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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 & 476.030
Stats. Implemented: ORS 183.335, 183.360 & 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 Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act effective January 1, 2006.

[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, 183.360 & 476.030

Stats. Implemented: ORS 183.335, 476.030 & 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; OSFM 11-2006, f. & cert. ef. 6-21-06

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, 476 & 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 contested 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), 453.382, 453.404, 480.355, 480.385 & 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

Agricultural Use of Fireworks in Oregon

837-012-0305

Purpose and Scope

(1) These rules establish *agricultural permit*, permit application and other requirements for those persons permitted under ORS 480.122 and 480.124 to obtain agricultural permits to control birds and predatory animals that are injurious to crops.

(2) An *agricultural permit* allows the permit holder to engage only in those activities including the purchase, transportation, possession, storage and use of *agricultural fireworks* (1.4E) when those

activities are otherwise in conformance with the requirements of ORS 480.122 and 480.124, these rules, and any other applicable state, federal, or local requirements.

(3) An individual member of the general public may not buy or use agricultural fireworks unless they have applied for and obtained an agricultural fireworks permit from the Office of State Fire Marshal pursuant to these rules. Violation of these rules may result in confiscation of the fireworks, and the assessment of penalties in accordance with ORS 480.990 and OAR 837-012-0560.

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0005; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0310

Agricultural Permit Applications

(1) Any person engaged in, or intending to engage in, the use of agricultural fireworks must apply for and obtain an agricultural permit issued by the Office of State Fire Marshal.

(2) Upon receipt of a properly completed and approved application, the Office of State Fire Marshal will 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 agricultural fireworks upon determining the proposed purchase or use is not in accordance with these rules or applicable statutes. A separate agricultural permit must be applied for and obtained for each person who desires to use agricultural fireworks.

(3) The permit application for an agricultural fireworks permit must be made on a form provided by the Office of State Fire Marshal.

(4) All information provided by the applicant on the permit application must be true and correct to the agricultural permit applicant's knowledge.

(5) As part of the permit application process, the applicant must obtain the signature of either the state game management or federal game management authority on the permit application.

(6) The applicant must obtain the signature of the game management authority prior to submitting the permit application to the Office of State Fire Marshal.

(7) Permit applications that do not contain the signature required in OAR 837-012-0360(5) will not be approved, and will be returned to the applicant.

(8) The Office of State Fire Marshal will either grant or deny permit applications within 10 days following receipt of a properly completed and submitted permit application.

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0010; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0315

Definitions

(1) "Agent" means an individual designated by the permit holder to pick up the agricultural fireworks authorized by the agricultural permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the agricultural fireworks. The agent must have the agricultural permit (or a copy) issued by the State Fire Marshal in their possession at the time the agricultural fireworks are picked up from the wholesaler.

(2) "Agricultural Fireworks" (also referred to as explosive pest control devices) means fireworks designed and intended solely for the use in controlling wildlife pests and that has a container that is a cardboard/pasteboard-type tube not exceeding 4" in length and 3/4 inch in diameter or a shotgun shell type container. Such devices may only contain pyrotechnic compositions, e.g., black powder, flash powder, or smokeless powder. The component that produces the audible report may not contain more than 40 grains (2.592 grams) of explosive composition. Agricultural fireworks/explosive pest control devices must be tested, classified and approved by the United States Department of Transportation. Agricultural fireworks may be used only 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. Agricultural fireworks do not include retail fireworks, public display fireworks, or exempt fireworks.

(3) "Agricultural Permit" means the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.122 and 480.124 and OAR 837-012-0305 through 837-012-0370 granting permission to a person to use agricultural fireworks.

(4) "Exempt Fireworks" means novelties and trick noisemakers.

(5) "Fire Protection District" means 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).

(6) "Fireworks" has 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) "Illegal Fireworks" means any fireworks other than those described in ORS 480.127(4) including but not limited to, any firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

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

(9) "Individual Member of the General Public" means 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.

(10) "Local Fire Authority" means the local fire authority having jurisdiction over the agricultural fireworks use and storage sites.

(11) "May" means a regulation of conduct and implies probability or permission.

(12) "May not" means a prohibition of conduct.

(13) "Must" means a mandatory requirement.

(14) "Novelties and Trick Noisemakers" means those items described in ORS 480.110(1)(a) through 480.110(1)(b) and NFPA 1124, Section 1.4, 2003 Edition. It also means exempt fireworks.

(15) "Permit Application" means the form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of an agricultural permit.

(16) "Permit Holder" means the person referred to in ORS 480.122 who:

(a) Desires to purchase, maintain, use, and explode agricultural fireworks for the purpose of scaring away or repelling birds or animals which are or may be injurious or destructive to forest or agricultural products or crops,

(b) Has applied to the State Fire Marshal for an agricultural permit;

(c) The State Fire Marshal has issued an agricultural permit referred to in ORS 480.122;

(d) Is responsible for any activities conducted under the agricultural permit.

(17) "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.

(18) "Public Display Fireworks" means fireworks that are authorized under a general, limited, or special effects public display permits issued pursuant to ORS 480.130, 480.140 and 480.150.

(19) "Retail Fireworks" means those items described in ORS 480.127(4), specifically combination items, cone fountains, cylindrical fountains, flutter sparklers, ground spinners, illuminating torches, and wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(20) "Sell" means to transfer possession of property from one person to another person for consideration.

(21) "Wholesaler" means 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 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0015; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0320

Storage of Agriculture Fireworks

Agricultural fireworks must be stored in accordance with the requirements of these rules, the **Oregon Fire Code** and the **Oregon Structural Specialty Code**.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0020; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0325

Permits-Denial, Suspension, Revocation

(1) The State Fire Marshal may deny, suspend or revoke an agricultural permit for violation of ORS 480.110 through 480.165 and OAR chapter 837, division 12. Any such revocation, suspension or denial will be in conformance with ORS 183.310 to 183.550.

(2) The period of denial, suspension or revocation may not exceed three years.

(3) The following criteria are used by the Office of State Fire Marshal to determine the appropriate sanction:

(a) The severity of the violation or violations and the impact on public safety, particularly if the circumstances of a violation 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 or violations were willful or intentional;

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

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

(4) Suspension or revocation of an agricultural permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0025; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0330

General

(1) Agricultural permit holders desiring to engage in other types of fireworks activities, including wholesale sales, public displays or retail sales, must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12.

(2) Agricultural permit holders must notify the Office of State Fire Marshal, in writing, within 24 hours of the date of change, of:

(a) The agricultural permit holder's mailing address, telephone number,

(b) The storage address of the agricultural fireworks.

(3) Change of the storage location of the agricultural fireworks is subject to prior written approval by the local fire authority and the Office of State Fire Marshal.

(4) Agricultural permit holders must 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 Fire Code, 2004 Edition**; and

(d) **Oregon Structural Specialty Code, 2004 Edition**.

(5) Agricultural permit holders must purchase agricultural fireworks only from wholesalers having the necessary and current permits required by ORS 480.110 to 480.160 and OAR 837-012-0500 through 837-012-0570.

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

(7) The issuance of an agricultural permit does not in any way constitute approval by the Office of State Fire Marshal of any agricultural fireworks purchased, sold, or provided pursuant to the agricultural permit.

(8) An agricultural permit allows the permit holder to engage in the purchase, transportation, possession, storage and use of agricultural 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 pertaining to fireworks.

(9) An agricultural permit does not authorize the:

(a) Purchase, possession or sale of illegal fireworks by or to any person; or

(b) The sale, re-sale, or provision of agricultural fireworks by or to any person other than the agricultural permit holder.

(10) Any agricultural permit holder, other than an individual, is required by the State Fire Marshal to list the name, age, address, and phone number of one individual in a management position within their company or organization, on the permit application.

(11) Individuals firing agricultural fireworks shall be a minimum of 18 years of age.

(12) Only the agricultural permit holder, and any employees of the agricultural permit holder, may engage in activities authorized by the agricultural permit.

(13) Agricultural permits, and the rights conveyed by the agricultural permit, are not transferable.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0030; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0340

Permit Fees

There are no fees for this application.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0350

Issuance of Agricultural Permits

(1) Each *agricultural permit* contains a unique number assigned by the Office of State Fire Marshal.

(2) Only one agricultural permit is required for each agricultural location. A permit application may contain multiple use locations provided each location is owned, leased, or used by the permit holder.

(3) The agricultural permit is valid only for the location of use listed on the agricultural permit.

(4) The agricultural permit will be mailed to the permit holder at the mailing address listed on the permit application.

(5) An initial agricultural permit issued by the Office of State Fire Marshal is valid from the date of issue up to three years as determined by the OSFM.

(6) Upon renewal, agricultural permits are valid for a period not to exceed three years.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0360

Purchase of Agricultural Fireworks

(1) Permit holders must be 18 years of age or older.

(2) Agricultural permit holders may purchase or otherwise obtain agricultural fireworks only from wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal. Exception: In the case of state game management or federal game management authorities who provide agency approved game management assistance to permit holders; once a permit has been issued — state game management or federal game management authorities may supply agricultural fireworks to the permit holder under the following criteria:

(a) Agricultural permit holders may only obtain agricultural fireworks listed on their agricultural fireworks permit.

(b) The state game management or federal game management authority who supplies agricultural fireworks must maintain a record

of all agricultural fireworks supplied and make such records available to the Office of State Fire Marshal upon request.

(c) Any decision by a state game management or federal game management authority to supply agricultural fireworks must be in conformance with their specific agency policies and procedures for the distribution of agricultural fireworks.

(3) Once an agricultural fireworks permit has been issued and the wholesaler selected; if an agricultural permit holder desires to obtain agricultural fireworks from another wholesaler, the agricultural permit holder must notify the Office of State Fire Marshal at least 24 hours prior to purchasing the agricultural fireworks from another licensed agricultural fireworks wholesaler.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0370

Prohibited Acts and Limitations

(1) An agricultural permit does not allow the permit holder to purchase, possess, or sell any other types of fireworks.

(2) Agricultural fireworks may not be utilized for any purpose other than the use as stated on the permit application.

(3) Agricultural fireworks utilized for any other use than the permitted use may result in the immediate suspension of the agricultural permit and confiscation of the unused agricultural fireworks.

(4) A permit holder may not sell or provide by any other means agricultural fireworks or any other fireworks to any other person including other permit holders.

(5) The agricultural permit does not authorize the manufacture, sale, use, discharge or possession of agricultural fireworks in any city or county where agricultural fireworks are prohibited by law or ordinance.

(6) No permit holder may maintain or allow the existence of a fire hazard at any location under their control where agricultural fireworks are stored, transported, or used.

(7) Permit holders may not provide agricultural fireworks to anyone other than an authorized employee or owner of the permit holder's business for the purpose specified on the permit applications.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

Wholesale Sales and Storage of Fireworks in Oregon

837-012-0500

Purpose and Scope

These rules establish permit and other requirements for Persons who Sell or provide by any other means, or intend to Sell or provide by any other means, 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, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

837-012-0505

Effective Dates

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

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) "BATFE" shall mean the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(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; or

(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, obtain, 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, 2003 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 application 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) "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.

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

(18) "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.

(19) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

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

(21) "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.

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

(23) "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.

(24) "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 837, division 12, and any other applicable federal, state and local laws, rules and regulations.

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

(26) "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, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 4-2006, f. & cert. ef. 3-10-06

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 837, division 12, including those pertaining to obtaining permits for such activities from local, federal, and state authorities.

(2) A Wholesale Permit holder 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, obtain, possess, use, discharge, transport, store, distribute, or Sell Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(3) Wholesale Permit holders shall comply with all applicable federal, state, and local laws, rules and regulations pertaining to Fireworks, including:

(a) ORS 480.110 through 480.165; and

(b) OAR 837, division 12.

(4) 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.

(5) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR 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.

(6) Wholesale Permit holders, who provide 1.3g Fireworks, shall provide, at a minimum, one general operator certification training course annually as required by OAR 837-012-0780.

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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 first 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 first 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.

(7) As part of the Permit Application process, the applicant shall obtain the approval of the Local Fire Authority and the local building official prior to submitting their application to the Office of State Fire Marshal.

(8) Exception to 837-012-0520(7). If the applicant's Wholesale Site address was continuous during the year preceding the year for which the Wholesale Permit renewal is sought, the applicant is required only to re-submit to the Office of State Fire Marshal, as part of the Wholesale Permit renewal application, the approval of the Local Fire Authority.

(9) 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 BATFE.

(10) 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.

(11) Permit Applications shall be signed by the applicant(s).

(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.

(12) 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.

(13) Permit Applications shall be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than December 18 of the year preceding the year for which the Wholesale Permit is sought. If December 18 falls on a day when a postmark cannot be obtained, applications shall be postmarked on the preceding business day when a postmark can be obtained. If December 18 falls on a day when the Office of State Fire Marshal is closed, and the applicant wishes to hand deliver their application, it shall be delivered to the Office of State Fire Marshal at the Salem office on the preceding business day. However, due to limited resources in the fireworks program, it is recommended that wholesale fireworks permit applications be postmarked or submitted to the OSFM by December 1 of the year preceding the year for which the permit is sought.

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

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110–480.165

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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 1-2008(Temp), f. & cert. ef. 1-25-08 thru 7-3-08; OSFM 2-2008, f. 4-3-08, cert. ef. 5-1-08

837-012-0525

Wholesale Permits

(1) Within 30 days of receipt of a properly completed and timely submitted Permit Application and Wholesale Permit fee, the Office of State Fire Marshal shall either issue or propose to deny the Wholesale Permit.

(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 837, division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to Fireworks.

(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, only 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 and/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, 478 & 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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0530

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 shall be \$3,000.

(4) Permit fees are non-refundable. Exception: The State Fire Marshal may refund all or part of the permit fee if it is determined the application is not appropriate or the permit is denied.

(5) Permit fees are non-transferable to any other individual or business.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented:

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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 9-2008(Temp), f. 11-14-08, cert. ef. 11-17-08 thru 5-8-09; OSFM 1-2009, f. 4-9-09, cert. ef. 4-10-09

837-012-0535

Denial, Suspension and/or Revocation of Wholesale Permit

(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 ORS 480.110 through 480.165 or OAR 837, division 12.

(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 of a Permit Application, or suspension or revocation of a Wholesale Permit, imposed by the Office of State Fire Marshal, the applicant or Wholesale Permit holder subject to the denial, suspension or revocation may submit to the Office of State Fire Marshal a Permit Application. The Office of State Fire Marshal shall either grant or deny the application pursuant to OAR 837-012-0525(1). If granted, the Wholesale Permit shall be valid for the remainder of the calendar year.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

837-012-0540

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

(a) NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks, 2003 Edition (The separation distances shall be met as required by NFPA 1124, 2003 Edition. All Fireworks stored at the Wholesale Site shall be considered in calculating the separation distances);

(b) NFPA 68, Guide for Explosion Venting, 2002 Edition;

(c) Oregon Structural Specialty Code, 2004 Edition;

(d) Oregon Fire Code, 2004 Edition;

NOTE: Wholesale Sites that are currently approved may not be required to be altered or updated to comply with these standards.

(3) 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 the Office of State Fire Marshal shall not be used as Wholesale Sites.

(4) 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.

(5) 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.

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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 and Sales Representatives of the Wholesale Operations, while not required to be present at all times the site is open for business shall be located at the Wholesale Site.

(3) A copy of the Wholesale Permit 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 Fireworks shall not be displayed;

(b) 1.4G 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 BATFE 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 BATFE.

(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, addresses, phone numbers (including home), driver's license numbers, and birth dates. Upon request a legible copy of the list shall be provided immediately 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 agreement, 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, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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 Wholesale Permit holder 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 or provision, 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 Residence or Domicile.

(4) Wholesale Permit holders with Wholesale Sites located 50 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 Residence prohibits the sale, provision, purchase, possession, or use of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks. Exception: This shall not apply to an out-of-state resident that has applied for and been granted a permit pursuant to ORS 480.110 through 480.165 and OAR 837, division 12.

Stat. Auth.: ORS 476, 478 & 480
 Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

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 Residence 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 837, division 12, or who has had any Fireworks permit or operator certificate 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 Wholesale or Retail Fireworks Permit or operator certificate is revoked or suspended.

(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 837, division 12, may be subject to denial, revocation, or suspension of the Person's Fireworks permit or operator certificate issued by the Office of State Fire Marshal, and/or a civil penalty.

(11) No Person shall purchase or otherwise obtain, possess, use, discharge, transport, offer for sale, sell, transfer or otherwise provide Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks without first applying for and obtaining the appropriate permit issued by the Office of State Fire Marshal pursuant to ORS 480.110 through 480.165 and OAR 837, division 12.

