire code which is more stringent than the State Fire Code, if such local fire code is otherwise lawful.

(5) When an authority having jurisdiction proposes a new local fire code, or proposes to amend an existing fire code, a draft copy of the proposed fire code or amendment shall be provided to the State Fire Marshal for a pre-adoption evaluation at the earliest date possible prior to final adoption and a final copy within 30 days after adoption.

(6) The State Fire Marshal shall cause the fire codes or amendments submitted under section (5) to be evaluated to assure conformity with state fire protection statutes and the minimum standards established by the State Fire Marshal to the extent possible within the time frame requested by the applicant.

(7) If the State Fire Marshal determines that a fire code submitted under section (5) of this rule conforms with minimum state standards, the State Fire Marshal shall issue a consistency finding at the earliest date possible.

(8) If the State Fire Marshal determines that a fire code or amendment submitted under section (5) 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 time to amend or delete such inconsistencies.

(9) Whenever the State Fire Marshal issues a proposed inconsistency finding under section(8) of this rule, and the authority having jurisdiction disagrees with the proposed finding, the aggrieved party may within 20 days of receiving the inconsistency finding appeal and request a contested case hearing under ORS Chapter 183 and OAR 837-039-0055. Thereafter, the State Fire Marshal shall process the appeal within a reasonable time.

(10) If an appeal is not filed within 20 days of notification, and 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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3) & ORS 476.120

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; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0040

Exemption Criteria

(1) In order to qualify for partially exempt status, applicants shall provide evidence that they 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) The applicants shall employ a number of fire prevention personnel they deem adequate to:

(a) Inspect regulated buildings on a frequency they deem necessary to provide a reasonable level of fire and life safety in the applicant's service area.

(b) Annually inspect;

(A) Hospitals (I-1.1) and for licensing or certification by the Health Division except for I-1.1 and I-2 Nursing Homes; and

(B) Licensed Day Cares (E-3) and for licensing by the Employment Department; and

(C) Mental Hospitals (I-3), Jails (I-3), Prisons (I-3) and Reformatories (I-3) in the applicant's service area.

(c) Inspect licensed Boarding/Residential Schools (E-1 and E-2), Group Homes and Residential Board/Care Facilities (SR) bi-annually or at the request of the Licensing Agency for a license renewal; and

(d) Initially inspect Surgical Centers (I-1.2 and I-1.3) and then every three years. A self inspection program may be initiated in the

two intervening years. The process for the self inspection shall be explained in the Exempt Jurisdiction's business plan; and

(e) Inspect licensed Sheltered Workshops (various occupancies) every three years.

(f) Make necessary reinspections at appropriate intervals to assure compliance with correction orders issued in response to noted deficiencies in the applicant's service area; and

(g) 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 in the applicant's service area.

(h) Provide consultation upon request of the licensing agency for Adult Foster Care Homes, pursuant to ORS 476.030(6) in the applicant's service area.

(4) Applicants shall employ fire prevention personnel who are reasonably qualified. Such qualifications shall be substantiated by:

(a) Being DPSST certified as a Fire Prevention Officer; or

(b) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to DPSST certification; or

(c) Having documented professional competency, as determined by the exempt jurisdiction, equivalent to either subsection (a) or (b) of this section; or

(d) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to the requirements of NFPA 1031, Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector I, II or III; or

(e) Being certified to a nationally recognized standard and approved by the State Fire Marshal; or

(f) Certification of the fire prevention administration by the Commission on Fire Accreditation International (CFAI).

(5) Applicants shall provide evidence that they assure coordination between all authorities responsible for structural fire safety and fire protection within the applicant's service area.

(6) Applicants shall:

(a) Provide the services specified in this rule to all service areas.

(b) 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

(c) Establish or 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 (6)(c) 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 (6) of this rule, applicants shall:

(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 origin, cause, and circumstances of each fire occurring in the applicant's service area. Applicants shall substantiate that their investigators are reasonably qualified through:

(a) Being DPSST certified as a Fire Investigation Officer; or

(b) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to DPSST certification; or

(c) Having documented professional competency, as determined by the exempt jurisdiction, equivalent to either subsection (a) or (b) of this section; or

(d) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to the requirements of NFPA 1033, Professional Qualifications for Fire Investigator; or

(e) Certification of the fire prevention administration by the Commission on Fire Accreditation International (CFAI).

(9) To the extent of the proposed exemption, applicants shall employ an adequate number of trained personnel, as determined by the applicant to provide effective fire prevention education for all schools, institutions, and similar occupancies in the applicant's service area.

(10) To the extent of the proposed exemption, applicants shall maintain records of their fire code administration and delegated appeal activities or other related functions as follows:

(a) Fire prevention inspection records shall be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(b) Records of fire code appeals shall be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(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 in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(d) Records of public fire education efforts shall be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(e) Records not otherwise described in this section shall be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(11) In the event an exempt jurisdiction ceases for any reason to be exempt, all records described in this section shall be maintained by the jurisdiction as per the Records Retention Schedule of the Secretary of State Archives Division.

(12) Applicants shall forward to the State Fire Marshal a written annual report which:

(a) Clearly describes the fire prevention and investigation 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.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0050

Programs Eligible for Delegation

(1) 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 officers and 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 in Case of Emergency (Emergency Conflagration Act);

(h) ORS 476.855, Discretionary Powers of the State Fire Marshal;

(i) ORS 476.900 through 476.925, Forest Fire Protection Equipment Acquisition;

(j) Except as otherwise provided in OAR chapter 837, division 040, ORS 480.010 through 480.095, Explosives Generally;

(k) Except as otherwise provided in OAR chapter 837, division 040, ORS 480.200 through 480.280, Manufacture, Sale, Possession and Transfer of Explosives;

(l) Except as otherwise provided in OAR chapter 837, division 012, ORS 480.130, Permits Required for Sale or Public Display of Fireworks; fee.

(m) Except as otherwise provided in OAR chapter 837, division 012, ORS 480.150, Permits for Fireworks Sales or Displays; Rules; Security.

(n) Except as otherwise provided in OAR chapter 837, division 012, ORS 480.156, Sales of Fireworks to Out-of-State Residents;

(o) ORS 480.350, Nonretail Facility License;

(p) ORS 480.355, Conditional Nonretail Facility License;

(q) ORS 480.375(2), Audits of Nonretail Facilities;

(r) ORS 480.432 through 480.440 LPG Licensing Program; and

(s) Those other statutory functions reserved exclusively to the State Fire Marshal.

(2) Although the administration of the functional areas listed in section (1) 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0055

Review and Appeals

(1) The State Fire Marshal **may** 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

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00, Renumbered from 837-039-0100

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 Assistants to the State Fire Marshal and enforce the fire code in conformance with this division.

(3) There are two areas of nonexempt enforcement activities:

(a) Responses to imminent life or property threats; and

(b) Inspection and enforcement of the state fire code.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.060 & ORS 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00

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 pro-

grams 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 837-039-0055, unless otherwise provided by law, as follows:

(a) The Assistant 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

Stats. Implemented: ORS 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00

837-039-0110

Certification Requirements for Plan Review

(1) These rules establish standards for certification of fire officials who review plans for new construction, alterations, and specifications from a **Fire Code** approved by the State Fire Marshal.

(2) All fire officials who review plans for new construction, alterations, and specifications shall obtain a **Fire Code** certification approved by the State Fire Marshal.

(3) The State Fire Marshal shall maintain a roster of **Fire Code** certified fire officials. A current list of **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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 479.165

Stats. Implemented: ORS 479.165

Hist.: FM 3-1994, f. & cert. ef. 3-1-94; OSFM 9-2000, f. & cert. ef. 8-22-00

DIVISION 40

FIRE AND LIFE SAFETY REGULATIONS

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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476

Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92

837-040-0010

Adoption of the Uniform Fire Code

The 1997 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030, ORS 479 & ORS 480

Stats. Implemented: ORS 476, ORS 479, & ORS 480

Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (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; FJM 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02

837-040-0140

Adoption of the Oregon Structural Specialty Code and Oregon Mechanical Specialty Code.

The fire and life safety provisions of the 1998 edition of the Oregon Structural Specialty Code and the 1999 edition of the Oregon Mechanical Specialty Code is hereby adopted as a standard for the purpose of evaluation of existing buildings.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02

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 reasonable 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 hazard to the occupants in the event of a fire or fire-related emergency shall provide a reasonable adequate level of exiting safety through substantial compliance with the requirements for new construction under the **1998 Edition of Oregon Structural Specialty Code**, or any of the following methods or combinations thereof which the State Fire Marshal or deputy approved for the building or structure:

(a) A partial automatic sprinkler system as specified in **N.F.P.A. Standard No. 13, 1999 Edition** or the **1998 Edition of Oregon Structural Specialty Code, Standard 9-1**, installed throughout the complete exit system and inside every unprotected opening into the exit system. The sprinkler system shall be fitted with a swing check valve on the supply side and a fire department connection, except that the fire department connection may be omitted when waived by the authority having jurisdiction. A water flow detection device shall be installed that sounds an alarm on the premises or when a building has a fire alarm system, it is connected into the building fire alarm system.

(b) An automatic smoke detection system engineered specifically for life safety and early warning, installed throughout the premises as specified in **N.F.P.A. Standard No. 72 1999 Edition**. Heat detectors may be installed in place of smoke detectors in mechanical service rooms, storage rooms, kitchens, custodial closets, and areas not normally occupied or traversed by people. Fire detection system(s) shall be interconnected with the 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 unless required by other Oregon Revised Statutes or Oregon Administrative Rules.

(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 architect or engineer of the State of Oregon of reasonably adequate expertise in fire and life safety, which will provide a reasonable 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 sixty (60) days after receipt of such findings to propose the method of improvement to the State Fire Marshal or deputy, who shall have sixty (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 statement of the reasons for disapproval shall be provided to the owner, lessee, agent or occupant within such sixty (60) day period.

(5) Except for governmental subdivisions exempt under ORS 476.030(3), 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 appeal in writing to the State Fire Marshal within (10) 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 appeal shall set forth the specific grounds of the appeal and no other grounds shall be considered thereafter. The appeal shall be accompanied by a fee of \$40 payable to the State Fire Marshal, and the State Fire Marshal may refer the 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 appellant. The Board shall fix a time for a hearing and notify the appellant of the time and place thereof which shall be within ten (10) 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 (5) and not more than ten (10) days thereafter, when and where the appeal will be heard by the State Fire Marshal. Within ten (10) days after receiving a recommendation from the Regional Appeal Advisory Board, or if no referral was made to such Board, within ten (10) 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 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 appellant under section (5) of this rule is aggrieved by the final order of the State Fire Marshal, the appellant may, within ten (10) days thereafter, appeal to the circuit court of the county in which the building or structures is situated, in the manner provided in ORS 479.180(2).