Stat. Auth.: ORS 476, 478 & 480
 Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 1-2005(Temp), f. & cert. ef. 1-13-05 thru 7-11-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 4-2006, f. & cert. ef. 3-10-06

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, purchased or otherwise obtained, stored, possessed, used or discharged in violation of ORS 480.110 through 480.165 or OAR 837, division 12.

(2) The Wholesale Permit holder, or any other Person responsible for the violation(s), 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, 478 & 480
 Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

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.

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(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, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

837-012-0570

Hazardous Materials Reporting for Wholesalers with Oregon Storage Sites

All Persons possessing more than ten pounds of 1.3G Fireworks 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 837, division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 6-2002, f. & cert. ef. 6-14-02

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 otherwise provide, intend to Sell or otherwise provide, Retail Fireworks to Individual Members of the General Public.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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; OSFM 11-2001, f. & cert. ef. 12-14-01

837-012-0605

Effective Dates

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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 837-012-0600 through 837-012-0675, 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) "BATFE" shall mean the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) "Building" shall have the meaning provided in the Oregon Structural Specialty Code, 2004 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 side-walls 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). See 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. See 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. See 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 Noise-makers.

(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, 2004 Edition. The term may include a check stand 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. See 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) "Flitter Sparkler" shall mean a narrow paper tube containing not more than 100 grams of pyrotechnic composition that produces colored sparks upon ignition. The paper at one end of the tube is ignited to make the device function. See 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. See 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, and due to uncontrolled and unpredictable behavior, present a severe hazard of fire and injury. 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, or 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. See 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 from 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 NFPA 1124, Section 1.4, 2003 Edition. It also means Exempt Fireworks.

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

(26) "Permit Application" shall mean the application 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) "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.

(28) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(29) "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.

(30) "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 837, division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to fireworks.

(31) "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.

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

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

(34) "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/or purchase the Retail Fireworks.

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

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

(37) "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.

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

(39) "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. See ORS 480.127(4)(g).

(40) "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 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

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 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, pertaining to Fireworks, including:

- (a) ORS 480.110 through 480.165;
- (b) All applicable requirements of OAR 837, division 12;
- (c) **Oregon Fire Code, 2004 Edition;** and
- (d) **Oregon Structural Specialty Code, 2004 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. Such a change is subject to the prior approval of the Local Fire Authority and the Office of State Fire Marshal.

(5) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR 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.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05

837-012-0620

Retail Permit Applications

(1) Any Person engaged in, or intending to engage in, the sale or provision by any other means of Retail Fireworks to Individual Members of the General Public shall apply for and obtain a Retail Permit issued by the Office of State Fire Marshal.

(2) A separate Retail Permit shall be applied for and obtained for each Retail Sales Outlet that may conduct sales of Retail Fireworks in Oregon.

(3) Only one application for a Retail Permit may be made for each Retail Site except pursuant to OAR 837-012-0630(3).

(4) The application for a Retail 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 application form, applicants shall submit copies of a sketch of the Retail Site in accordance with subsection (7) of this rule.

(7) The sketch of the Retail Site, required pursuant to subsection (6) of this rule, shall include without limitation, the following:

- (a) A diagram of the Retail Sales Outlet and its relationship to adjacent areas located at the Retail Site;
- (b) For all Outdoor Sales, the location and distances of all structures, Buildings, highways, streets, trees, and other vegetation within 50 feet of the Retail Sales Outlet;
- (c) For all Indoor Sales, the location of the Sales Display and the location and distances of all highly combustible materials within a 20-foot radius of the Sales Display;

(A) For Retail Sales Outlets located within structures or Buildings of less than 1,000 square feet, all Exits from the Building or structure;

(B) For Retail Sales Outlets located in structures or Buildings of greater than 1,000 square feet, all Exits from the Building or structure located within 75 feet of the Sales Display;

(C) For tents, all exits from the tent.

(D) A list of the general types of merchandise located within 20 feet of the Sales Display. This requirement does not apply to Tents.

(d) The location of any open flames, exposed heating elements or other direct sources of ignition, including, but not limited to, coffee makers, food warmers, cookers and broilers located inside the Retail Sales Outlet or, for Indoor Sales, within 20 feet of the Sales Display.

(8) Any applicant for a Retail Permit, other than an Individual, shall list on the application form the name, address, and phone number of one Individual holding a management position within the permit holder's company or organization. See definition of "Person" in ORS 174.100(4) and "Individual" in OAR 837-012-0610(18).

(9) As part of the Permit Application process, the applicant shall apply for and obtain, in writing when available;

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

(b) All required state and local land use and zoning permits, licenses and/or approvals for the Retail Site.

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

(11) The required Local Fire Authority signatures are:

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

(b) For retail sales conducted outside city limits, but inside a rural Fire Protection District, the Permit Application must be signed by the district Fire Chief or his authorized representative;

(c) For retail sales conducted outside both city limits and a rural Fire Protection District, the Permit Application must be signed by the District Deputy State Fire Marshal.

(d) Applicants must also obtain the signature of the Local Fire Authority with jurisdiction over the Retail Fireworks storage location, regardless of whether the storage location is the same as the Retail Site.

(12) Proof of identification of the Individual Responsible for Sales shall be provided to the Local Fire Authority at the time the Permit Application is submitted to the Local Fire Authority for review and signature. The proof of identification shall be a current and recognizable photographic identification.

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

(14) ORS 480.127 requires retail fireworks sales applicants to apply in writing to the State Fire Marshal for a permit at least 15 days in advance of the proposed sale. However, due to limited resources in the fireworks program, it is recommended that retail fireworks permit applications be postmarked or submitted to the OSFM by April 15 of the year for which the permit is sought.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2006, f. & cert. ef. 3-10-06

Sales and Storage of Retail Fireworks In Oregon

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 \$100.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 2-2006(Temp), f. & cert. ef. 2-13-06 thru 3-10-06; OSFM 5-2006, f. & cert. ef. 3-10-06; OSFM 9-2008(Temp), f. 11-14-08, cert. ef. 11-17-08 thru 5-8-09; OSFM 1-2009, f. 4-9-09, cert. ef. 4-10-09

837-012-0630

Issuance of Retail Permits

(1) The Office of State Fire Marshal shall not approve a Permit 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 837, division 12 and any other applicable federal, state or local laws, rules or regulations pertaining to Fireworks.

(8) A Retail Permit holder is authorized only to Sell or otherwise provide 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 Sales Outlet and 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 Permit for the purchase of Retail Fireworks.

(15) Retail Permit holders shall not contract, subcontract, lease, 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 & 480

Stats. Implemented: ORS 480.110 - 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03

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 837-012-0525(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 and any accompanying documentation are imprinted and/or affixed 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 or accompanying documentation that does not show the information required pursuant to subsections (4) and (5) of this rule.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110 - 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

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 to comply with ORS 480.110 through 480.165 or OAR 837, division 12.

(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, 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 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 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

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 each day. 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. The Individual Responsible for sales may be absent from the Retail Sales Outlet for up to 48 consecutive hours twice during the period of time the Retail Permit is valid. The two 48-hour time periods shall not be consecutive. The Individual Responsible for sales, when not at the Retail Site, shall be available through their 24-hour contact number listed on their Permit Application.

(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 present in the Retail Sales Outlet at all times.

(4) The Individual Responsible for Sales shall be:

(a) The Retail Permit holder listed on the Retail 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 the Retail Sales Outlet listed on the Retail Permit.

(6) The Retail Site 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 and indicates that approval 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 pertaining to Fireworks including:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

(c) **Oregon Structural Specialty Code, 2004 Edition**; and

(d) **Oregon Fire Code, 2004 Edition**.

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

(11) 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.

(12) No Fireworks shall be discharged within 100 feet of any Retail Sales Outlet.

(13) 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.

(14) The type of Retail Sales Outlet (Tent, Stand, Canopy or trailer) 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.

(15) 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 the storage location of the Retail Fireworks and indicate that approval by signing the Permit Application.

(16) Retail Fireworks shall be stored:

(a) In compliance with the **Oregon Structural Specialty Code, 2004 Edition**; or

(b) In an explosives magazine pursuant to NFPA 495, 2001 Edition.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 476 & 480
 Stats. Implemented: ORS 480.110 - 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. & cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2005, f. & cert. ef. 2-15-05

837-012-0650

Outdoor 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, and any 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.

(3) Trailers shall have their wheels blocked or removed, or the tongue locked. Trailers shall be disconnected from any power source which can potentially move the trailer any distance. Any fuel tanks or other ignition sources, including those for propane, shall be removed and placed a minimum of 20 feet from the trailer. Individual Members of the General Public shall not have access to the interior of the trailer.

(4) 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.

(5) Tents having three or more enclosing sides shall comply with the requirements for both Indoor Sales and Outdoor Sales.

(6) Fire extinguishers shall be provided at each outdoor Retail Sales Outlet. At a minimum, at least one 2A rated water type extinguisher, or an equivalent water type extinguishing system as approved by the Local Fire Authority shall be placed at each Retail Sales Outlet.

(7) All electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the Oregon Electrical Specialty Code, 2005 Edition and any other applicable state or local requirements.

(8) Outdoor Retail Sales Outlets that operate at night shall erect and maintain sufficient light fixtures 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.

(9) Outdoor Retail Sales Outlets 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, 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; and

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

(10) A Stand 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.

(11) "No Smoking" signs shall be posted on the outside of all enclosing sides of an outdoor Retail Sales Outlet. The signs shall be visible to all Individuals located at the Retail Sales Outlet. Sign lettering shall be red and at least 2-1/2 inches high on a white background.

(12) Smoking, open flames, and other such ignition sources or the use of Fireworks are prohibited within 100 feet of the Retail Sales Outlet.

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

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

(15) 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.

(16) The Retail Permit holder, Individual Responsible for Sales and/or any Employees or Volunteers of 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 & 480
 Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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. & cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0655

Indoor Sales

(1) 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, and any surrounding property.

(2) A specific area inside the Building shall be designated and maintained as the Sales Display area.

(3) The location of the Sales Display area shall not hinder or block any Exit, including, if applicable, a required checkstand Exit.

(4) The Individual Responsible for Sales shall regularly monitor and oversee Retail Operations at the Retail Sales Outlet to ensure the Sales Display and/or storage area(s) are orderly and maintained in accordance with these rules.

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

(6) Fire extinguishers shall be placed throughout the indoor Retail Sales Outlet in the quantities and locations required by NFPA 10, 1998 Edition 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 system, as approved by the Local Fire Authority shall be placed at the outlet.

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

(8) All trash, rubbish, empty boxes and discarded Retail Fireworks wrapping or packaging shall be removed daily or more 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 & 480
 Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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. & cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0660

Records and Postings

(1) The Retail Permit shall be posted at the Retail Sales Outlet and shall be readily visible to all individuals approaching or entering the outlet.

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

(3) A record of each shipment of Retail Fireworks received by the Retail Permit Holder shall be maintained. The record shall include the Wholesaler's 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.

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

(5) Upon request, the records described in subsection (3) of this rule, shall be readily available for review and inspection by the Local Fire Authority and/or representatives of the Office of State Fire Marshal. All records shall be clear, legible, and accurate.

(6) 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 and/or the Local Fire Authority.

(7) 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 837, division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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; OSFM 11-2001, f. & cert. ef. 12-14-01

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 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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 Member of the General Public under 16 years of age;

(b) Illegal Fireworks to any Individual Member 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 pursuant to OAR 837-012-0635(1) through (3).

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR 837, division 12, or who has had any Fireworks permit or operator certificate 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 States Consumer Product Safety Commission, or does not have a United States Bureau of Explosives Temporary Transfer Permit.

(5) No Retail Sales Outlet shall be erected prior to the issuance of a Retail Permit for that Retail Sales Outlet location.

(6) No Person shall Sell, transfer or otherwise provide Retail Fireworks to Individual Members of the General Public without first obtaining a Retail Permit.

(7) A Retail Permit holder shall not employ or have direct business ties with any Person whose Wholesale or Retail Fireworks Permit or operator certificate is revoked or suspended.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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. & cert. ef. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

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, purchased or otherwise obtained, stored, used, discharged 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 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 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; OSFM 11-2001, f. & cert. ef. 12-14-01

Public Display of Fireworks in Oregon

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) These rules establish application, Permit and other requirements for public Fireworks Displays, certification requirements for public Fireworks Display Operators and requirements for public Fireworks Display Assistants.

Stat. Auth.: ORS 476 & 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0710

Effective Dates

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

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

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) "Aerial Shell" means a cylindrical or spherical cartridge containing pyrotechnic compositions, a long fuse or Electric Match wires, and a black powder Lift Charge.

(3) "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 480.124.

(4) "Approved Applicant" means any Individual that meets the requirements of OAR 837, division 12.

(5) "Assistant" means an Individual as set forth by OAR 837-012-0780 who works under the direction of an Operator to put on a Fireworks Display.

(6) "Barge" means a floating vessel or a floating platform.

(7) "Barrage" means a rapid-fire sequence of Aerial Fireworks. Mortars are loaded prior to the Display and the Aerial Shells are chain fused to fire in rapid sequence.

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

(9) "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).

(10) "Burst" means Break.

(11) "Burst Charge" means the composition in an Aerial Shell that, when ignited by the time fuse, ruptures the shell casing, ignites the shell contents and disperses the shell contents into the sky.

(12) "Cake Device" means Multi-shot Device.

(13) "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.

(14) "Comet" means a firework consisting of a large pellet of pyrotechnic composition that is ignited and propelled from a Mortar tube by a black powder charge.

(15) "Designated Agent" means the Individual 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 Shall have the Permit authorized by the State Fire Marshal in their possession at the time the Fireworks are picked up from the Wholesaler.

(16) "Discharge Site" means the area immediately surrounding the area where Fireworks are ignited for an outdoor Display.

(17) "Display" means an outdoor General or Limited Fireworks Display or an indoor or outdoor Fireworks Display using Special Effects Fireworks.

(18) "Display Fireworks" Shall mean Fireworks that are authorized under a General, Limited, or Special Effects Display Permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(19) "Display 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 Limited, General, or Special Effects Display Permit.

(20) "Display Site" Shall mean the immediate area where a Fireworks Display is conducted and Shall include the Discharge Site, the Fallout Area, and the required separation distance from Fireworks Discharge Site to spectator viewing areas. The Display Site does not include spectator viewing areas or vehicle parking areas.

(21) "Dud" A Firework that leaves the mortar and returns to earth without producing the intended Break or effect.

(22) "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.

(23) "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.

(24) "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.

(25) "Exempt Fireworks" Shall mean Novelties and Trick Noisemakers.

(26) "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 Fall-Out Area is the location where a typical Aerial Shell dud will fall to the ground considering wind and the angle of Mortar placement. At a minimum, the Fall Out Area Shall be the required separation distance based on table of distances listed OAR 837-012-0840.

(27) "Finale" means a rapid-fire sequence (Barrage) of Aerial Fireworks, typically fired at the end of a Display. The Mortars are load-

ed prior to the Display, and the Aerial Shells are Chain Fused to fire in rapid sequence.

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

(29) "Fireworks Detonation" means the entire contents of the Aerial Shell and the life charge are consumed in one simultaneous explosion at or near the bottom of the Mortar.

(30) "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.

(31) "Flower Pot" means an Aerial Shell that Bursts before it leaves the Mortar, projecting its contents out of the Mortar similar to a mine. The force of the Aerial Shell Bursting usually does not rupture the Mortar.

(32) "Fusee" means a highway distress flare, sometimes used to ignite Fireworks at outdoor Displays.

(33) "General Display Operator" means an Individual who has been issued a General Display Operator Certificate who meets the requirements of OAR 837-012-0700 through 837-012-0970 and is qualified to be an Operator on a General or Limited Display.

(34) "General Display Permit" means a Permit to hold an outdoor Display using 1.3g Fireworks. General Displays may also include 1.4g Fireworks or Special Effects Fireworks.

(35) "General Fireworks Display" means a Display held outdoors, utilizing 1.3g Fireworks and may include 1.4g Fireworks and Special Effects Fireworks and Shall be conducted by a General Display Operator.

(36) "General Operator Certificate" means a document issued by the Office of State Fire Marshal authorizing the holder of the certificate to be an Operator at a General Fireworks Display.

(37) "Ground Display Piece" means a Firework that functions on the ground (as opposed to an Aerial Shell that functions in the air). Typical ground Fireworks Display pieces include fountains, roman candles, wheels, and "set pieces."

(38) "Individual" Shall mean a single human being.

(39) "Individual Member of the General Public" means any Person who has not been issued a Wholesale Permit, a Display Permit, a Retail Permit or an Agricultural Permit by the Office of State Fire Marshal.