(7) In governmental subdivisions exempt under ORS 476.030(3), 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 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. Structural Changes shall not be required in buildings built, occupied and maintained in conformity with state building code regulations applicable at the time of construction, ORS 476.030(c).

NOTE: The state building code was first adopted in 1974.

(b) Rather than looking strictly to the current standard for new construction under the building code, fire officials must use their own judgement 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 (Historical structures ORS 476.035). The written findings required by this 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 method 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 in existing buildings. 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.030(C)

Hist.: FM 68, f. 5-2-75, ef. 5-25-75; FM 7-1981, f. & ef. 11-5-81; OSFM 7-2001, f. 6-27-01, cert. ef. 7-1-01

DIVISION 45

SMOKE ALARMS AND SMOKE DETECTORS

837-045-0040

Purpose and Scope

The purpose of these rules is to establish safety requirements for the installation and maintenance of smoke alarms and smoke detectors in existing buildings, and to establish standards and procedures for the enforcement of those requirements, for the protection of Oregon residents from fire.

Stat. Auth.: ORS 479.255 & ORS 479.295

Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0045

Definitions

(1) "Approved Sprinkler Fire Suppression System" means a fire suppression system:

(a) Constructed in accordance with the National Fire Protection Association (NFPA) Standard 13 or 13R as referenced in the State Building Code under OAR 918-460-0010 in effect on October 1, 2000; and

(b) Inspected and approved by the building official; and

(c) Inspected and certified annually by the Authority Having Jurisdiction as being in compliance with NFPA Standard 25 (1998 ed.)

(2) "Efficiency Dwelling Unit" means a dwelling unit containing only one habitable room.

(3) "Formal Hearing" means a proceeding before a hearing officer conducted pursuant to the Administrative Procedures Act (APA), ORS 183.413 to 183.470.

(4) "Hotel" as defined in ORS 479.250 includes, but is not limited to: Hotels, Motels, Auto Courts, Motor Inns and all similar occupancies by any other name (i.e., School Dormitories, Fraternities, Sororities, and any other similar buildings) with six or more sleeping/guestrooms for non-family members that are rented, hired out or made available on a regular basis for sleeping purposes but are not used as a primary residence.

(5) "Informal Conference" means a meeting between the party(ies) and the Office of State Fire Marshal, prior to a formal hearing, that may include a discussion about whether a basis exists for informal disposition of a contested case by stipulation, agreed settlement, consent order or other means.

(6) "Ionization Smoke Detection" means the principle of using a small amount of radioactive material to ionize the air between two differentially charged electrodes to sense the presence of smoke particles.

(7) "Local Fire Authority" means persons described in ORS 476.060(1).

(8) "Lodging House" as defined in ORS 479.250 includes, but is not limited to: School Dormitories, Fraternities, Sororities, Youth Camps and Private Dwellings that have five or less sleeping/guestrooms that are made available for sleeping purposes in exchange for compensation in money, goods, labor, or other tender, but that are not used as a primary residence.

(9) "Nationally Recognized Testing Laboratory" means an accredited laboratory listed by the International Conference of Building Officials Evaluation Services or an equivalent laboratory approved by the Authority Having Jurisdiction.

(10) "Owner" includes a duly authorized agent or attorney, a purchaser, devisee, fiduciary, lessor or sublessor and/or a person having a vested or contingent interest in the property in question.

(11) "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.

(12) "Photoelectric Smoke Detection" means the principle of utilizing a light source and a photosensitive sensor to detect particles of combustion. Photoelectric smoke detection incorporates either a "light obscuration" or a "light scattering" method of operation.

(13) "Request for Hearing" means a written request for a formal hearing to contest the assessment of a civil penalty.

(14) "Smoke Alarm for Hearing Impaired Persons" means a device that:

- (a) Meets the definition in ORS 479.250(1);
- (b) Causes a strobe to emit a white light when activated; and
- (c) Is listed by a nationally recognized testing laboratory for the purpose of alerting hearing impaired persons in the event of a fire.

(15) "Smoke Detector for Hearing Impaired Persons" means a device that:

- (a) Meets the definition in ORS 479.250(2);
- (b) Causes a strobe to emit a white light when activated; and
- (c) Is listed by a nationally recognized testing laboratory for the purpose of alerting hearing impaired persons in the event of a fire.

(16) "State Fire Marshal" means the State Fire Marshal appointed under ORS 476.020 and the Chief Deputy State Fire Marshal and Deputy State Fire Marshals appointed by the State Fire Marshal under ORS 476.040.

(17) "Ten-Year Smoke Alarm Battery" means a battery power source that is warranted by the battery manufacturer to be free from defects in materials and workmanship for a period of at least ten (10) years when used in an ionization smoke alarm that:

- (a) Is listed by a nationally recognized testing laboratory; and
- (b) Has been approved by the nationally recognized testing laboratory for use with a ten-year battery.

Stat. Auth.: ORS 476.040, ORS 476.060, ORS 479.250 – ORS 479.300 & ORS 479.990

Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0050

Installation and Location of Smoke Alarms and Smoke Detectors

(1) All smoke alarms or smoke detectors shall be installed and located in accordance with the listing and manufacturer's instructions and OAR 837-045-0045 through 837-045-0060.

(2) Dwelling Units.

(a) Smoke alarms and smoke detectors in dwelling units shall be installed in each sleeping room and on the ceiling or a wall in the corridor or area giving access to sleeping areas. Where sleeping areas are located on an upper level, the smoke alarm or smoke detector shall be installed 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 alarm or smoke detector will not adequately service all sleeping areas, a smoke alarm or smoke detector shall be installed adjacent to each sleeping area.

(b) When activated, the installed smoke alarm(s) or smoke detector(s) shall produce an alarm sound audible in the dwelling unit, guestroom(s) and sleeping area(s).

(3) Efficiency Dwelling Units, Lodging Houses and Hotels.

(a) In an efficiency dwelling unit, lodging house guestroom or hotel room or suite, the smoke alarm or smoke detector shall be installed on the ceiling or a wall of the main room or sleeping area.

(b) When activated, the smoke alarm(s) or smoke detector(s) shall produce an alarm sound audible in the main room and sleeping area(s).

Stat. Auth.: ORS 479.255 & ORS 479.295

Stats. Implemented: ORS 479.250 – ORS 479.300

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0055

Hotels with Approved Sprinkler Fire Suppression Systems

Hotels that have installed an approved sprinkler fire suppression system are exempt from the requirements of ORS 479.257(1).

Stat. Auth.: ORS 479.257 & ORS 479.295

Stats. Implemented: ORS 479.250 – ORS 479.300

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0060

Power Source

(1) The power supply of a smoke alarm shall be a commercial power source, an integral battery or batteries or a combination of both. The power supply for a smoke detector shall be a commercial power source.

(2) When a smoke alarm or smoke detector is served from a commercial power source, the wiring shall be permanent and shall not have a disconnecting switch other than that required for over current protection.

(3) 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.

(4) The owner of a dwelling unit, lodging house or hotel shall obtain a permit from the local building official for the installation of a 110-volt smoke alarm or a low-voltage smoke detector connected to a fire alarm control panel.

Stat. Auth.: ORS 479.255 & ORS 479.295

Stats. Implemented: ORS 479.250 – ORS 479.300

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0065

Smoke Alarms for Hearing Impaired Persons or Smoke Detectors for Hearing Impaired Persons

(1) Smoke alarms for hearing impaired persons or smoke detectors for hearing impaired persons shall meet:

(a) The requirements of ORS 479.250 to 479.300, except ORS 479.297;

(b) The applicable requirements of the State Building Code under OAR 918-460-0010 in effect on October 1, 2000; and

(c) OAR 837-045-0040 to 837-045-0110.

(2) If a hotel requires a guest to pay a refundable deposit for providing a smoke alarm for hearing impaired persons, the amount of the deposit shall not exceed 50 percent of the purchase price of the smoke alarm.

(3) A hotel shall provide a printed notice pursuant to ORS 479.255(5) and in accordance with the following requirements:

(a) The notice shall be printed or typed and the printed or typed wording shall be a contrasting color to the background color of the notice;

(b) The notice shall be a contrasting color to the surface on which the notice is mounted;

(c) The notice shall state, "Smoke alarms or smoke detectors for hearing impaired persons are available upon request" or other appropriate wording as may be specifically approved by the State Fire Marshal or local fire authority.

(d) If the notice is posted at the place of registration, the notice 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 479.255 & ORS 479.295

Stats. Implemented: ORS 479.250 – 479.300

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0070

Issuance of Notice of Deficiency Citations

(1) The State Fire Marshal or local fire authority may issue a notice of deficiency citation for a violation under ORS 479.990(6) or the rules adopted thereto.

(2) Each separate instance of non-compliance under ORS 479.990(6) or the rules adopted thereto shall be considered a separate violation.

(3) A notice of deficiency citation may be issued for each separate violation under ORS 479.990(6).

(4) A notice of deficiency citation shall be on a form approved by the Office of State Fire Marshal.

(5) For violations of ORS 479.255, 479.260, 479.270 or 479.280 or the rules adopted thereto, the State Fire Marshal or local fire authority shall present a copy of the notice of deficiency citation to the owner of the dwelling unit, lodging house or hotel.

(6) For violations of ORS 479.297, or the rules adopted thereto, the State Fire Marshal or local fire authority shall present a copy of the notice of deficiency citation to the owner or employee selling a smoke alarm in violation of ORS 479.297.

(7) For violations of ORS 479.300, or the rules adopted thereto, the State Fire Marshal or local fire authority shall present a copy of the notice of deficiency citation to the person believed to have removed or tampered with a properly functioning smoke alarm or smoke detector.

(8) The State Fire Marshal or local fire authority shall present a copy of the notice of deficiency citation by:

- (a) Personal service;
- (b) Service by certified mail; or
- (c) Service by regular mail.

(9) Upon presenting a copy of the notice of deficiency citation under OAR 837-045-0070(5) through (8), the State Fire Marshal or local fire authority shall retain all remaining copies of the notice of deficiency citation until the re-inspection of the premises.

(10) After 10 days have passed from the date the notice of deficiency citation was issued, the State Fire Marshal or local fire authority shall:

- (a) Re-inspect the premises; and
- (b) Complete the "Re-Inspection of Premises" section of the notice of deficiency citation.

(11) Issuance of a notice of deficiency citation under this rule shall have no effect on the use of a uniform citation under ORS chapter 153 for offenses subject to ORS chapter 153.