(40) "Instructor" Shall mean the Individual who delivers the training required under OAR 837-012-0780.

(41) "Lance" means a thin cardboard tube packed with a color producing pyrotechnic composition and used to construct Ground Display Pieces.

(42) "Law Enforcement Authority" means any law enforcement official having jurisdiction over the public Fireworks Display Site.

(43) "Lead Fuse" means a Fireworks fuse made of Quick Match that transfers fire from an ignition source to the Lift Charge of an Aerial Shell or other Fireworks.

(44) "Lift Charge" means composition in an Aerial Shell that propels the Aerial Shell into the air when ignited.

(45) "Limited Fireworks Display" means a Display held outdoors limited to 1.4G Fireworks. Fireworks authorized by the Limited Permit are subject to limitation by the Local Fire Authority and/or the Office of State Fire Marshal.

(46) "Limited Display Operator" means an Individual who has been issued a Limited Display Operator Certificate who meets the requirements of OAR 837-012-0700 through 837-012-0970 and is qualified to be an Operator on a Limited Display.

(47) "Limited Display Permit" means a Permit to hold a Display using 1.4g Fireworks.

(48) "Limited Operator Certificate" means a document issued by the Office of State Fire Marshal authorizing the holder of the certificate to be an Operator at a Limited Fireworks Display.

(49) "Local Fire Authority" Shall mean the local fire official having jurisdiction over the Display Site and/or the site where Fireworks may be stored prior to the date and time of the Display.

(50) "Low Break" means an Aerial Shell that functions significantly lower than its prescribed height.

(51) "Manual Firing" means using a handheld ignition source such as a Fusee or Portfire to ignite Fireworks.

(52) "Mine" means a device designed to project stars and other effects, such as whistles and firecrackers into the air from a Mortar charged by black powder that ignites the contents of the Mine.

(53) "Misfire" means a Firework fails to function after an ignition source is applied to the ignition point.

(54) "Monitor" means an Individual designated by the Sponsors of the Display to keep the audience in the intended viewing area and out of the Display Site, Discharge Site and Fallout Area.

(55) "Mortar" Shall mean a tube from which Aerial Shells are fired into the air.

(56) "Mortar Rack" means a frame containing Mortars and are most often used for Barrages and Finales and in electrically ignited General Fireworks Displays.

(57) "Mortar Trough" means an aboveground structure filled with sand or similar materials in which Mortars are positioned for use in General Fireworks Displays.

(58) "Multi-break Shell" means a cylindrical Aerial Shell with more than one main compartment connected with internal fusing and performs with successive breaks. An Aerial Shell with more than one distinctive type of effect contained within one main compartment is not a Multi-break Shell.

(59) "Multi-Shot Device" means a Firework consisting of more than one tube each containing a Firework item. It is ignited once with each of its tubes chain fused together to fire in succession until all tubes have been fired.

(60) "Muzzle Break" means an Aerial Shell that Bursts immediately as it leaves the Mortar.

(61) "Operator" means the Individual qualified as set forth in OAR 837-012-0780 to conduct the Display.

(62) "Operator Certificate 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 Limited Operator Certificate or a General Operator Certificate.

(63) "Peanut Shell" means two or more Aerial Shells in a common wrapper propelled by the same lift charge with separate external time fuses.

(64) "Permit" means the official written document issued by the Office of State Fire Marshal authorizing a Display allowing the Permit Holder to purchase Fireworks for the Display as detailed on the Permit when otherwise in conformance with OAR 837 division 12.

(65) "Permit Holder" means the Person as listed on the Display Permit as the Person to whom the Permit is issued.

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

(67) "Portfire" means a tube containing slow burning pyrotechnic composition sometimes used to ignite Fireworks at a Limited or General Fireworks Display.

(68) "Quick Match" means a Black Match encased in a loose fitting sheath and is used in fuses for Aerial Shells and for simultaneous ignition of Fireworks such as Lances in a Ground Display Piece.

(69) "Ready Box" means a container used for the storage of Fireworks at a Fireworks Discharge Site.

(70) "Retail Fireworks" Shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a Firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(71) "Roman Candle" means a cardboard tube containing Firework stars which, when lit, are expelled into the air at timed intervals.

(72) "Safety Cap" means a paper tube, closed at one end, that is place over the end of a Fireworks fuse to protect the fuse from damage or accidental ignition.

(73) "Salute" means a special Firework that is designed to produce a loud report.

(74) "Set Piece" means a Ground Display Piece usually consisting of land and Quick Match arranged on a frame.

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

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

(77) "Special Effects Display" Shall mean a Display held either indoors or outdoors limited to Special Effects Fireworks authorized by the Special Effects Permit.

(78) "Special Effects Fireworks" Shall mean any effect created by utilizing flammable, combustible or explosive composition or substance, or any combination of such compositions or substances, or any articles including Fireworks, explosives, or smoke which are prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and/or fire and are primarily designed or discharged in connection with performances, events, gatherings, television, radio, theater, motion picture productions, or similar venues which may or may not be presented before live audiences.

(79) "Special Effects Permit" Shall mean a Permit to hold a Display using Special Effects Fireworks.

(80) "Sponsor" means the Person that has applied for and been issued a Display Permit.

(81) "Sticky Match" means the trademarked name for a type of match that uses a continuous black powder trail inside a wrapper that is prepared with exposed adhesive along its length. The adhesive is used to attach Sticky Match to Fireworks devices.

(82) "Supervision" means Displays Shall be under the Supervision of the Law Enforcement Authority, Local Fire Authority, and/or the Office of State Fire Marshal.

(83) "Training Course" Shall mean the course that is required under OAR 837-012-0780.

(84) "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, Display Fireworks, or Agricultural Fireworks.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04

837-012-0730

General

(1) The location of the Display Site, the Operator or Assistant for a Display, the date or time of the Display, or the quantity of Fireworks to be discharged at the Display, may be changed if:

(a) For the location of the Display Site only, the proposed new Display Site is located in the same fire jurisdiction as the Display Site listed on the Display Permit;

(b) For the Operators only, the Individual to replace the Operator listed on the Display Permit possesses a current and valid Operator Certificate.

(c) The Local Fire Authority having jurisdiction over the Display Site and the Office of State Fire Marshal approve the change prior to the beginning of the Display as listed on the Display Permit; and

(d) The change is documented in the after-show report pursuant to OAR 837-012-0970.

(2) All Displays, all participants in a Display, including but not limited to, the Monitors, Sponsor(s), Wholesaler(s), Operator and Assistant(s) Shall comply with the following:

(a) ORS 480.110 through 480.165.

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

(c) Any other applicable federal, state or local, law, rule or regulation pertaining to Fireworks.

(3) Display Permit Holders or Operator Certificate Holders desiring to engage in other types of Fireworks activities, including wholesale or retail sales or agricultural use, must meet all applicable requirements in ORS 480.110 to 480.165 and OAR 837, division 12, including those requiring Permits to be obtained from local, state, and/or federal authorities.

(4) Public Display Permit Holders Shall purchase Fireworks only from Wholesalers having the necessary and current Permits required by ORS 480.110 to 480.165 and OAR 837-012-0500 through 837-012-0570.

(5) Issuance of a public Display Permit does not constitute an endorsement of the Fireworks purchased or sold.

Stat. Auth.: ORS 480.150
 Stats. Implemented: ORS 480.110 - 480.165
 Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0740

Display Permit Applications

(1) Any Person intending to have, put on, or Sponsor a Display Shall apply for and obtain a Display Permit from the Office of State Fire Marshal.

(2) A separate Display Permit Shall be applied for and obtained for each Display that may be conducted in Oregon.

(3) Each Display Permit Shall be for a specific date and time of day. Permits Shall not be continuous throughout the date of Display.

(4) The Application for Display Permit Shall be made on a form provided by the Office of State Fire Marshal.

(5) The Display Permit Application may be completed by the Sponsor, Wholesaler, Operator or Assistant for the intended Display as listed on the Application.

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

(7) In addition to completion of the Application, applicants Shall submit:

(a) A diagram of the Display Site in accordance with subsection (9) of this rule;

(8) As part of the Display Permit Application process, applicants Shall apply for and obtain, in writing when available;

(a) All required state and/or local licenses, Permits and/or approvals; and

(b) Liability insurance, if required pursuant to ORS 480.150(1).

(9) The diagram of the Display Site, required pursuant to subsection (7) of this rule, Shall include without limitation, the following:

(a) The location and size of the Discharge Site. All the other distances required by the subsection below Shall be measured from the outside perimeter of the Discharge Site;

(b) The location of the Fallout Area;

(c) The location of all buildings, structures, highways, streets or other means of travel in and within 100 feet of the Discharge Site and Fallout Area;

(d) The location of the spectator viewing area(s) and their distance from the Discharge Site and Fallout Area; and

(e) The location of all trees, power lines of any type and any other overhead obstructions 25 feet or higher in and within 100 feet of the Discharge Site and Fallout Area.

(10) Applicants Shall submit their completed Display Permit Application to the Local Fire Authority and Law Enforcement Authority for review and signature approving, but not limited to, the proposed Display Site, Discharge Site, spectator viewing areas, parking areas and Fallout Areas, prior to submission of the Display Permit Application to the Office of State Fire Marshal.

(11) The Local Fire Authority and the Law Enforcement Authority Shall not sign a Display Permit Application if, but not limited to, the Display Site, Discharge Site, spectator viewing areas, parking areas or Fallout Areas or the Display Permit Application does not comply with ORS 480.110-480.165, OAR 837 division 12 or any other applicable federal, state or local laws, rules or regulations pertaining to Fireworks.

(12) Display Permit Applications Shall be postmarked by a United States Postmark or received at the Salem Office of State Fire Marshal a minimum of 15 days prior to the date of the proposed Display.

(13) Display Permit Applications postmarked or received after the deadline set forth under subsection (12) of this rule may be returned unprocessed.

(14) A Permit is not transferable from the Permit Holder to another Permit Holder or Person.

(15) Another Person or Permit Holder cannot perform any acts allowed by the Display Permit unless that Person is listed on the Display Permit and/or is a Designated Agent for the Permit Holder.

Stat. Auth.: ORS 480.150
 Stats. Implemented: ORS 480.110 - 480.165
 Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0750

Display Permit Application Fees

(1) Display Permit Application fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Display 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 Display Permit Application until the check has cleared the bank.

(3) The Display Permit Application fee for a Display Permit is \$100.

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

Stat. Auth.: ORS 480.150
 Stats. Implemented: ORS 480.110 - 480.165
 Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 2-2005, f. & cert. ef. 2-15-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 3-2006(Temp), f. & cert. ef. 2-13-06 thru 3-10-06; OSFM 6-2006, f. & cert. ef. 3-10-06; OSFM 9-2008(Temp), f. 11-14-08, cert. ef. 11-17-08 thru 5-8-09; OSFM 1-2009, f. 4-9-09, cert. ef. 4-10-09

837-012-0760

Issuance of Display Permits

(1) Within 15 days of receipt of a properly completed and timely submitted Display Permit Application and Display Permit Application 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 Display Permit, without the prior approval of the Local Fire Authority and Law Enforcement Authority.

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

(4) Only one Display Permit Shall be issued for a Display Site for a particular date and time. Multiple Permits may be issued for the same Display Site and the same day, but not for the same time.

(5) The Office of State Fire Marshal Shall mail the original Display Permit to the Individual who completed the Display Permit Application at the mailing address the Individual completing the Display Permit Application listed on the Display Permit Application.

(6) Display 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 Display Permit Holder.

(7) A Display Permit is valid only for the date, time, and Display Site listed on the Permit.

(8) A Display Permit authorizes the Display Permit Holder to purchase, transport, possess and store Display Fireworks, for the purposes of holding the approved Display, when those activities are otherwise in conformance with the applicable requirements of ORS 480.110-480.165, OAR 837, division 12 and any other federal, state or local laws, rules or regulations pertaining to Fireworks.

(9) A Display Permit authorizes a Display only:

(a) At the Display Site diagrammed on the Display Permit Application and listed on the Display Permit;

(b) On the date and time listed on the Display Permit; and

(c) Conducted by the Operator and Assistant(s) listed on the Display Permit.

(10) A Display Permit authorizes the use and discharge of only the type and quantity of Display Fireworks listed on the Display Permit.

(11) A Display Permit does not authorize the sale, purchase, possession, storage, discharge or provision by any other means of any Fireworks except as specifically stated on the Display Permit.

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

Stat. Auth.: ORS 480.150
 Stats. Implemented: ORS 480.110 - 480.165
 Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0770

Operator Certificate Applications

(1) The application for an Operator Certificate Shall be made on a form provided by the Office of State Fire Marshal.

(2) Any Individual who intends to participate as the Operator at a General Display or Limited Display Shall first apply for and obtain an Operator Certificate issued by the Office of State Fire Marshal.

(3) All information provided by the applicant on the Operator Certificate Application Shall be true and correct to the applicant's knowledge.

(4) In addition to completion of the Application, applicants Shall submit proof of identification. Proof of identification Shall be a copy of a current and recognizable photographic identification.

(5) Completed Operator Certificate Applications Shall be postmarked by a United States Postmark, or received by the Office of State Fire Marshal at least 90 days prior to the date of the first Display at which the applicant intends to participate as the Operator.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0780

Operator and Assistant Qualifications

(1) To be eligible for a General Operator Certificate, an applicant Shall comply with the following:

(a) Shall be at least 21 years of age;

(b) Shall have participated as an Assistant in three or more General Displays in Oregon within three years of the date of application:

(A) Participation Shall mean completing the following duties: firing of the Display, installation of Mortars, installation of set pieces, loading shells, after-Display clean-up and inspection, installation of electrical firing system, and tending the magazine, which may include reloading the Mortars.

(B) At a minimum, an applicant must have installed Mortars, loaded shells, and participated in after-Display clean-up and inspection on all three Displays in Oregon.

(C) At a minimum, an applicant must have manually fired on at least one of the three Displays required for certification.

(D) The Office of State Fire Marshal may review after-show reports as proof of an applicant's requisite participation.

(c) Must have passed a written examination, administered by the Office of State Fire Marshal; and

(A) The examination Shall assess the applicant's knowledge of ORS 480.110-480.165 and OAR 837-012-0700-837-012-0970.

(B) To pass the examination, the applicant Shall answer 80% or more of the examination questions correctly.

(d) Shall have attended and completed one training course, approved by the Office of State Fire Marshal and administered by an instructor certified by the Office of State Fire Marshal.

(2) To be eligible for a Limited Operator Certificate, an applicant Shall comply with the following:

(a) Must be at least 18 years of age; and

(b) Must certify that the applicant is knowledgeable of the applicable requirements of ORS 480.110-480.165 and OAR 837, division 12.

(3) Any Individual who desires to participate in a General Display or Limited Display as an Assistant Shall comply with the following:

(a) Must be at least 18 years of age; and

(b) Must work under the direct Supervision and control of a General Operator or Limited Operator.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 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; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0790

Issuance of Operator Certificate

(1) Upon receipt of a properly completed and timely submitted Operator Certificate Application, the Office of State Fire Marshal Shall either grant or deny the Application.

(2) The Office of State Fire Marshal Shall assign a unique number to each Operator Certificate issued.

(3) The Office of State Fire Marshal Shall mail the original Operator Certificate to the applicant at the mailing address listed on the Operator Certificate Application.

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

(5) An Operator Certificate allows the holder of the Certificate to possess, store, use and discharge Display Fireworks for purposes of a Display when those activities are otherwise in conformance with the applicable requirements of ORS 480.110-480.165, OAR 837, division 12 and any other applicable federal, state or local laws, rules or regulations pertaining to Fireworks.

(6) A General Operator Certificate authorizes the holder of the Certificate to participate as the Operator at either a General Display or a Limited Display.

(7) A Limited Operator Certificate authorizes the holder of the Certificate to participate as the Operator only at a Limited Display.

(8) Only the holder of the Operator Certificate may engage in the activities authorized by the Certificate.

(9) An Operator Certificate does not authorize:

(a) The sale or provision of Fireworks; or

(b) The purchase, transportation, possession or storage of Fireworks.

(10) An Operator Certificate, and the rights conveyed by the Certificate, is not transferable.

(11) An Operator Certificate is valid for three years from the date of issue unless revoked or suspended.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 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; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0800

Renewal of Operator Certificate

(1) An Operator Certificate must be renewed every three years.

(2) The holder of a General Operator Certificate is not required to re-take the examination required under OAR 837-012-0780(1)(c) unless the current certificate expires. General Operators whose certificate expires are required to retake the qualifying examination.