Stat. Auth.: ORS 479.280, ORS 479.295 & ORS 479.990
 Stats. Implemented: ORS 479.250 – 479.300 & 479.990
 Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0075

Forwarding Notice of Deficiency Citation to the Office of State Fire Marshal

(1) Upon re-inspection of the premises and completion of the notice of deficiency citation under OAR 837-045-0070(10), the State Fire Marshal or local fire authority shall:

- (a) Retain a copy of the notice of deficiency citation for its records; and
- (b) Forward the original notice of deficiency citation to the Office of State Fire Marshal within ten days of the re-inspection.

(2) If applicable, each notice of deficiency citation forwarded to the Office of State Fire Marshal 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 the issuing authority completes during the process of issuing notice of deficiency citations and/or re-inspecting the premises.

Stat. Auth.: ORS 479.280, ORS 479.295 & ORS 479.990
 Stats. Implemented: ORS 479.250 – 479.300 & ORS 479.990
 Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0080

Assessment of Civil Penalty and Issuance of Notice of Civil Penalty

(1) Upon receipt and review of a notice of deficiency citation and, if applicable, any accompanying documentation, the Office of State Fire Marshal may assess a civil penalty(ies).

(2) The Office of State Fire Marshal shall assess a penalty amount determined by the Office of State Fire Marshal to be appropriate for the particular violation(s). In determining an appropriate penalty amount, or whether to assess a penalty amount at all, the Office of State Fire Marshal may use the schedule set forth in OAR

837-045-0085 as a guideline and may consider the following criteria:

- (a) The severity of the violation(s) or its impact on public safety;
 - (b) The number of similar or related violations;
 - (c) Whether the violation(s) was willful or intentional;
 - (d) The prior history of penalties imposed by the Office of State Fire Marshal against the person;
 - (e) Other circumstances determined by the office of State Fire Marshal to be applicable to the particular violation(s).
- (3) Upon assessment of the civil penalty(ies), the Office of State Fire Marshal shall issue a notice of civil penalty pursuant to the provisions of ORS 183.090.
- (4) The Office of State Fire Marshal shall:
- (a) Retain the original notice of civil penalty;
 - (b) Serve a copy of the notice of civil penalty pursuant to ORS 183.090.

(5) The Office of State Fire Marshal may mail a copy of the notice of civil penalty to the authority that issued the notice of deficiency citation.

(6) If the Office of State Fire Marshal does not assess a civil penalty, the Office of State Fire Marshal may:

- (a) Mail a certified letter to the person against whom the notice of deficiency citation was issued that notifies the person that the Office of State Fire Marshal will not assess a civil penalty for the violation(s) described in the notice of deficiency citation; and
- (b) Mail a copy of the letter to the authority that issued the notice of deficiency citation.

Stat. Auth.: ORS 479.280, ORS 479.295 & ORS 479.990
 Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990
 Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0085

Schedule of Civil Penalties

(1) The Office of State Fire Marshal adopts this civil penalty schedule. As used in this rule, a violation will be considered a second or subsequent violation if the person against whom the civil penalty is assessed was notified verbally or in writing within three previous years of the occurrence of the same or a substantially similar violation, and was given an opportunity for hearing on the previous alleged violation.

(2) Failure to comply with any provisions of the statutes cited in ORS 479.990(6), or the rules adopted thereto, may be punishable by a civil penalty as follows:

- (a) For first violation: \$50;
 - (b) For second violation: \$100;
 - (c) For third or subsequent violation(s): \$250.
- Stat. Auth.: ORS 479.295 & ORS 479.990
 Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990
 Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0090

Contested Cases

(1) A person may request a hearing regarding the assessment by the Office of State Fire Marshal of a civil penalty, subject to the requirements of ORS 183.090.

(2) A request for hearing shall be timely filed.

(3) A request for hearing is timely filed when the request is postmarked or received at the Office of State Fire Marshal within 20 days from the date of service of the notice of civil penalty.

(4) The 20-day deadline shall be computed by excluding the date of the notice of civil penalty and including the 20th day. If the 20th day falls upon any legal holiday, Saturday or Sunday, the 20th day shall be the following work day.

(5) If a request for hearing is not timely filed under sections (3) and (4) of this rule, the person shall have waived the right to a contested case under ORS chapter 183.090.

(6) A person may write to or call the Office of State Fire Marshal to informally discuss the assessment of a civil penalty; however, an informal communication shall not extend the 20-day deadline by which a request for hearing must be made.

(7) A contested case may include:

- (a) An informal conference; and/or

(b) A formal hearing.

(8) A contested case shall be conducted pursuant to the provisions of ORS 183.090 and the rules adopted thereto.

Stat. Auth.: ORS 479.295 & ORS 479.990

Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0095

Informal Conference

(1) The Office of State Fire Marshal may provide an opportunity for an informal conference.

(2) A request for an informal conference may be made verbally or in writing; and shall:

(a) Be made or addressed to the Office of State Fire Marshal; and

(b) Clearly state the issue(s) to be discussed.

(3) If the Office of State Fire Marshal and the party(ies) agree, an informal conference may be held by telephone.

(4) After an informal conference, the Office of State Fire Marshal may amend, withdraw, or reduce a civil penalty. Such action shall be taken in accordance with the Administrative Procedures Act (APA), ORS 183.025 to 183.725, and the rules adopted thereto.

Stat. Auth.: ORS 479.295 & ORS 479.990

Stats. Implemented: ORS 479.250 – 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0100

Formal Hearing

(1) A person may file a written request for hearing before or after an informal conference, at any time before the 20-day deadline for filing such a request expires.

(2) The Office of State Fire Marshal shall arrange for a hearings officer to conduct the formal hearing.

(3) The Office of State Fire Marshal shall set a date, time, and location for the formal hearing.

(4) A formal hearing shall be conducted pursuant to ORS 183.090.

(5) The Office of State Fire Marshal may mail certified a copy of the final order to the fire authority that issued the notice of deficiency citation within ten days of signing of the final order.

Stat. Auth.: ORS 479.295 & ORS 479.990

Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0105

Adjustment of Civil Penalty

(1) At any time during a contested case, and prior to the issuance of a final order, the Office of State Fire Marshal may mitigate the civil penalty amount and may agree to payment of an amount less than that stated in the notice of civil penalty, after review of:

(a) The criteria listed in OAR 837-045-0080(2); and

(b) Any explanatory information provided to the Office of State Fire Marshal.

(2) If the Office of State Fire Marshal adjusts a civil penalty, the Office of State Fire Marshal shall issue an amended notice of civil penalty.

(3) The Office of State Fire Marshal shall:

(a) Retain the original amended notice of civil penalty;

(b) Serve a copy of the amended notice of civil penalty on the person against whom the civil penalty was assessed.

(4) The Office of State Fire Marshal may mail a copy of the amended notice of civil penalty to the authority that issued the notice of deficiency citation.

Stat. Auth.: ORS 479.295 & ORS 479.990

Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0110

Payment of Civil Penalty

A civil 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.

Stat. Auth.: ORS 479.295 & ORS 479.990

Stats. Implemented: ORS 479.250 – ORS 479.300 & ORS 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

DIVISION 61

FIRE FIGHTING

Standardization of Fire Protection Equipment

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 476.030

Stats. Implemented: ORS 476.410 - ORS 476.440

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 Threads." 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, 1998 edition."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.410

Hist.: FM 40, f. 3-5-70, ef. 3-25-70; FM 3-1988, f. & cert. ef. 2-17-88; OSFM 8-2001, f. 6-27-01, cert. ef. 7-1-01

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 "National Fire Protection Association Standard No. 1963, 1988 edition".

(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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.410

Hist.: FM 3-1988, f. & cert. ef. 2-17-88; OSFM 8-2001, f. 6-27-01, cert. ef. 7-1-01

DIVISION 85

COMMUNITY RIGHT-TO-KNOW SURVEY AND COMPLIANCE PROGRAMS

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 085 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 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0020

Purpose and Scope

(1) The purpose of OAR chapter 837, division 085, 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 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0030

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:

Agriculture, Forestry and Fishing

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 453.307(2)
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 085 to request and receive trade secret information.

(13) “Correction Order” means a written order that directs an employer, owner or operator to submit hazardous substance survey information.

(14) “Covered Employer, Owner or Operator” means:

(a) Any person(s) operating a facility having one (1) or more Standard Industrial Classification code(s) not exempted by the Office of State Fire Marshal in OAR 837-085-0030; or

(b) Any person(s) operating a facility that the Office of State Fire Marshal believes may store, generate, use, or otherwise possess hazardous substances.

(15) “Division” means OAR chapter 837, division 085 of the Office of State Fire Marshal.

(16) “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.

(17) “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, fire fighting, 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.

(18) “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.

(19) “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.

(20) “Exempted Substance” means a substance that is not required to be reported.

(21) “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.

(22) “Explosives” means a hazardous substance that has been classified as an explosive by the U.S. Department of Transportation.

(23) “Extension” means the written authorization of the Office of State Fire Marshal to extend a compliance or due date.

(24) “Facility” 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.

(25) “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.

(26) “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.

(27) “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.

(28) “Fire District” means any agency having responsibility for providing fire protection services.

(29) "Fixed Facility" means a facility having permanent and/or non-mobile operations.

(30) "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 085.

(31) "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 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 085; 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.

(32) "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.

(33) "Health Professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(34) "Identity" means any chemical or common name that 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.

(35) "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.

(36) "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.

(37) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of pressure and/or cryogenic conditions.

(38) "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.

(39) "No Longer Reportable" means a previously reported substance was not on site in a reportable quantity during the current survey period.

(40) "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.

(41) "Noncompliance Classification" means the category assigned to issues of noncompliance for the purposes of assessing a penalty.

(42) "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.

(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 (SIC) categories designated by the Office of State Fire Marshal according to ORS 453.408(2) and OAR 837-085-0030.

(44) "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**.

(45) "Record" means any recorded information.

(46) "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 at any time during the survey period.

(47) "Reportable Quantity" means the amount of hazardous substance that must be present in a facility before reporting is required. See OAR 837-085-0070.

(48) "Reporting Range" means a range of quantities assigned by the Office of State Fire Marshal for reporting hazardous substances.

(49) "Significant Maximum Daily Amount Change" means a change in the maximum daily quantity reporting range to a higher reporting range than previously was reported.

(50) "Single Combined Survey" means a survey that has multiple substations reported on it.

(51) "Source Generation Sites" means facilities generating that which is relayed, pumped and/or stored by substations.

(52) "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.

(53) "State Fire Marshal" means the State Fire Marshal or designee.

(54) "Substantive Change" means a change(s) in hazardous substance reporting information that requires notification to the Office of State Fire Marshal. See OAR 837-085-0100.