(3) Applications for renewal of an Operator Certificate Shall be received by the Office of State Fire Marshal at least 90 days prior to the expiration date of their current Certificate.

(4) All other requirements for the issuance of a renewal Operator Certificate Shall be the same as for the issuance of the original Certificate.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 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; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0810

Training Course Instructor

(1) Individuals who intend to provide the training course required under OAR 837-012-0780 Shall work under the direction and control of an Oregon permitted wholesaler who supplies 1.3g Fireworks.

(2) At a minimum, Instructors Shall meet the following requirements:

(a) Be currently certified as a General Display Operator under OAR 837-012-0790; and

(b) Has been a General Display Operator consecutively for six years prior to the date of training. If the Instructor has not been consecutively certified for six years prior to the date of training, then the Instructor must be approved by the Office of State Fire Marshal prior to providing the General Operator certification training or the training Shall not be accepted by the Office of State Fire Marshal for General Operator certification.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 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; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0820

Pyrotechnician Training Course Requirements

(1) The training course required by OAR 837-012-0780(1)(d) Shall be developed by the Office of State Fire Marshal.

(2) All Individuals providing Operator Certification training required under OAR 837-012-0780 Shall provide at a minimum the training course developed by the Office of State Fire Marshal.

(3) Any training course not developed by the Office of State Fire Marshal Shall not comply with OAR 837-012-0780(1)(d).

(4) The Office of State Fire Marshal may update the training course annually to assure it is consistent and current with federal and state laws, rules and regulations pertaining to Fireworks Displays.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 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; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru

8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0830

Denial, Suspension and/or Revocation of Display Permit or General or Limited Operator Certificate

(1) The State Fire Marshal may deny, revoke or suspend a Display Permit or General or Limited Operator Certificate when a Person listed on the Display Permit or Operator Certificate fails to comply with ORS 480.110 through 480.165, OAR 837, division 12 or any other applicable federal, state or local law, rule or regulation pertaining to Fireworks.

(2) Any such denial, revocation, or suspension Shall be in conformance with ORS 183.310 to 183.550.

(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 knowingly 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.

(3) The period of denial, revocation and/or suspension 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 holder of, or applicant for, a Display Permit or Operator Certificate; and

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

(4) Suspension or revocation of a Display Permit or Operator Certificate may include suspension or revocation of the current Permit or Certificate and the right to apply for a subsequent Permit or Certificate.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-

02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04

837-012-0835

Purchase, Transportation and Storage of Display Fireworks

(1) General and Limited Display Permit Holders Shall purchase or otherwise obtain Display Fireworks only from Wholesalers who possess a current and valid wholesale Permit issued by the Office of State Fire Marshal.

(2) General and Limited Display Permit Holders Shall purchase or otherwise obtain Display Fireworks only from the Wholesaler listed on the Display Permit.

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

(4) The Designated Agent may pick up Fireworks from the Wholesaler and deliver only to the storage site listed on the Display Permit or directly to the Display Site as listed on the Permit.

(5) The Permit Holder, or their Designated Agent, Shall possess the Display Permit at the time the Display Fireworks are picked up from or delivered by the Wholesaler.

(6) The Permit Holder, or their Designated Agent, Shall transport the Display Fireworks only to the:

(a) Storage site approved by the Local Fire Authority and the Office of State Fire Marshal and listed on the Display Permit; or

(b) The Display Site listed on the Display Permit.

(7) The Permit Holder or their Designated Agent, Shall comply with all applicable federal, state and local laws, rules and regulations pertaining to the transportation of Fireworks.

(8) Prior to acceptance of Display Fireworks from a Wholesaler, the Permit Holder, or their Designated Agent, Shall confirm that the outside of all Cartons, Containers or Cases of Display Fireworks, and any accompanying documentation, are affixed with the full Permit Holder name and Display Permit number of the Display Permit corresponding to the Permit Holder authorizing the Display Fireworks being received and the Wholesaler Name and their Oregon Wholesale Permit number of the Oregon Wholesaler who supplied the Display Fireworks.

(9) Display Permit Holders, or their Designated Agent, Shall not accept any Cartons, Containers or Cases of Display Fireworks or accompanying documentation that do not show the required information pursuant to subsections (8) of this rule. If the required Permit Holder name and Display Permit number is not on the outside of all Cartons, Containers or Cases of Display Fireworks, and any accompanying documentation, the Permit Holder Shall refuse to accept the Display Fireworks.

(10) Permit Holder name and Display Permit number and the Wholesaler name and Permit number Shall be maintained on any Carton, Container or Case containing Display Fireworks authorized by a Display Permit.

(11) The storage of Display Fireworks Shall comply with the following:

(a) OAR chapter 837, division 12;

(b) Oregon Uniform Fire Code, 1998 Edition;

(c) Oregon Specialty Code, 1998 Editions;

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

(e) United States Department of Transportation laws and regulations. See also CFR Title 17, Part 18, Subparts J and JJ.

(12) The transportation of Display Fireworks Shall comply with the following:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

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

(d) United States Department of Transportation laws and regulations. See also CFR Title 17, Part 18, Subparts J and JJ.

(13) Fireworks may be delivered to the Display Site up to a maximum of 72 hours prior to the date and time of the permitted Display. Security at the Display Site will be continuous until the date and time of the Display. Fireworks may be delivered to the Display Site up 72 hours prior only after a security plan has been submitted to and approved by the Local Fire Authority.

(14) Special consideration may be given for increasing the 72 hours maximum as allowed in 837-012-0835(13) for exceptionally

large displays. Approval Shall be granted prior to arriving at the Display Site and Shall be approved by both the Office of State Fire Marshal and the Local Fire Authority.

(15) All Fireworks at the Display Site Shall meet the requirements of NFPA 1124, Code for the Manufacture, Transportation and Storage of Fireworks 1998 Edition.

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

Stat. Auth.: ORS 476.030 & 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0840

Selection of Display Site and Set Up

(1) Prior to the Display, the areas selected for the Discharge Site, Fallout Area, spectator viewing and parking Shall be inspected and approved by the Local Fire Authority and Law Enforcement Authority.

(2) The purpose of this rule is to provide guidance for clearances upon which the Local Fire Authority and Law Enforcement Authority Shall base their approval of the Display Site.

(3) The required minimum separation distance between the Discharge Site and any spectators, vehicles or readily combustible materials is set forth in Table 1. This distance is determined by the largest size Aerial Shell to be discharged at the intended Display. At a minimum, the Fallout Area for a Display Shall be the required minimum separation distance set forth in Table 1.

(a) Where added safety precautions have been taken, or particularly favorable conditions exist, the Local Fire Authority may decrease the required separation distance pursuant to Table 1. In no case may the required separation distance be less than 70' per inch of Aerial Shell diameter. Final approval of the decrease in distance Shall be the responsibility of the Office of State Fire Marshal.

(b) When unusual or safety threatening conditions exist, the Local Fire Authority Shall increase the required separation distance pursuant to Table 1 as necessary to provide adequate safety for the Display Site, spectators, and surrounding property.

(4) The required minimum distance from the Discharge Site to any health care, detention or correctional facility Shall be at least twice the distance set forth in Table 1.

(5) The required minimum distance from the Discharge Site to any bulk storage area of materials that pose a flammability, explosive or toxic hazard Shall be at least twice the distance set forth in Table 1.

NOTE: To determine whether materials pose these hazards, see NFPA's Fire Protection Guide to Hazardous Materials.

Table 1

Minimum Radius of Display Site for Outdoor Display of Fireworks

Shell Size — Distance in Feet

2" — 200

3" — 300

4" — 400

5" — 500

6" — 600

7" — 700

8" — 800

9" — 900

10" — 1000

11" — 1100

12" — 1200

More Than 12" — Approval of Local Fire Authority

This Table requires a minimum separation distance of 100 feet per inch of Aerial Shell plus additional footage as may be necessitated by the Display Site.

(6) Figure 1 demonstrates some of the location requirements for a suitable Display Site where Mortars are placed vertically, such as may be the case for an electrically ignited Display: [Figure not included. See ED. NOTE.]

(7) The Discharge Site Shall be located so that the trajectory of the Aerial Shells Shall not come within 25 feet of any overhead object.

(8) Ground Display Pieces Shall be located at a minimum distance of 75 feet from spectator viewing and parking areas.

EXCEPTION: For Ground Display Pieces with greater hazard potential (such as large wheels with powerful drivers, and items employing large Salutes), and roman candles and multishot devices, the minimum separation distance Shall be increased to 140 feet minimum or 100 feet per inch of shell diameter. Example: 1.75" artillery type mortar shells Shall have a minimum separation distance of 175'.

EXCEPTION: Limited Display Permits that authorize only Retail Fireworks Shall not be subject to the 140 foot separation requirement. Separation requirements for Limited Display Permits authorizing only the use of Retail Fireworks Shall be at the discretion of the Local Fire Authority.

(9) Where Aerial Shells are to be stored at the Discharge Site for subsequent loading into Mortars during the Display, the 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.

(10) Figure 2 demonstrates some of the location 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 with a manually ignited Display: [Figure not included. See ED. NOTE.]

(11) Fireworks Shall not be discharged within 100 feet of any tent or canvas shelter. Unauthorized tents Shall not be located within the Display Site.

(12) Fallout Areas:

(a) The Fallout Area Shall be a large, open area;

(b) Spectators, vehicles, and/or readily combustible materials Shall not be located within the Fall Out Area during the Display.

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

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

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0850

Construction of Fireworks Aerial Shells

(1) 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);

(2) 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.

(3) Shells Shall be labeled with the type of shell, the shell size and the name of the manufacturer or distributor.

(4) 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).

(5) The label or wrapper of any type of aerial Salute Shall be conspicuously marked with the word "Salute";

(6) 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.

(7) In order to allow the Individual 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.

(8) 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 fired Displays, there is no requirement for Safety Caps except that there Shall be no exposed pyrotechnic composition.

(9) 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 3 ounces;

(10) Storage of Aerial Shells not in Mortars:

(a) All Fireworks Shall be stored and transported according to the requirements of 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 Wholesaler or destroyed according to the Wholesaler'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 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 be upwind from the Discharge Site.

EXCEPTIONS:

-1- When acceptable to the Local 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.

(11) 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 aboveground 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 Operators or Assistants 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 Operators or Assistants 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 may be conspicuously painted or otherwise marked on the top of all Mortars.

(12) When more than one Operator or Assistant will be igniting the Aerial Shells for a Display, it is preferred that the line of Mortars be separated in some manner and that only one Operator or Assistant light shells in each designated area.

(13) 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.

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

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

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2004, f. & cert. ef. 1-14-04

837-012-0855

Barge Requirements

(1) Barges Shall be permitted to be manned or unmanned as long as the Operator and Assistants remain in control of the Barge, Barge Display Site and firing of the Display.

(2) The movement and location of a Barge(s) Shall be controlled at all times, whether self propelled, controlled by another vessel, or secured by anchoring or mooring.

(3) The means of controlling the movement and location of a Barge pursuant to subsection (2) of this rule Shall be done so by means that have been approved by the Local Fire Authority prior to the Display.

(4) Barges Shall be used as a Discharge Site only if the Barge is sufficiently stable and seaworthy so that the type of Fireworks and the placement of the Fireworks, Mortars, and accompany equipment on the Barge Shall not compromise the stability or seaworthiness of the Barge when the Fireworks are discharged.

(5) When the Operator and/or Assistant(s) Shall be located on the Barge during the Display, the Barge(s) that are manned during firing Shall have a safety shelter. The safety shelter Shall:

(a) Be of sufficient size to accommodate all Individuals present during the actual firing of Display;

(b) Have a minimum of three sides and a roof; and

(c) Have walls and a roof constructed of at least 3/4 in. (19 mm) plywood or equivalent material.

(6) Separation between Mortars and safety shelter Shall be 2ft/in. (0.6 m/25 mm) of diameter of any Mortars up to 6 in. (152 mm) in diameter. For shells larger than 6 in. (152 mm) in diameter, the minimum separation distance Shall be 4 ft/in. (1.22 m/25 mm) of shell diameter.

EXCEPTION: If the safety shelter is constructed of stronger material, then the separation distance between Mortars and the shelter Shall be permitted to be reduced at the discretion of the Local Fire Authority and/or the Office of State Fire Marshal.

(7) The required minimum size for a Barge (in square feet) for a particular Display Shall be determined by the following calculations;

(a) Minimum Discharge Site (in square ft) = sum of (total number of each size Mortar times its inside diameter) divided by two (2).

EXCEPTIONS: Multi-shot devices up to 3 in. in diameter Shall be calculated at twice the actual footprint of each such device (length X width). Ground Display Pieces Shall be excluded from the calculations for minimum Display set-up area.

(b) Total # of 3 in. Mortar x 3 + total number of 4 in. Mortars x 4 + total number of 5 in. Mortars x 5 + etc.)/2

EXAMPLE: A Display containing 100 - 3 in. shells, 50 - 4 in. shells, 20 - 5 in. shells, 10 - 6 in. shells, and 5 - 8 in. shells would require the following minimum Display set-up area.

$$\frac{100 \times 3 + 50 \times 4 + 20 \times 5 + 10 \times 6 + 5 \times 8}{2}$$

$$\frac{300 + 200 + 100 + 60 + 40}{2}$$

$$700 / 2 = 350 \text{ sq ft}$$

(8) Barges Shall be configured, and the Display so arranged, that Operators, Assistants and any other Individuals on the Barge can readily exit the Barge in case of an emergency.

Stat. Auth.: ORS 476.030 & 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 6-2006, f. & cert. ef. 3-10-06

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 and/or Operator 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 Display Site to prevent spectators or any other unauthorized Individuals from entering the Display Site. The Display Site Shall be so restricted throughout the Display and until the Display 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 Fireworks materials are present, public access to the Display 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 some situations, it is believed that it is appropriate to have one Individual tending each Ready Box or shell storage area in use at a given time. Similarly, it is believed that there should be two Individuals reloading shells into Mortars for each Individual igniting the Aerial Shells. Unless racks of Chain Fused shells are being fired, it generally is believed that a single

Individual 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 Individual lighting them.

(8) The Display Operator is responsible for meeting the administrative rules, statutory requirements and any other applicable requirements for the Display including ensuring that all Assistants are fully trained in the proper performance of their assigned tasks and that they are knowledgeable of safety hazards.

(9) If at any time before or during the Display, the Operator, Local Fire Authority, or the Law Enforcement Authority knows or should know that an adverse condition exists that significantly affects safety, Display Shall be postponed until the condition is corrected.

(10) If at any time before or during the Display, the Operator, Local Fire Authority, or the Law Enforcement Authority knows or should know that the lack of crowd control poses a danger, the Display Shall immediately be discontinued until such time as the situation is corrected.

(11) If at any time before or during the Display, the Operator, Local Fire Authority, or the Law Enforcement Authority knows or should know that high winds, precipitation, or other adverse weather conditions prevail, such that 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 materials to be used in the Display from adverse weather conditions. Moisture-damaged materials Shall not be used.

(15) No Individual Shall be allowed in the Discharge area while under the influence of alcohol, narcotics, or drugs.

(16) Communication when required by the fire official means the Displays Shall be provided with a method. Such method may consist of a cellular or digital telephone, marine radio, walkie talkie systems or other approved means. Method of communication between the Operator, the Local Fire Authority and others as deemed necessary by the Local Fire Authority, example: ship-to-shore communication for Barge Displays. The method of communication Shall be determined by the Local Fire Authority.

(17) Operators Shall be continuously responsible for the Display from the beginning of the Display through completion of the Display including the after Display cleanup and inspection.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0865

Operations for Barge Displays

(1) Manual Firing of Displays Shall be allowed only under the following conditions:

(a) Shells Shall be loaded into Mortars and put into place prior to the Display. There Shall be no reloading of any kind during the Display;

(b) Shells Shall be single-Break only and Shall not exceed 6" in diameter;

(c) The Barge Shall meet double the size requirements established by OAR 837-012-0855;

(d) All Individuals, other than Operators and Assistants Shall be behind protective barriers during the Display. Protective barrier(s) must meet the strength requirements of 3/4 inch (19mm) plywood or equivalent.

(e) Electrical Firing and Manual Firing on the same Barge is allowed when the Mortars to be used for Manual Firing Shall be separated from Mortars to be used for Electrical Firing by a minimum of 25 feet.

(f) All Aerial Shells greater than 6" in diameter Shall be fired using Electrical Ignition or other means of remote ignition that place the shooter and Assistants at least 75 feet away from the Mortar or behind a sturdy barricade at the time of ignition of the Lift Charge.

(2) A U.S. Coast Guard approved personal flotation device (PFD) Shall be provided and available for each Individual working on the

Barge. Those PFD's Shall be properly worn anytime the Barge is not moored at the dock. PFD's Shall have or include a visual location device.

(3) A watercraft Shall be ready and capable of providing a rapid emergency response during the Display.

(4) During the Display only necessary Individuals Shall be present on the Barge. No spectators Shall be present on the Barge.

(5) Necessary Individuals include:

(a) Operator and Assistants;

(b) Local Fire Authority department personnel;

(c) Barge Operators; and

(d) Local Fire Authority, Coast Guard, law enforcement, or other regulatory authority acting within the scope of their official capacity.

(6) Barge Shall be free of all nonessential combustible materials.

(7) Fuel tanks are deemed essential material to perform the Display for vessels controlling, marshaling, or adjoining the Barge from which Fireworks are being discharged.

(8) Barges constructed of wood or other combustible material Shall be permitted to be used as a Fireworks Display Site when the requirements of these rules and any other applicable state, local, and federal requirements pertaining to Fireworks are met.

(9) Barges constructed of wood or other combustible material can be used provided the surface of the Barge has been protected from fire by means acceptable to the Local Fire Authority. The Barge should also be of sufficient construction and configuration to safely allow the firing of the Display. Consideration should be given to the conditions that could affect the separation distance. Greater distance might be required to allow for the effects of sea conditions, wind, and drift of the Barge.

(10) Whenever, in the opinion of the Local Fire Authority, the Operator, or the Barge captain, conditions such as high seas or rapid current pose a potential safety hazard to the Operator and Assistants, spectators, surrounding area, or any other Individuals, the Display Shall be postponed until conditions improve.

Stat. Auth.: ORS 476.030 & 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

837-012-0870

Loading and Firing of Shells

(1) Shells Shall be carried from the storage area to the Discharge Site only by their bodies, never by their fuses.

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

(2) Shells Shall be checked for proper fit in their Mortars prior to the Display.

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

(4) The Person loading shells Shall be reasonably certain that the shell is properly seated in the bottom of the Mortar.

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

(6) The Safety Cap protecting the fuse Shall not be removed by the Person responsible for igniting the fuse until immediately before the shell is to be fired.

EXCEPTION: Where Electrical Ignition is used. The Electric Matches are attached prior to the Display, generally with wires connected to an Electrical Firing Unit during the Display. The Operator or an Assistant ignites the Fireworks from the Electrical Firing Unit during the Public Fireworks Display.

(7) Shells Shall be ignited by lighting the tip of the fuse with a Fusee, torch, Portfire, or similar device. The Operator Shall never place any part of their body over the Mortar at any time. As soon as the fuse is ignited, the Operator Shall retreat from the Mortar area.

EXCEPTION: Alternatively, Electrical Ignition may be used.

(8) The first shell fired Shall be observed carefully by the Operator to determine that its trajectory is such that the shell functions over the Fall-Out Area and that any dangerous debris or unexploded shells will land in the Fall-Out Area. The Operator Shall determine whether or not to begin the Display and Shall Monitor the Display continuously to determine if the Display continues to meet all requirements for the continuance of the Display.

(9) The Display Shall be interrupted and the Mortars Shall be reangled or repositioned as necessary for safety any time during a Display. In the case of a Barge, the Display Shall be interrupted and the Barge Shall be repositioned as necessary for safety any time during 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, Individuals 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 reignition of Chain Fused Aerial Shells Shall only be attempted at properly installed ignition points.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0875

Mortar Racks for Barge Displays

(1) Mortar Racks Shall be constructed in a thorough manner to be capable of holding multiple Mortars in position during normal functioning.

(2) Mortar Racks that are not inherently stable Shall be secured or braced to stabilize them. Stabilization Shall be accomplished by using stakes, legs, A-frames, side-boards, or equivalent means. Inherently stable Shall mean that if the base of the rack, before being loaded with Fireworks, were tipped 50 degrees from the horizontal in any direction, it would then return to the horizontal position.

(3) Mortar Racks Shall be oriented, angled, or oriented and angled in such a way that maximizes the spectator's safety.

Stat. Auth.: ORS 476.030 & 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0880

Ground Display Fireworks

(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 Fall-Out 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.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0890

Site Clean-Up

(1) Following the Display, the Operator, and Assistants Shall conduct an inspection of the Fall-Out 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 Wholesaler who supplied the Fireworks 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 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

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 **Oregon Fire Code 2004 Edition, Oregon Structural Specialty Code 2004 Edition, and NFPA 1124 Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles 2003 Edition**, these rules or requirements of the Local 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 Display. The description Shall include:

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

(b) The dates the Fireworks will be at each storage site; and

(c) The type of magazine in which the Fireworks Shall be stored.

(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 7 days after the Display date.

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

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 6-2006, f. & cert. ef. 3-10-06

837-012-0910

Prohibited Acts and Limitations

(1) No Individuals Shall be allowed in the discharge area while under the influence of alcohol, narcotics, or drugs.

(2) No smoking Shall be allowed within 50 feet of any area where Fireworks or other pyrotechnic materials are present.

(3) Only authorized Individuals will be allowed within the Discharge Site.

(4) No Individual 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 Wholesale, or Retail Fireworks Permit or operator certificate suspended or revoked 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. If the Display Site is a large body of water or close proximity indoor event, and in the opinion of the Local Fire Authority and the State Fire Marshal the Display presents no more fire hazard than at other time, the Permit Shall be issued.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 6-2006, f. & cert. ef. 3-10-06

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 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

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 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

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 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 in accordance with ORS 161.615;

(b) The sentence to pay a fine for a Class B misdemeanor Shall be 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 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03

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 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0960

Fire Protection

Fire extinguishers Shall be provided in numbers and locations throughout the Display Site as required by the Local 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 Local Fire Authority Shall be provided.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

837-012-0970

Reports for General Displays

(1) Within 10 days of 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. Certification and/or future Permits may be denied, suspended, and/or revoked for false reporting or failure to complete the report.

(2) The Operator Shall provide the information on the report form provided by the Office of State Fire Marshal. 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 of the Display and who is completing the report;

(b) Name of Permit Holder 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 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02

Fireworks Citations and Civil Penalty Assessments

837-012-1000

Authority and Application

(1) These rules are promulgated under the State Fire Marshal's authority contained in ORS 476.030 and 480.165.

(2) These rules apply to any Person who violates any provision of ORS 480.110 through 480.165 and the rules adopted thereto including, but not limited to, those for public fireworks displays, agricultural use of fireworks, wholesale and retail sales of fireworks, special effect fireworks, and/or manufacturing of fireworks.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 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 Noisemakers.

(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 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 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 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 837, division 12.

(5) Each separate Instance of non-compliance with ORS 480.110 through 480.165 or OAR 837, division 12 shall be considered a separate Violation.

(6) Each day that a Violation continues shall be considered a separate Violation.

(7) The distribution, sale, use, manufacture, or possession of any amount of illegal Fireworks is prohibited and subject to Citation and penalty.

(8) In addition to the issuance of Citations and penalties under these rules, the State Fire Marshal and fire authority acting in accordance with ORS 476.060 and 480.154(2) and OAR 837-012-0560(1)(a) and 837-012-0675(1)(a):

(a) May confiscate any amount of illegal Fireworks; and

(b) May confiscate other Fireworks possessed by Persons violating ORS 480.110 through 480.165 and OAR 837, division 12.

(9) In addition to the issuance of Citations, penalties, and the confiscation of Fireworks, the State Fire Marshal may also revoke, suspend, or deny any Fireworks permit provided for under ORS 480.110 through 480.165 to any Person who fails to pay a penalty(ies) assessed under these rules.

(10) The penalty for each Violation shall range from \$0 to \$500 a day depending upon the Type and Instance of the Violation.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 837-012-1130 through 837-012-1160, except as provided in OAR 837-012-1100.

(2) The Types of Violations are:

(a) Least — Type I;

(b) Minimal — Type II;

(c) Moderate — Type III;

(d) Severe — Type IV.

(3) The Violation Instance is determined based on the number of times a Person has committed a Violation. Table 2. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 837, division 12.

(2) A Citation may impose a penalty or provide a warning (OAR 837-012-1050, Table 2).

(3) The Citation shall be forwarded to the Office of State Fire Marshal within ten days of issuance. Where possible, each Citation shall be accompanied by a copy of the issuing authority's written report, inspection sheets, Fire District Property Report (or evidence receipt — Form #920-021-06) or any other forms that are completed during the process of issuing Citations.

(4) The Office of State Fire Marshal shall issue a notice of civil penalty based upon the information contained in the Citation and any accompanying documentation.

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

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 837-012-1050(3).

(2) Examples of Type I Violations include but are not limited to:

(a) Failure to post "No Smoking" signs at the retail Fireworks sales stand;

(b) Failure to provide required fire extinguishing equipment at the retail Fireworks sales stand;

(c) Failure to maintain a clean, orderly area within 20 feet of the retail sales area;

(d) Failure to keep a copy of the retail sales permit at the retail sales stand while the stand is open;

(e) Possession of illegal Fireworks worth less than \$50.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 within or into the State of Oregon;

(c) Omission of the name of the retail sales permit holder and retail sales permit number on Fireworks cartons, containers, cases, and associated paperwork purchased by the permit holder and shipped within or into the State of Oregon;

(d) Possession of more than \$50 but less than \$100 worth of illegal Fireworks;

(e) Discharge of less than \$50 worth of illegal Fireworks;

(f) Smoking or the ignition of Fireworks within 50 feet of any Fireworks stand.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 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 & 480.280

Stats. Implemented: ORS 480.200 - 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; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1210

Definitions

For purposes of OAR 837-012-1200 through 837-012-1420 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 *BATFE* 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) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(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) Is always attended and in line of sight vision of a holder of a *certificate of possession*.

(c) Complies with the construction requirements of NFPA 495, Explosive Materials Code, 2001 Edition, 8-6.3 (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 non-electric 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, 2001 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 contains 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 unfortified 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 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 (8) of this rule.

(16) "Magazine" has the meaning provided in ORS 480.200(5). (Refer to OAR 837-012-1210(10) 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) "May" means a regulation of conduct and implies probability or permission.

(19) "May Not" means a prohibition of conduct.

(20) "Must" means a mandatory requirement.

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

(22) "Owner" means a *person* with a vested ownership interest in the *magazine*. The term does not mean a renter, lessor, or sub-lessor of the *magazine*.

(23) "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.

(24) "Possession" means to own, to have physical *possession* of, or otherwise to exercise dominion or control over *explosives*.

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

(26) "Request for Hearing" means a written request for a *formal hearing*.

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

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

(29) “Store” means to deposit and place *explosives* in a *magazine* for safekeeping and future use.

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

Stat. Auth.: ORS 476 & 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; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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* must 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 Fire Code, 2004 Edition, and Oregon Structural Specialty Code, 2004 Edition.

(d) NFPA 495, *Explosive Materials Code*, 2001 Edition, as adopted in OAR 837-012-1340.

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

(3) Holders of a *certificate of possession* may purchase *explosives* only from those *persons* who have a *BATFE* license to sell *explosives*.

(4) Pursuant to ORS 480.210(1)(b), a *BATFE* 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) must be:

(a) A certified copy of a *manufacturer* or *dealer* license issued by the *BATFE*;

(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* must 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* must 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 *must* be signed and dated by the holder of the certificate.

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

Stat. Auth.: ORS 476 & 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; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1230

Fees

(1) Fees *must* be payable to the Office of State Fire Marshal.

(2) Fees *may* be paid at, or mailed to, the Office of State Fire Marshal and *must* accompany the appropriate application.

(3) Payment *may* be made by personal check, business check, cashier's check or money order. If the fee is paid by a personal or business check, the application will be placed in a pending status until the check clears the bank.

(4) Fees are:

(a) \$50 — *Certificate of Possession*

(b) \$30 — Examination

(c) \$125 — Initial two-year *magazine registration* with Office of State Fire Marshal inspection

(d) \$187.50 — three-year *magazine registration* renewal with Office of State Fire Marshal inspection

(e) \$250 — four-year *magazine registration* with Office of State Fire Marshal inspection

(f) \$50 — Initial two-year *magazine registration* with acceptance of *BATFE* inspection

(g) \$75 — three-year *magazine registration* renewal with acceptance of *BATFE* inspection

(h) \$100 — four-year *magazine registration* renewal with acceptance of *BATFE* inspection

(5) Fees are non-refundable and non-transferable.

(6) Three- and four-year renewal fee authority is in accordance with ORS 183.705 and OAR 837-012-1330(2).

Stat. Auth.: ORS 476 & 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; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 4-2005, f. & cert. ef. 2-17-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 14-2005, f. 10-21-05, cert. ef. 10-22-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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* must be on forms provided by the Office of State Fire Marshal.

(2) Applicants *must* complete the applications in full and pay the applicable fees before the Office of State Fire Marshal will process the applications.

(3) Pursuant to federal law, the Office of State Fire Marshal requires 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 remains confidential unless otherwise provided by law.

(4) Application for the examination required under ORS 480.225(1)(j):

(a) The application *must* be completed by the individual who will be taking the required examination.

(b) The application and fee *must* be received by the Office of State Fire Marshal a minimum of fourteen days before the applicant intends to complete the examination to allow time for:

(A) The fee payment to clear the bank.

(B) 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. Any *individual* who intends to possess *explosives* *must*:

(a) Complete the application.

(b) Submit a separate application and fee for each *certificate of possession* to be issued.

(c) 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. The *owner* of the *magazine* *must*:

(a) Complete the application.

(b) Submit a separate application for each *magazine* to be registered.

(c) Specify on their application which agency they select to inspect their *magazine*:

(A) The Office of State Fire Marshal.

(B) The Bureau of Alcohol, Tobacco, Firearms and Explosives.

Stat. Auth.: ORS 476 & 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; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1250

Eligibility for a Certificate of Possession

To be eligible for a *certificate of possession*, applicants *must* meet the requirements under ORS 480.225 and 480.230.

Stat. Auth.: ORS 476 & 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; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1260

Certificate of Possession — Examination

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

(2) Applicants *must* provide valid photo identification at the time they appear to take the examination. Only photo identification issued by the Department of Motor Vehicles in the applicant's state of residency is accepted by the Office of State Fire Marshal.

(3) The examination is based upon, and examines the applicant's knowledge of:

(a) *NFPA* 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340

(b) ORS 480.200 through 480.290.

(4) The examination is open book.

(a) Applicants are responsible for providing their own copy of *NFPA* 495, Explosive Materials Code, 2001 Edition, to use during the examination.

(b) The Office of State Fire Marshal provides 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 notifies applicants of the results of their examination using the address listed on the applicant's examination application.

(7) If an applicant fails to:

(a) arrive at the scheduled examination appointment, (b) complete the examination, or

(c) pass the examination, the applicant *must* submit a new application and fee pursuant to OAR 837-012-1230 and 837-012-1240 to the Office of State Fire Marshal.

(8) Passing examination scores are valid for two years from the date of the examination. If the examinee does not apply for and receive a *certificate of possession* within two years from the date of passing the examination, the examination score will be considered invalid and the applicant *must* re-take and pass the examination.

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

Stat. Auth.: ORS 476 & 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; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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 will conduct an investigation to ensure the applicant meets the requirements of ORS 480.225 and 480.230.

(2) The investigation includes, 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 issues a *certificate of possession* to the applicant.

(4) The Office of State Fire Marshal assigns 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 mails the original *certificate of possession* to the applicant at the address listed on the application.

Stat. Auth.: ORS 476 & 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; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1280

Certificate of Possession - Renewal

(1) A *certificate of possession* *must* 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* are the same as the issuance of the original certificate.

(4) Applications for the renewal of a *certificate of possession* may 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 may not *certificate of possession* could result in the expiration or *lapse*, of the current certificate.

Stat. Auth.: ORS 476 & 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; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1290

Explosives Storage

(1) *Explosives* may 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* *must* be in compliance with all applicable requirements of:

(a) *NFPA* 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340.

(b) Oregon Fire Code, 2004 Edition.

(c) Oregon Structural Specialty Code, 2004 Edition.

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

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

Stat. Auth.: ORS 476 & 480

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1300

Magazine Registration and Inspection

(1) *Magazines* not issued a *certificate of registration* may not be used for the storage of explosives.

(2) To be eligible for a *certificate of registration*, a *magazine* *must* comply with all requirements of:

(a) ORS 480.200 through 480.290.

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

(c) Oregon Fire Code, 2004 Edition.

(d) Oregon Structural Specialty Code, 2004 Edition.

(e) *NFPA* 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340

(f) All applicable federal, state and local laws, rules and regulations pertaining to *explosives*.

(3) Prior to the issuance of a *certificate of registration*, the *magazine* *must* be inspected for compliance with these rules.