(55) "Substation" means facilities that function only as electrical transmission relays, telephone transmission relays, pager transmission relays, cable TV transmission relays, cellular phone transmission relays, radar transmission relays, water storage reservoir, water pump and/or chlorinating stations, sewerage/storm water pump stations, natural gas pump stations and/or road sand storage.

(56) "Survey Period" means the 12 months preceding the date the Hazardous Substance Survey is mailed to, or completed by, the covered employer, owner and/or operator.

(57) "Temporary Worksite" means a single site location where activities, such as construction and logging, will likely occur for less than 24 months.

(58) "Trade Name" means the brand name or trademark given to a hazardous substance by a manufacturer or distributor.

(59) "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.

(60) "Waste Hazardous Substance" means any substance, which meets the Department of Environmental Quality's definition of "hazardous waste."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99 & cert. ef. 2-3-99

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 12 months preceding the date the survey is mailed to, or completed by the facility.

(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.

(4) Covered employers, owners and operators that conduct business from a private residence are exempt from submitting the annual Hazardous Substance Information Survey for that location if ALL of the following apply:

(a) The only hazardous substances ever present at the location being surveyed are those used in the up-keep, maintenance and heating of the residence, or general office supplies used in conjunction with the business;

(b) The amounts of general office supplies used in conjunction with the business do not exceed reportable quantities;

(c) Vehicles used in conjunction with the business and parked at the location being surveyed carry no containers of hazardous substances;

(d) The information contained in the current annual Hazardous Substance Information Survey is up-to-date, complete and valid.

(5) Covered employers, owners and operators that conduct business from a commercial facility are exempt from submitting the annual Hazardous Substance Information Survey for their location if ALL of the following apply:

(a) The only hazardous substances ever present at the location are general office supplies used in conjunction with the business and/or janitorial supplies used in the up-keep and maintenance of that facility;

(b) The amounts of office supplies and/or janitorial supplies used in conjunction with the business cannot exceed reportable quantities;

(c) Vehicles used in conjunction with the business and parked at the location being surveyed carry no containers of hazardous substances;

(d) The information contained in the current annual Hazardous Substance Information Survey is up-to-date, complete and valid.

(6) Covered employers, owners and operators exempted from the requirement to submit the annual Hazardous Substance Information Survey by OAR 837-085-0050(4) and (5) must report substantive changes in accordance with OAR 837-085-0100.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 – ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

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 (31) shall be used.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

837-085-0070

Hazardous Substance Survey — Reportable Quantities

(1) If at anytime 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 333-100-0005(118) 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 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

837-085-0080

Hazardous Substance Survey — Quantity Determinations

(1) Covered employers, owners and operators shall calculate the following for each hazardous substance manufactured, generated, used, stored, possessed or disposed of during the survey period:

(a) Average daily amount;

(b) Maximum daily amount;

(c) Total amount transported to the facility;

(d) Total amount transported from the facility.

(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 period that the highest amount of the hazardous substance was on-site for more than 24 hours;

(c) The "Amount In" may be calculated for each hazardous substance by reviewing purchasing records, inventory records, receiving records, etc., to identify the total amount of the substance transported to the facility during the survey period;

(d) The "Amount Out" may be calculated for each hazardous substance by reviewing inventory records, production records, shipping records, etc., to identify the total amount of the substance transported from the facility during the survey period.

(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 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

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 by the due date indicated on the survey.

(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) Covered employers, owners and operators who operate substations, as defined by OAR 837-085-0040(55), that are of the same type may report all their substations on a single combined survey instead of reporting each location separately:

(a) Source generation sites, as defined by OAR 837-085-0040(51), must be reported separately;

(b) Substations that have no hazardous substances are exempt from reporting;

(c) Each Substation reported on a single combined survey must have identification posted at it that identifies the site by a company unique number or name and the survey (Facility) ID number issued by the Office of State Fire Marshal;

(d) The identification must be readable from a distance of 50 feet;

(e) Substations that are completely underground and can only be accessed through a manhole or excavation are exempt from this posting requirement;

(f) Within 30 days of receiving a survey, covered employers, owners [or]and operators shall request a survey from the Office of State Fire Marshal for each of their facilities not receiving a survey.

(6) Covered employers, owners and operators receiving the survey shall provide the following information:

(a) The facilities reporting status,including:

(A) Whether or not hazardous substances were present at the site in reportable quantities;

(B) Whether or not extremely hazardous substances were present that met or exceeded the threshold planning quantity of **CFR Title 40, Part 355, Appendix A and B**;

(C) Whether or not the facility is subject to the reporting requirements of Section 112(r) of the Clean Air Act.