(4) The inspection may be completed by:

(a) The Office of State Fire Marshal

(b) The *BATFE* 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.

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

Stat. Auth.: ORS 476 & 480

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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 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) All *notices of correction* are on forms provided by the Office of State Fire Marshal.

(5) *Notices of correction* specify the deficiencies required to be corrected prior to the *magazine* being issued a *certificate of registration*.

(6) *Notices of correction* specify the date by which the deficiencies are to be corrected.

(7) A copy of each *notice of correction* is provided by the OSFM to the owner of the *magazine* by:

- (a) personal service;
- (b) service by certified mail
- (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 retains all remaining copies of the notice until the re-inspection of the *magazine* is completed.

(9) At the end of the time allowed for correction of the deficiencies, as required by the *notice of correction*, the Office of State Fire Marshal may:

(a) Re-inspect the *magazine* to determine if the deficiencies specified in the *notice of correction* have been corrected.

(b) Complete the re-inspection section of the *notice of correction*.

(10) Upon re-inspection of the *magazine*, the Office of State Fire Marshal provides 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* will not be issued a *certificate of registration*.

(b) The *magazine* will not be issued a renewal *certificate of registration*.

(c) The *certificate of registration* for the *magazine* may be suspended or revoked.

Stat. Auth.: ORS 476 & 480
 Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
 Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1320

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

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

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

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

(a) The inspection was completed not more than 180 days prior to the date of the application for a *certificate of registration*;

(b) A United States Post Office postmark date is used to determine the date of application.

(c) The inspection proves the *magazine* is in compliance with these rules.

(4)(d) If deficiencies are noted on the *BATFE* inspection, the Office of State Fire Marshal *may* decide to conduct its own inspection. Should the Office of State Fire Marshal decide to complete its own inspection, the applicant *must* submit additional payment of the following applicable fee prior to the Office of State Fire Marshal conducting its inspection:

- (a) \$75 for an initial two-year registration.
- (b) \$137.50 for a three-year renewal.
- (c) \$175 for a four-year renewal.

Stat. Auth.: ORS 476 & 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; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2005(Temp), f. & cert. ef. 11-9-05 thru 5-7-06; OSFM 7-2006, f. & cert. ef. 5-5-06; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1330

Certificate of Registration of Magazine — Renewal

(1) All requirements for the issuance of a *certificate of registration* must be met before a certificate is renewed.

(2) Pursuant to ORS 183.705, *certificates of registration* may be renewed every two years, or up to four years, as determined by the Office of State Fire Marshal, in order to bring the Office of State Fire Marshal *magazine* registration renewal dates in alignment with the *BATFE* renewal dates.

(3) Applications for the renewal of a *certificate of registration* may 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 result in the expiration or *lapse*, of the current certificate.

(6) If a current *certificate of registration* expires or lapses, *explosives* may not be stored in the *magazine* until the *magazine* is issued a renewal *certificate of registration*.

Stat. Auth.: ORS 476 & 480
 Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
 Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1340

Fire and Life Safety Standards

NFPA 495, Explosive Materials Code, 2001 Edition, is hereby adopted with the following exceptions:

(1) Chapter four is not adopted.

(2) Although *NFPA* 495, Explosive Materials Code, 2001 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, 2001 Edition, 8-7.2).

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

[Publications referenced are available from the agency.]
 Stat. Auth.: ORS 476 & 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; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1350

Removal/Confiscation of Explosives

(1) *Explosives* may not be stored in a *magazine*, or possessed by an individual if:

(a) An application for a *certification 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.

(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 are carried out 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*

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

Stat. Auth.: ORS 476.030 & 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; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1360

Magazine Re-location — Reporting

(1) *Re-location* of any *magazine* required to be registered under ORS 480.244 *must* be reported to the Office of State Fire Marshal within 24 hours of its *relocation*.

(2) The *owner* or the *individual* with either:

(a) Physical *possession*; or

(b) Control of the *magazine* is the *individual* responsible for reporting the *relocation* of the *magazine*.

(3) The toll free reporting number for reporting *relocation* of *magazines* is 1-877-459-9366.

(4) A report of *relocation* of the *magazine* *must* 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*.

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

(3) There is no fee for reporting the *relocation* of a *magazine*.

Stat. Auth.: ORS 476 & 480

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1370

Record Keeping Requirements for Explosives

(1) Holders of a *certificate of possession* *must* 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 & 480

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1380

Hazardous Materials Reporting

Persons possessing 10 pounds or more of *explosives*, 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.

Stat. Auth.: ORS 453, 476, 478 & 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; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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 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 *may* 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 *may* 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* if:

(a) The *magazine* registered, or to be registered, is ineligible for registration under ORS 480.200 to 480.290 or these rules; or

(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 *may* 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* *may not* exceed three years, unless otherwise provided by law. In determining the appropriate sanction, the Office of State Fire Marshal *may* consider the following criteria:

(a) The severity of the violation or violations and the impact on public safety.

(b) The number of similar or related violations.

(c) Whether the violation or violations were willful or intentional.

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the *individual* or *person*.

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

(9) Any notice of denial, suspension or revocation issued by the Office of State Fire Marshal is mailed by certified mail to the most recent address on file with the Office of State Fire Marshal pursuant to OAR 837-012-1220(6).

Stat. Auth.: ORS 476, 478 & 480

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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* *must* be timely filed.

(3) A *request for hearing* is timely filed when the request is post-marked 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* waives 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 *may not* extend the deadline established in subsection (3) of this rule.

(6) A contested case *may* include:

(a) An *informal conference*, or

(b) A *formal hearing*.

(7) Contested cases are conducted pursuant to the provisions of ORS chapter 183 and the rules adopted thereto.

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

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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:

- (a) Be made or addressed to the Office of State Fire Marshal; and
- (b) Clearly state the issue or issues to be discussed.

(3) If the Office of State Fire Marshal and the party agrees, 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 in accordance with ORS chapter 183 and the rules adopted thereto.

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

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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 has the responsibility to arrange for a hearings officer to conduct the *formal hearing*.

(3) The Office of State Fire Marshal has the responsibility to set the date, time, and location for the *formal hearing*.

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

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

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

DIVISION 20**FLAMMABLE AND COMBUSTIBLE LIQUIDS****Flammable Liquid Dispensing Regulations****837-020-0025****Purpose and Scope**

These rules establish licensing requirements for *nonretail facility* and *conditional nonretail facility owners* and *operators*. These rules also establish the requirements that each *nonretail customer* and *conditional use customer* must meet to dispense Class 1 flammable liquids at those facilities.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0030**Effective Dates**

837-020-0025 through 837-020-0125 are effective upon date of filing.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02

837-020-0035**Definitions**

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0125 only, the following definitions apply:

(1) "Business Use" means that all *Class 1 flammable liquids* dispensed into *motor vehicles* and *containers* must be used only in the course of business activities.

(2) "Class 1 Flammable Liquid" means any liquid with a flash point below 25 degrees Fahrenheit, closed cup tester. Note: Diesel fuel is not a *Class 1 flammable liquid*.

(3) "Container" means all types of portable *containers*.

(4) "Conditional Use Customer" means a *person* who *may* dispense *Class 1 flammable liquids* at a licensed *conditional nonretail facility*, and meets the requirements of OAR 837-020-0045 through 837-020-0125.

(5) "Conditional Nonretail Facility" means a *nonretail facility* licensed by the State Fire Marshal, where *conditional use customers* may dispense *Class 1 flammable liquids*.

(6) "Dispensing" means the transfer of a *Class 1 flammable liquid* from a *facility* to a *motor vehicle* or *container*.

(7) "Documentation" means a *verifiable* Federal Employer Identification Number or *documentation* that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. *Documentation* *may* be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the business is currently licensed to operate.

(8) "Dual Operations" means a *nonretail facility* where *Class 1 flammable liquids* are dispensed at retail and nonretail with either a time separation of the retail and nonretail operations or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.

(9) "Emergency" means any man-made or natural element or circumstance causing or threatening loss of life, injury to *person* or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.

(10) "Emergency Management Agency" means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and ensure the conduct and coordination of functions for comprehensive *emergency* program management.

(11) "Emergency Service Agency" means an agency defined in ORS 401.025 or an entity authorized by an *emergency service agency* to provide services during an *emergency*.

(12) "Emergency Service Worker" means an *individual* who, under the direction of an *emergency service agency* or *emergency management agency*, performs *emergency services* and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the *emergency management agency* of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the *emergency service* system.

(13) "Emergency Services" means and includes 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*. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 22520).

(14) "Employee" means an *individual* who works for an *operator* or an *owner*.

(15) "Equivalent Documentation" means verifiable *documentation* that meets or exceeds the requirements of *documentation* required under ORS 480.345. The final decision as to what is acceptable as *equivalent documentation* rests with the State Fire Marshal.

(16) "Facility" means a site where *Class 1 flammable liquids* are dispensed. A *facility* can be either *retail*, *non-retail* or a combination or both.

(17) "General Public" means someone other than a *nonretail customer* or a *conditional use customer*.

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

(19) "License" means the official document issued by the State Fire Marshal that authorizes the operation of a *nonretail facility* or a *conditional nonretail facility* when otherwise in compliance with all applicable requirements of OAR 837-020-0040.

(20) "License Application" means the form and accompanying *documentation* required to be completed and submitted to the State Fire Marshal for approval prior to the issuance of a *nonretail facility* or a *conditional nonretail facility license*.

(21) "May" means a regulation of conduct and implies probability or permission.

(22) "May not" means a prohibition of conduct.

(23) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.

(24) "Must" means a mandatory requirement.

(25) "Nonretail Customer" means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345

(26) "Nonretail Facility" means a *facility* licensed by the State Fire Marshal, where *Class 1 flammable liquids* are dispensed through a fuel dispensing device that limits access to qualified *nonretail customers*.

NOTE: A dual operation facility is also a nonretail facility.

(27) "Operator" means a *person* that operates a *nonretail facility* or a *conditional nonretail facility*.

(28) "Oregon Fire Code (OFC)" means the *Oregon Fire Code*, 2007 Edition.

(29) "Owner" means any *person* that is the *owner of a nonretail facility* or a *conditional nonretail facility*. An *owner* may also be an *operator*.

(30) "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.

(31) "Retail Facility" means a facility that sells *Class 1 flammable liquids* to the *general public* in compliance with ORS 480.330.

(32) "Verifiable Documentation" means *documentation* that can be verified by the State Fire Marshal as true and accurate.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08

837-020-0040

General

(1) *Nonretail facility and conditional nonretail facility operators* desiring to engage in nonretail facility or conditional nonretail facility operations must comply with all applicable state, federal and local laws, rules and regulations including, but not limited to:

(a) ORS 480.310 through 480.385;

(b) OAR 837-020-0025 through 837-020-0125;

(c) **Oregon Fire Code, 2007 Edition;**

(d) OAR chapter 837, division 85 — Hazardous Materials Reporting; and

(e) NFPA 30 and 30A.

(2) In addition to other applicable provisions of law, each nonretail facility and conditional nonretail facility must meet the following requirements as per OAR 837-020-0040:

(a) Proper drainage grades or curbs must be situated to prevent any spills from flowing towards any building or other pump islands;

(b) Locations for the emergency fuel shut off devices must be clearly and conspicuously posted;

(c) Instructions for the operation of nonretail dispensers must be clearly and conspicuously posted;

(d) Locations of all fire extinguishers must be clearly and conspicuously posted;

(e) Fire extinguishers must be accessible;

(f) Be adequately lighted at all times when available for use;

(g) A fire alarm transmitting device or a telephone not requiring a coin or credit card to operate must be provided, and be accessible, at each nonretail facility and conditional nonretail facility during all hours of operation. This equipment must be maintained in good working order in the event emergency assistance is needed; and

(h) All applicable provisions of the OFC must be met.

(3) All nonretail facilities and conditional nonretail facilities must have the following warning signs posted. These signs must be readily visible and readable from each Class 1 flammable liquid dispensing pump from a distance of ten feet and state:

(a) Smoking is prohibited;

(b) Vehicle engines must be shut off while fueling;

(c) The nonretail facility or conditional use facility address;

(d) The telephone number of the owner or operator;

(e) Do not fill unapproved containers;

(f) Portable containers must be removed from inside the trunk, passenger compartment, or truck bed of a vehicle and placed on the ground before filling.

(g) It is a violation of law, subject to penalty, to dispense Class 1 flammable liquids without first receiving the training required by OAR 837-020-0055; and

(h) It is a violation of law, subject to penalty, to dispense Class 1 flammable liquids for personal use or into motor vehicles or containers not owned or used by a business, government, non-profit, or charitable organization, per ORS 480.345(4), (not required at conditional nonretail facilities).

(i) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

(j) To prevent static charge, do not reenter your vehicle while gasoline is pumping.

(k) If a fire starts, do not remove nozzle, use emergency fuel shut off.

(4) In addition to the provisions required by OAR 837-020-0040, nonretail dual operation facilities separated by distance must:

(a) Have signs visible from each driveway access point identifying the retail and nonretail pump islands. Signs must be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background;

(b) Where retail and nonretail dispensing of Class 1 flammable liquids occurs during the same hours, nonretail pump islands must be separated from retail pump islands by a space of at least 50 feet. Nonretail and retail pump islands may be separated by a distance of no less than 20 feet, provided prior approval is given by the State Fire Marshal, and that one of the following barriers is present:

(A) An approved solid physical barrier or a solid wall at least four feet high, constructed of fire resistive materials, and which runs the entire length of the pump island; or

(B) A fire resistive building, meeting the requirements of the building code.

(c) Unless pump islands are separated by at least 50 feet (20 feet with an approved barrier), retail and nonretail dispensing may not occur during the same hours at a facility.

(d) Where retail and nonretail dispensing is separated only by time, signs must be visible from each driveway access point and each Class 1 flammable liquid dispensing pump stating the days and hours that separate retail and nonretail operations occur. These signs must be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background.

(5) At least 45 days prior to the start of intended operations, the facility owner or operator of each new nonretail facility and conditional nonretail facility covered by OAR 837-020-0040 must file the appropriate license application forms and certifications with the State Fire Marshal.

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

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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 7-2008, f. 9-26-08, cert. ef. 10-1-08

837-020-0045

Operation of Class 1 Flammable Liquid Dispensing Device by General Public Prohibited

Owners or operators of facilities where *Class 1 flammable liquids* are dispensed at retail *may not* allow any *individual* other than *owners, operators*, and their *employees*, when acting in their employment capacity to use or manipulate any pump, hose, pipe or other device used at the *facility* to dispense *Class 1 flammable liquids* into a fuel tank of a *motor vehicle* or *container*.

EXCEPTIONS:

(1) *Individuals* other than *owners, operators* and *employees* of the *nonretail facility* may be authorized to dispense *Class 1 flammable liquids* at *nonretail facilities* if such *individuals* meet the requirements of ORS 480.310 through 480.385 and OAR 837-020-0025 through 837-020-0125.

(2) Motorcycle assisted fueling at *retail facilities*. A motorcyclist operating their motorcycle *may* handle the nozzle for *dispensing* fuel, but *may not* activate or deactivate any fuel dispensing device. *Individuals* who violate this fueling procedure *may* be subject to citation under OAR 837-020-0125.

(3) Aviation fuel dispensed at airports permitted by the Oregon Department of Aviation.

Stat. Auth.: ORS 476 & 480.380
 Stats. Implemented: ORS 480.330 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

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 *Class 1 flammable liquids* at *nonretail facilities* only under the following conditions: *The nonretail customer and conditional use customer* satisfies all requirements of OAR 837-020-0045 through 837-020-0095.

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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0055

Fire Safety Training

(1) *Owners or operators of nonretail facilities and conditional nonretail facilities* must provide an initial fire safety training course to each *nonretail customer* and each *conditional use customer* authorized to dispense *Class 1 flammable liquids*. The training may be delivered through any suitable method that contains all provisions of 837-020-0055(2) and must be provided prior to allowing *nonretail customers and conditional use customers* to dispense *Class 1 flammable liquids*. A signed document indicating receipt of safety training must be maintained by each *operator* as part of each customer file.

(2) The fire safety training described in section (1) must include:

- (a) The hazards of all forms of *Class 1 flammable liquids* to be dispensed by the *nonretail customers and conditional use customers*;
- (b) The location and operation of *emergency* fuel shut off devices required under the OFC;
- (c) The no smoking set-back requirements of the OFC;
- (d) Procedures for contacting the local fire department and other *emergency* service organizations;
- (e) The use of the fire extinguishers required under the OFC; and
- (f) The type of portable *containers* that may be filled and the safe procedures for filling them.

(3) All *nonretail customers and conditional use customers* who wish to dispense *Class 1 flammable liquids* at *nonretail facilities and conditional nonretail facilities* must successfully complete the fire safety training described in sections (1) and (2) of this rule prior to engaging in *dispensing* operations.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 476 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0060

Quantity of Purchase Criteria

(1) Except as provided below, each *nonretail customer* must file documentation with the *owner or operator* to show the *nonretail customer* purchases at least 900 gallons of *Class 1 flammable liquids* fuel every 12 months for business, government, nonprofit, or charitable purposes.

(2) The 900 gallons may have been purchased from any source. The *nonretail customer* must provide documentation to the *owner or operator* to demonstrate this requirement has been met if the *nonretail customer* does not purchase 900 gallons from the *owner or operator* they have entered into an agreement with. This documentation must be readily available for review by the State Fire Marshal.

(3) Diesel fuel used for the purpose of fueling a motor vehicle may be counted toward the 900 gallon minimum fuel purchase requirement.

(4) *Nonretail customers* that do not meet the requirements of ORS 480.345 and this section must have their access to nonretail fuel dispensing revoked by the *nonretail facility owner or operator*.

(5) *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* annually provides documentation that the fuel qualifies as a deductible farming expense on the *nonretail customer's* Schedule F of their 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 a *nonretail facility* on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(6) *Nonretail customer* applicants must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 837-020-0060 within 12 months of the date of their first fuel purchase or when their account was established. Customers failing to meet this requirement must be terminated as a *nonretail customer*.

NOTE: This section does not apply to *Conditional Use Customers*.

Stat. Auth.: ORS 480.380
 Stats. Implemented: ORS 480.345 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0065

Certification and Record Keeping

(1) Each *owner or operator of a nonretail facility* or a *conditional nonretail facility* must provide the safety training required by OAR 837-020-0055 to all their *nonretail customers* and their *conditional use customers*.

(2) *Owners or operators of nonretail facilities and conditional nonretail facilities* must maintain electronic or hard copy documentation that is readily accessible to demonstrate all *nonretail customers and conditional use customers* meet the requirements of OAR 837-020-0050.

(3) *Owners or operators of nonretail facilities and conditional nonretail facilities* must maintain documentation to demonstrate that, at a minimum, weekly site visits of each *nonretail facility and conditional nonretail facility* have been performed. Such documentation must be noted on forms approved by the State Fire Marshal, and must be readily accessible to demonstrate this requirement has been met.

(4) *Owner or operators of nonretail facilities and conditional nonretail facilities* must provide documentation to the State Fire Marshal to certify violations of OAR 837-020-0025 through 837-020-0125 have been corrected.

(5) The documentation of corrections must be received by the specified time referenced in the Notice and Order of Correction provided by the State Fire Marshal.

(6) Failure to provide documentation in accordance with OAR 837-020-0025 through 837-020-0125 constitutes a violation which may result in civil penalty assessment to the *owner or operator*, and may result in the revocation of their *license*.

Stat. Auth.: ORS 476 & 480.380
 Stats. Implemented: ORS 480.345 - 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0070

Nonretail and Conditional Use Customer Agreements

(1) The *owner or operator* must enter into a written agreement with *nonretail customers and conditional use customers* permitted under OAR 837-020-0050 to dispense fuel at the *nonretail facility and conditional nonretail facility*. Except as otherwise provided in ORS 480.355, the agreement must at a minimum:

(a) Certify that the *nonretail customer* will purchase at least 900 gallons of *Class 1 flammable liquids*, including diesel fuel, from any source during a 12-month period, or if the amount of *Class 1 flammable*, including diesel fuel, purchased is less than 900 gallons annually, file documentation that:

(A) The fuel qualifies as a deductible farming expense on the *nonretail customer's* current Schedule F of their federal income tax return; or

(B) The fuel was purchased by a governmental agency providing fire, ambulance or police services;

(C) The *nonretail customer* was a customer of *nonretail facility* on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(b) Provide a verifiable federal employer identification number or *equivalent documentation* to indicate participation in a business or employment with a government agency or nonprofit or charitable organization;

(c) Certify that the *nonretail customer* is employed by a business, government agency or nonprofit or charitable organization and that the *nonretail customer* will dispense *Class 1 flammable liquids* only into the fuel tank of a *motor vehicle* or *container* owned or used by the business, government agency or nonprofit or charitable organization;

(d) That all *Class 1 flammable liquids* dispensed at *nonretail facilities* will be for *business use* only, and that the *nonretail customer* is subject to a penalty if fueling a *motor vehicle* or *container* for personal use; and

(e) Certify that the *nonretail customer* or *conditional use customer* has satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(f) Require the *nonretail customer* or *conditional use customer* to submit a sworn statement, as defined in ORS 162.055, that the information supplied in the agreement is true and correct.

(2) The requirements of subsections (1)(a), (b), (c), and (d) of this rule to not apply to *conditional use customer* agreements.

Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.345 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0075

Complaint and Enforcement Procedures

(1) Alleged violations at *retail facilities*, *nonretail facilities*, and *conditional nonretail facilities* are subject to investigation by the State Fire Marshal.

(2) Upon request of the State Fire Marshal, the *owner* or *operator* must be able to demonstrate that all *nonretail customers* and *conditional use customers* dispensing *Class 1 flammable liquids* at their *nonretail facilities* and *conditional nonretail facilities* meet the requirements of OAR 837-020-0050.

(3) *Owners* or *operators* of *retail facilities*, *nonretail facilities*, and *conditional nonretail facilities* who fail to meet the applicable requirements of OAR 837-020-0040 may be subject to the enforcement and closure provisions of ORS 479.170 in addition to the provisions in OAR 837-020-0125.

Stat. Auth.: ORS 476 & 480.380
Stats. Implemented: ORS 480.365 & 480.375 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0080

Nonretail Fuel Dispensing During a Governor Declared Emergency

(1) During an *emergency* as defined in ORS 401.025, a *nonretail facility* may permit *individuals* who are not otherwise qualified under ORS 480.345 to dispense *Class 1 flammable liquids* if all conditions specified in this section are satisfied.

(2) The *owner* or *operator* of the *nonretail facility* holds a valid *nonretail facility license* issued by the State Fire Marshal;

(3) The *owner* or *operator* has paid an application fee of \$250 as required by ORS 480.350 for each *nonretail facility* and an annual fee of \$5 for each *nonretail customer* that enters into a written agreement with the *owner* or *operator*.

(4) The *owner* or *operator* has provided a blank copy of the form required by ORS 480.345 and OAR 837-020-0070 that will be used as the written agreement between the *owner* or *operator* and *nonretail customer* that outlines the safety training and *emergency* procedures to be used at the *nonretail facility*.

(5) The *nonretail customer* and the *owner* or *operator* of the *nonretail facility* have entered into a written agreement that meets the requirements of OAR 837-020-0070.

(6) The *Class 1 flammable liquid* is dispensed only into a *motor vehicle* or *container* of an *emergency service agency* as defined in ORS 401.025 or to an entity authorized by an *emergency service agency* to provide services during an *emergency*.

(7)(a) The *nonretail customer*, other than the *owner* or *operator*, is an *emergency service worker* as defined in ORS 401.025 and dis-

penses *Class 1 flammable liquids* only into the fuel tank of a *motor vehicle* or *container* owned or used by the *emergency service agency*; or

(b) An *owner* or *employee* of the entity authorized by the *emergency service agency* to provide services during an *emergency* and dispenses *Class 1 flammable liquids* only into the fuel tank of a *motor vehicle* or other *container* owned or used by the entity authorized by that agency to provide services during an *emergency*.

(8) The *nonretail customer*, other than the *owner* or *operator* or *employee*, dispensing *Class 1 flammable liquids* satisfies safety training requirements of OAR 837-020-0055.

(9) The *owner* or *operator* is responsible to bear the burden of production and proof that the requirements of OAR 837-020-0040, and any other rules of the State Fire Marshal have been satisfied.

Stat. Auth.: ORS 480.347
Stats Implemented: ORS 480
Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0085

Nonretail and Conditional Nonretail Facility License Requirements

(1) *Nonretail* and *conditional nonretail facilities* must obtain a valid *license* issued by the State Fire Marshal, prior to operating a *nonretail facility* or a *conditional nonretail facility*.

(2) A separate *license* is required for each *nonretail facility* and *conditional nonretail facility*.

(3) All initial *facility licenses* be valid for one year from the date of issue.

(4) In accordance with ORS 183.705, a renewal date of a *facility license* may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates,

(5) The State Fire Marshal will issue a *license* to the *owner* or *operator* if the *owner* or *operator* has:

(a) Complied with the requirements established by OAR 837-020-0040;

(b) Submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(c) Certified that the *owner* or *operator* will comply with all provisions of ORS 480.345, the OFC, and this division;

(d) Provided a blank copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;

(e) Provided a blank copy of the safety training that is provided to their *nonretail customers* and *conditional use customers*, to ensure the safety training meets all requirements of OAR 837-020-0055;

(f) Paid an application fee of \$250 for each *facility* site and \$5 for each *nonretail customer* and *conditional use customer* as required by OAR 837-020-0115.

(6) Any and all certification required by this section *must* be made in accordance with ORS 162.075.

(7) The *owner* or *operator* bears the burden of production and proof that the requirements of this Division, and all applicable rules of the State Fire Marshal have been satisfied.

(8) The State Fire Marshal may conduct an on-site inspection to determine compliance with OAR 837-020-0040 and other applicable fire and life safety laws prior to issuing a *nonretail facility* or *conditional nonretail facility license* to the *owner* or *operator* under section (4) of this rule.

(9) In addition to the requirements set forth in this section, *owners* or *operators* who wish to operate a *dual operations facility*, the *owner* or *operator* must provide to the State Fire Marshal, on State Fire Marshal forms, the specific hours and days when the *owner* or *operator* proposes to conduct only retail *dispensing* and the specific hours and days when the *owner* or *operator* proposes to conduct only non-retail *dispensing*.

(10) In addition to the requirements set forth in this section, *owners* or *operators* who wish to operate a *conditional nonretail facility*, *must* comply with the following:

(a) A *conditional 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;

(b) After investigation and public hearing, and after considering the comments of local residents and government officials, the State

Fire Marshal may issue a *conditional nonretail license* to an *owner* or *operator* for local non-commercial use if the State Fire Marshal finds:

(A) There is no *facility* where *Class 1 flammable liquids* are dispensed by attendants at *retail*, including *dual operation facilities*, within seven miles of the *owner* or *operator's nonretail facility*, and other undue hardship conditions exist. Such undue hardship conditions are 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 affected area;

(B) The *owner* or *operator* has certified that the *owner* or *operator* will comply with the applicable provisions of ORS 480.345(1), (5), (6)(d), and (6)(e), and this division;

(C) The method of access to a *conditional nonretail facility* only allows access to that specific *conditional nonretail facility* and no other *nonretail facility* or *conditional nonretail facility*.

(11) Within a given geographical area, applications for *conditional nonretail licenses* issued under this section are considered in order of priority of receipt. The date the State Fire Marshal actually receives the application determines its priority.

(12) A *conditional nonretail license* may not be renewed if the requirements of this Section are not met at the time of application for renewal. There is no guarantee of continued operations under this section.

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

Stat. Auth.: ORS 480.380 & 480.355

Stats. Implemented: ORS 480.350 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0105

License Denials, Revocations and Suspensions; Civil Penalties and Appeals

(1) The State Fire Marshal may deny, revoke, or suspend a *nonretail facility* or *conditional nonretail facility license* if the *owner* or *operator*:

(a) Fails to comply with OAR 837-020-0040, or any other rule, pertaining to nonretail fuel dispensing, adopted by the State Fire Marshal; or

(b) Falsifies any information in the application for the *license*.

(2) The option of denial, revocation or suspension may be based on the following:

(a) The number of similar or related violations alleged to have been committed in the current license year;

(b) Whether the violation or violations were willful or intentional;

(c) The prior history of violations committed by the *owner* or *operator*; or

(d) Other circumstances determined by the State Fire Marshal to be applicable to the particular violation or violations.

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

(4) Where the State Fire Marshal has alleged a self-service violation at a *retail facility*, *nonretail facility*, or *conditional nonretail facility*, the burden of proof to show the purchase was in compliance with the requirements of ORS 480.330 through 480.385 and OAR chapter 837, division 20 shifts from the state to the *owner* or *operator* once the state establishes and provides the *owner* or *operator* with the following information:

(a) The date and time of the alleged violation;

(b) The *facility* location, including the pump number where the alleged violation occurred;

(c) The vehicle description and *license* number; and

(d) A description of the *individual dispensing the Class 1 flammable liquids*.

(5) Any *owner* or *operator* who applies for a *license* required by OAR 837-020-0085, and whose application is denied, is entitled to file an appeal. Appeals are conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(6) Before suspending, revoking or terminating a *license* issued under OAR 837-020-0085, the State Fire Marshal will give prior notice to the licensee and offer a hearing. If requested, such hearings are conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(7) Where the State Fire Marshal proposes to assess a civil penalty under ORS 480.385 and OAR 837-020-0125, appropriate notice of appeal rights will be given under ORS 480.385.

(8) Judicial review of a final order made after a hearing requested under section (1) or (2) of this rule will be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(9) Nothing in this Section may prevent the State Fire Marshal from closing a *nonretail facility* or a *conditional nonretail facility* under ORS 479.170, provided that the accelerated appeals process explained in ORS 479.180 is observed.

(10) Where a *nonretail customer* or a *conditional use customer* account list has been submitted to the State Fire Marshal during enforcement or appeal proceedings, the State Fire Marshal will treat the list as confidential to the extent allowed by law.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.355, 480.365 & 480.375 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0115

Application, License Renewals, and Annual Fees

(1) Any *owner* or *operator* engaged in, or intending to engage in, the operation of a *nonretail facility* or a *conditional nonretail facility* must apply for and obtain a *license* issued by the State Fire Marshal. The application, fees, and supporting documents for new facilities must be submitted and received by the State Fire Marshal 45 days prior to the start of the operation.

(2) A separate *license* must be applied for and obtained for each *nonretail facility* or *conditional nonretail facility*.

(3) The *license* must be obtained prior to start of the *nonretail facility* or *conditional nonretail facility* operation, or the *owner* or *operator* may be assessed a civil penalty and be subject to closure of the *Nonretail* or *conditional nonretail facility*.

(4) The application fee for each *nonretail facility* and *conditional nonretail facility license* is \$250 per facility. *Licenses* are valid for one year from the date of issue.

(5) In accordance with ORS 183.705, the *license* renewal date of a *facility* may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(6) *License* fees may be either paid at, or mailed to, the State Fire Marshal. The *license application* may be either delivered to or mailed to the State Fire Marshal.

(7) Payment may be made by personal check, business check, cashier's check or money order made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal may not take any action on the *license application* until the check has cleared the bank.

(8) In addition to the application and renewal fees assessed by this section, *owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* must pay to the State Fire Marshal an annual account fee of \$5 for each *nonretail customer* and *conditional use customer* who has access to dispense *Class 1 flammable liquids* at any time during the applicable *license* year.

(9) *License* renewal applications, accompanying *documentation*, and payment must be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the *license* expiration for a *license* renewal valid for the following *license*. If the 30 days prior to the *license* expiration date falls on a day when a postmark cannot be obtained, the applications must be postmarked or received by the Office of State Fire Marshal on the preceding business day.

(10) *License application* renewals postmarked or received after the deadline set forth under subsection (8) of this rule may be subject to a civil penalty.

(11) *License* and customer fees received by the Office of State Fire Marshal are deposited with the State Treasurer, placed in the State Fire Marshal Fund, and used to fund the non-retail fuel dispensing program.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.350 & 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; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08

837-020-0120**Hearings and Contested Cases**

A *person* may request a Formal Hearing regarding the suspension, revocation, or denial of a *license* by the State Fire Marshal.

(1) A Request for Hearing *must* be timely filed.

(2) A Request for Hearing is timely filed when the request is postmarked or received by the 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.

(3) If a Request for Hearing is not timely filed under section (c) of this rule, the *person* waives the right to a contested case under ORS Chapter 183.

(4) A *person* may write to or call the State Fire Marshal to informally discuss the notice of suspension, revocation, or denial; however, an informal communication does not extend the deadline established in 837-020-0105 subsection (3).

(5) A contested case *may* include:

(a) An Informal Conference;

(b) A Formal Hearing, or both.

(6) A contested case will be conducted pursuant to the provisions of ORS Chapter 183 and the rules adopted thereto.