(b) Demographic information including:

(A) The primary and, if applicable, 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 and 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) Whether or not the substance reported contains a **CFR Title 40, Part 355**, listed extremely hazardous substance;

(D) Whether or not the substance reported contains a Clean Air Act, Section 112(r), listed chemical;

(E) Information regarding whether the substance is pure or a mixture;

(F) The status of hazardous substance, if applicable, as it is used at the facility, e.g., new or no longer reportable;

(G) 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;

(H) 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 millilicuries;

(I) The average amount of each reportable hazardous substance;

(J) The maximum amount of each reportable hazardous substance;

(K) The total amount of each reportable hazardous substance transported to the facility;

(L) The total amount of each reportable hazardous substance transported from the facility;

(M) The total estimated number of days each hazardous substance was on-site;

(N) The type(s) of containers used for storage of each reportable hazardous substance(s);

(O) The pressure and temperature at which the substance is stored;

(P) The primary and secondary associated U.S. Department of Transportation hazard classification(s) for each reportable hazardous substance;

(Q) The Chemical Abstract Service (CAS) number, if known, for each reportable hazardous substance;

(R) The four-digit United Nations (UN) or North American (NA) number, if known, for each reportable hazardous substance;

(S) The EPA Pesticide Registration number for each reportable hazardous substance; and

(T) 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(1) – ORS 453.317(2)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

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 covered;

(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(49), 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 453.317(6)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

837-085-0110

Record 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 453.406

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 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0130

Administrative Action on Exemption Application

(1) After an exemption request is determined to be complete and procedurally adequate, as provided in OAR 837-085-0020(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 ORSs and OARs.

(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 453.307 - ORS 453.372

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 453.327 - ORS 453.337

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 453.327 - ORS 453.337

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 453.327 - ORS 453.337

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 453.327 - ORS 453.337

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 085, 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 453.327 - ORS 453.337

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.

(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 453.322

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 453.317(8)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0210

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 453.317(8)

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 453.317(8)

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 453.317(8)

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 453.317(8)

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:

(a) Regular mail, postage prepaid, true, exact and full copies when penalties for noncompliance have been suspended in full;

(b) Certified or registered mail, postage prepaid, true, exact and full copies when penalties for noncompliance have been assessed.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1995, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

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 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0270

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 837-085-0290(2)(b) and 837-085-0310.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

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 and 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 and 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) Send to Attention of;
- (d) E-Mail Address;
- (e) Department or Division;
- (f) Number of Employees;
- (g) Special Fire Department Information including, but not limited to:

- (A) Written Emergency Plan and, if so, the location;
- (B) Automatic Fire Suppression System;
- (C) NFPA 704 Placarding;
- (D) Other Types of Placarding.
- (h) Pure or Mixture;
- (i) Maximum Daily Quantity;
- (j) Chemical Abstract Service Number; or
- (k) 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 and 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 and 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 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99

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 noncompliance

class for which they are found to be in noncompliance. 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 435.357

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
6	\$420	\$300
7	\$490	\$350
8	\$560	\$400
9	\$630	\$450
10	\$700	\$500

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94

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 435.357
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 435.357
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 435.357
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 435.357
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 Non-compliance and Proposed/Final Penalty Assessment Order, for good cause.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

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 435.357

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 435.357

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.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

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 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

DIVISION 90

HAZARDOUS MATERIALS

Hazardous Substance Possession Fees

837-090-1000

Coverage

(1) Persons with facilities covered by ORS 453.317 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 453.396 - ORS 453.414
Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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 453.398 - ORS 353.402

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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 453.396 - ORS 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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°.

(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 837-090-0040.

(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 two and three 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 near-by combustibles upon exposure to water or moisture.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.396 - ORS 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; 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 453.402(2)

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; 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 453.400, ORS 453.402 & ORS 403.404

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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, ORS 833 & ORS 1071

Stats. Implemented: ORS 453.402

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; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92, Renumbered from 837-090-0900; 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 453.406

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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 453.402(6) & ORS 453.402(7)

Hist.: FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

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 465.106

Stats. Implemented: ORS 465.106

Hist.: FM 5-1993, f. & cert. ef. 11-1-93

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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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 five-foot strip around the field perimeter and the removal of loose, combustible straw from a 12-foot strip immediately adjacent to the five-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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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 476 & ORS 478

Stats. Implemented: ORS 476.380 & ORS 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

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 476 & ORS 478

Stats. Implemented: ORS 476.380 & ORS 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

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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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 interchange 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 exist; or

(b) For the use of alternative methods to provide the noncombustible ground surfaces required by subsections (1)(a) and (b) and (2)(a) and (b) of this rule.

Stat. Auth.: ORS 476.030, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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 476 & ORS 478

Stats. Implemented: ORS 476.380 & ORS 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

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:

-1- 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.

-2- 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.

-3- 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, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 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 propaning 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 476 & ORS 478

Stats. Implemented: ORS 476.380 & ORS 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

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 453.367

Stats. Implemented: ORS 453.374 & ORS 453.390

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0005

Effective Dates

OAR 837-120-0001 through 837-120-0150 are effective upon date of filing.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 & ORS 453.390

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 pipe-lines, 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 Com-

munication 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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: Appendices referenced in this rule are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 out-

side 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: Appendices referenced in this rule are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 453.367

Stats. Implemented: ORS 453.347

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 453.367

Stats. Implemented: ORS 453.374

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

rials 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 453.367

Stats. Implemented: ORS 453.382

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 453.367

Stats. Implemented: ORS 453.382

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 453.367

Stats. Implemented: ORS 453.382

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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.384

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 453.367

Stats. Implemented: ORS 453.374

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 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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: Publications referenced are available from the agency.]
Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 838-010-0005(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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - ORS 453.390

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 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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 453.367
Stats. Implemented: ORS 453.374 - ORS 453.390
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 & ORS 478.310

Stats. Implemented: ORS 476.030

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 476.030

Stats. Implemented: ORS 476.280 & ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.290 & ORS 478.310

Stats. Implemented: ORS 453.550, ORS 476.560, ORS 476.290 & ORS 478.310

Hist.: FM 1-1993, f. 5-13-93, cert. ef. 6-1-93