(7) The State Fire Marshal *may* provide an opportunity for an Informal Conference. A request for an Informal Conference *must* be in writing; and *must*:

(a) Be addressed to the State Fire Marshal; and

(b) Clearly state the issue or issues to be discussed; and

(c) If the State Fire Marshal and the party or parties agree, an Informal Conference *may* be held by telephone.

(8) After an Informal Conference, the State Fire Marshal *may* amend, withdraw, or reduce the suspension, revocation, or denial. Such action will be taken in accordance with ORS Chapter 183 and the rules adopted thereto.

(9) A *person* may file a written Request for Hearing before or after an Informal Conference, at any time before the deadline established in section (3) of the Contested Cases section of OAR 837-020-0120.

(10) The State Fire Marshal is responsible to arrange for a hearings officer to conduct the Formal Hearing.

(11) The State Fire Marshal will set a date, time, and location for the Formal Hearing.

Stat. Auth.: ORS 476.030 & 480.310 - 480.385

Stats. Implemented: ORS 480.310 - 480.385

Hist.: OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0125**Penalties**

The State Fire Marshal *may* impose a civil penalty of up to \$500 for each violation of ORS 480.310 through 480.385, and OAR 837-020-0040. All penalties are imposed in accordance with the following penalty matrix established by the State Fire Marshal. Penalties *may* be based on history, violation types, number of instances of violations identified, and severity of violations.

Violation Types, Instances, and Penalty Assessments

(1) The Types of Violations are:

(a) Least — Type I;

(b) Minimal — Type II;

(c) Moderate — Type II;I

(d) Severe — Type IV.

(2) The violation instance is determined based on the number of times a *person*, *individual*, *owner*, or *operator* has committed a violation. A violation occurs each time a *person*, *individual*, *owner*, or *operator* breaks a rule established by OAR 837-020-0040.

PENALTY MATRIX:**VIOLATION TYPE PENALTY INSTANCE**

	1	2	3
I. LEAST	\$25	\$50	\$ 75
II. MINIMAL	\$50	\$75	\$150
III. MODERATE	\$150	\$200	\$250
IV. SEVERE	\$300	\$400	\$500

TYPE I: LEAST

Eligibility Documentation (excluding safety training)

Signs —

Retail/Nonretail locations

Phone # of operator

It is a violation of law...

Days and hours of operation of time separation facility not present or correct

Other _____

TYPE II: MINIMAL

License applications not received by deadline

AST labels for above ground tanks not present

Dispensing instructions not present

Other _____

TYPE III: MODERATE

Unlawful dispensing at nonretail facilities

Certification of correction of deficiencies not provided in accordance with

Notice and Order

Weekly Site Inspections not done on a regular basis.

Signs —

No Smoking...

Emergency Fuel Shut Off Device location

Fire Extinguisher location

Do Not Fill Unapproved Containers

In Case of Fire...

Portable container

Discharge static electricity

Other _____

TYPE IV: SEVERE

Falsified license application

Required facility equipment not present or not in good working order

Safety training not provided prior to allowing customer to dispense fuel

Unlawful dispensing at retail facilities

Operating a nonretail facility or conditional nonretail facility without a license

Other _____

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.380 & 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); OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM

10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM

1-2007, f. 3-30-07, cert. ef. 4-1-07

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 & 480

Stats. Implemented: ORS 480.410 - 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; Renun-

bered 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 is a facility where the primary function is to store LP-Gas prior to further distribution. LP-Gas is received by cargo tank vehicle, railroad tank car, or pipeline, and then distributed by portable container (package) delivery, by cargo tank vehicle, or through gas piping.

(4) Company License means the same as an Installation License defined in OAR 837-030-0120(10).

(5) 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.

(6) Delivery Unit means any unit that is used to deliver or transport liquefied petroleum gas.

(7) Examination means a document designed to test an applicant's knowledge regarding liquefied petroleum gas, its properties, related equipment and applicable safety regulations.

(8) 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. The types of Fitter Licenses are:

(a) HVAC Fitter — Required for all individuals who perform LPG work on HVAC equipment, including hearth products;

(b) IC Fitter (Internal Combustion) — Required for all individuals who work on internal combustion engines of forklifts and vehicles;

(c) Master Fitter — Required for all individuals who perform LPG fitting or venting work, install, repair or remodel any piping or venting. This license covers all areas of LPG work.

NOTE: Individuals licensed as a fitter prior to May 16, 2005, are considered a Master Fitter;

(d) RV Fitter — Required for all individuals who work on recreational vehicles (license not required for construction or warranty work for manufactured dwellings or recreational vehicles).

(9) "Individual" means one distinct, individual human being. It does not mean person.

(10) 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.

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

(12) Liquefied Petroleum Gas means any liquid composed predominately of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes.

(13) "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.

(14) 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 & 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; OSFM 16-2005, f. & cert. ef. 11-9-05; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

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; (2006 Edition); and

(b) NFPA 58 — Liquefied Petroleum Gas Code (2008 Edition).

(c) NFPA 1192 — Standard on Recreational Vehicles (2008 Edition).

(2) Whenever the following phrases or abbreviations appear in the above referenced standards, they 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 Oregon Fire Code, 2007 Edition and Oregon Fire Code Chapter 38, 2007 Edition as amended for inspection and enforcement of liquefied petroleum gas installations pursuant to ORS 476.030(1) and 480.420(1). (Refer to OAR 837, division 40.).

(4) The Oregon State Fire Marshal recognizes the **State of Oregon Building Codes Division** inspection and enforcement authority on those portions of liquefied petroleum gas installations downstream of the first stage regulator. Depending on occupancy classification, these portions may be regulated under the Oregon Mechanical Specialty Code as adopted by OAR 918-440-0010 or the **Oregon Residential Specialty Code** as adopted by OAR 918-480-0005.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.420

Hist.: FM 22, f. 11-15-65; FM 59, f. 2-25-72, ef. 3-15-72; FM 62, f. 6-14-73, ef. 7-1-73; FM 66, f. 2-20-75, ef. 3-11-75; FM 1-1981, f. 7-20-81, ef. 8-1-81; FM 6-1985, f. & ef. 9-20-85; FM 1-1987, f. & ef. 3-18-87; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert. 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; OSFM 2-2002, f. & cert. ef. 2-25-02; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 16-2005, f. & cert. ef. 11-9-05; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

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 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 must complete the licensing process the same as any other new company.

(6) Fitter and truck equipment operator licensees may transfer from company to company without relicensing as long as the license has not expired.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.432

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; 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; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0150

Company License (Company Representative)

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

(2) Each location must 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 must 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 company must notify the State Fire Marshal, in writing, within two weeks of the transfer or resignation.

(5) The new company representative must 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 orig-

inal 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 & 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; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0160

Fitter License

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

(2) To qualify for a fitter license, an individual must 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 fitter may transfer their license to another company.

(5) The Office of State Fire Marshal must 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 & 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; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0170

Truck Equipment Operator License

(1) Any individual operating liquefied petroleum gas delivery equipment installed on a motorized vehicle must obtain a truck equipment operator license.

(2) To qualify for a truck equipment operator license, an individual must 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 must 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 & 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; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0180

Probationary Status (On-the-Job Training)

(1) Individuals who desire to obtain a fitter or truck equipment operator license may work up to 60 days of on-the-job training.

(2) The 60 days of training consist of actual work days. (For the purposes of tracking an individual's probationary status, work days are 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 must be under the supervision of a licensed fitter.

(4) On-the-job training for truck equipment operators must be under the supervision of a licensed truck equipment operator.

(5) Individuals receiving on-the-job training must pass the written examination required under OAR 837-030-0190 and obtain the required license 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 or truck equipment operator license, must immediately cease working as a fitter or truck equipment operator until such time as they have obtained the required license.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.435
Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0190

Examinations

(1) Persons applying for installation (company), fitter or truck equipment operator licenses must 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 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 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 have the following maximum time limits:

(a) Company Representative — 1 hour;

(b) Master Fitter — 2.25 hours;

(c) Truck Equipment Operator — 1.50 hours;

(d) Company Representative, Fitter, Truck Equipment Operator Combination — 3.75 hours;

(e) Company Representative, Fitter Combination — 2.75 hours;

(f) Company Representative, Truck Equipment Operator Combination — 2 hours;

(g) Fitter, Truck Equipment Operator Combination — 3.25 hours;

(h) IC Fitter — 1.50 hours;

(i) RV Fitter — 1.50 hours;

(j) HVAC Fitter — 1.50 hours;

(k) Company Representative, RV Fitter — 2 hours;

(l) Company Representative, HVAC Fitter — 2 hours;

(m) Company Representative, IC Fitter — 2 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 can use any information other than the information referenced in these rules to complete the examination, nor can 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, ORS 480.410 through 480.460, 480.990, and OAR 837-030-0100 through 837-030-0280.

(7) All applications to take examination must be made on a form provided by the Office of State Fire Marshal and must be accompanied by the fee required in ORS 480.434.

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

(9) If an applicant fails to arrive at the scheduled examination appointment, fails to complete the examination, or fails to pass the examination, the applicant must submit to the Office of State Fire Marshal a new application and fee pursuant to ORS 480.434.

(10) License holders and persons previously licensed are not required to complete new examinations unless a period of two years or more has elapsed from the date of their last license expiration date.

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

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.434

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 16-2005, f. & cert. ef. 11-9-05; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0200

License Application, Approval, Issuance

(1) All license applications must be on a form provided by the Office of State Fire Marshal.

(2) License applications may not be submitted until the applicant has passed the appropriate qualifying examination.

(3) The completed application form must contain the following:

- (a) Applicant's name;
- (b) Type of license applied for;
- (c) Name and address of the company;
- (d) Signature of the company representative; and
- (e) Company number assigned by the Office of State Fire Marshal.

(4) Applications must be accompanied by the appropriate license fee.

(5) Upon approval of the application, a license will be issued and mailed to the company.

(6) Company licenses are valid for a period of one year from date of issue. Fitter and truck equipment operator licenses are valid for a period of two years from date of issue. If the examinee has not applied for and been issued a license within two years from the date of completion of the examination in which the passing score was received, the examination score will be invalid and the applicant must re-take and pass the examination.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.434

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; 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; OSFM 2-2002, f. & cert. ef. 2-25-02; OSFM 16-2005, f. & cert. ef. 11-9-05; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0210

License Revocation, Suspension or Denial

(1) The State Fire Marshal may revoke, suspend, or refuse to issue or renew a license required under ORS 480.410 to 480.460. Any such revocation, suspension, or refusal to issue must be in conformance with ORS 183.310 to 183.550. Valid cause exists for the revocation, suspension, 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 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 or suspension may not exceed three (3) years if the circumstances of the licensee's or applicant's failure to comply with applicable laws and rules pertaining to

liquefied petroleum gas presented a significant hazard or other public danger.

(3) Licenses are the property of the Office of State Fire Marshal and must be surrendered upon request of the State Fire Marshal or a State Fire Marshal assistant.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.435

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0220

License Renewal

(1) All licenses must be renewed on or before a date specified by the State Fire Marshal. This date will be 30 days after service of written notice by the State Fire Marshal and will be specified on the renewal application.

(2) License renewals must be made on a form provided by the Office of State Fire Marshal and must be accompanied by the appropriate fees.

(3) Company license renewals are valid for a period of one year. Fitter or truck equipment operator licenses renewals are valid for a period of two years.

(4) Licenses not renewed by the specified date are subject to a late fee. The fees for the liquefied petroleum gas program are located in Oregon Revised Statute as follows: ORS 480.436 License fees; term of licenses; delinquency penalty.

(5) Licenses not renewed by their expiration date are invalid and the licensee must cease working until such time as licensing is brought current.

Stat. Auth.: ORS 476 & 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; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

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 must 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, must be in compliance with all applicable liquefied petroleum gas laws, rules and regulations.

(3) All equipment must 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 a State Fire Marshal 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 must include two complete sets of plans which 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 will be returned to the applicant with the written approval and an assigned permit number. One copy of the plans will 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 must be reported to the State Fire Marshal.

(9) The State Fire Marshal must 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 will be used to determine the reporting date.

(11) Notification must be made on a form (Notice of Installation of Liquefied Petroleum Gas Tank for Motor Fuel) and must 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 must sign the notice verifying the information is correct; and

(13) The appropriate tank installation fee for the liquefied petroleum gas program is located in Oregon Revised Statute as follows: ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

EXCEPTION: This section does 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 must 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 violation of the applicable fire and life safety standards, may be ordered by the State Fire Marshal to be taken out of service. Once out of service, it may 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 are available from the agency.]

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.450
Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 81, f. & ef. 3-3-76; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert. 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; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0235

Plan Review of Certain Storage Tanks

(1) Liquid Petroleum Gas installations wherein a single container is more than 2,000 gallons in water capacity, or the aggregate capacity of the installation is greater than 4,000 gallons, require a plan review from the Office of State Fire Marshal.

(2) Applications for plan reviews must be submitted to the Office of State Fire Marshal within 10 working days from the proposed installation date.

(3) Applications for plan reviews must be submitted on an Office of State Fire Marshal form and be accompanied by a \$100 fee.

Stat. Auth.: ORS 476.033 & 480.410 - 480.460
Stats. Implemented: ORS 476.033 & 480.410 - 480.460
Hist.: OSFM 16-2005, f. & cert. ef. 11-9-05; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0240

Reporting Tank Installations

(1) The State Fire Marshal must 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 will be used to determine the reporting date.

(3) Notification must 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 must be accompanied by a summary sheet that details the number and size of tanks installed during the preceding month.

(5) The company representative must sign the summary sheet verifying the information is correct.

(6) The appropriate tank installation fees must accompany the tank installation notices and summary sheet. The fee for the liquefied petroleum gas program is located in Oregon Revised Statute as follows: ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

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

Stat. Auth.: ORS 476 & 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; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0250

Inspection of Tank Installations

(1) State Fire Marshal Deputies or State Fire Marshal assistants will inspect a reasonable number of reported tank installations.

(2) Inspection records will be maintained at the Office of State Fire Marshal.

(3) Tank installation companies will 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 will notify the company of:

(a) Necessary corrections to bring the installation into compliance;

(b) The number of days (not to exceed 60 days) the company has to bring the installation into compliance.

(5) The installing company must 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 must be in writing; and

(b) Must be returned to the Office of State Fire Marshal.

(6) Corrections not made or not reported within the number of days allowed to bring the installation into compliance, are subject to fees for the liquefied petroleum gas program located in Oregon Revised Statute as follows: ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

Stat. Auth.: ORS 476 & 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; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0260

Bulk Storage Sites: Inspections/Notifications

(1) State Fire Marshal deputies or State Fire Marshal assistants may inspect bulk storage sites annually.

(2) Inspection records will be maintained at the Office of State Fire Marshal.

(3) The installing company will 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 will notify the company of:

(a) Necessary corrections to bring the installation into compliance;

(b) The number of days (may not exceed 60 days) the company has to bring the installation into compliance.

(5) The installing company must 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 must be written on the copy of the inspection notice provided to the company;

(b) The inspection notice must be returned 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, must be reported to the State Fire Marshal in writing within two weeks of the change.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.440 & 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

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 must 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 will be maintained at the Office of State Fire Marshal.

(4) Companies will 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 will notify the company of:

(a) Necessary corrections to bring the delivery unit into compliance;

(b) The number of days (may not exceed 60 days) the company has to bring the delivery unit into compliance.

(6) The company must 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 must be written on the copy of the inspection notice provided to the company.

(b) The inspection notice must be returned 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 must be reported to the State Fire Marshal in writing within two weeks of the change.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.440 & 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; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

837-030-0280

Fees/Penalties

(1) Fees are payable to the Office of State Fire Marshal.

(2) Fees must be paid at, or mailed to, the Office of State Fire Marshal and must accompany the appropriate application.

(3) Payment may 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 will not take any action on the application until the check has cleared the bank.

(4) Fees for the liquefied petroleum gas program are located in Oregon Revised Statute as follows:

(a) Examination Fees — ORS 480.434 Examination of applicants for licenses; issuance of license. Examination fees are non-refundable and non-transferable.

(b) Company License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(c) Fitter License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(d) Truck Equipment Operator License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(e) Company, Fitter, and Truck Equipment Operator License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(f) Plan Review Fee — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(g) Bulk Plant Inspection Fee — ORS 480.440 Inspection of certain storage tanks. (Excludes initial inspection during plant construction).

(h) Delivery Unit Inspection Fee — ORS 480.440 Inspection of certain storage tanks.

(5) Tank Installation Fees for all tanks: All tanks ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(6) Tank Reinspection Fees — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required. 10 year tank inspection fee — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(7) Penalty Fees for the Liquefied Petroleum Gas program are located in Oregon Revised Statutes as follows:

(a) ORS 480.436 License fees; term of licenses; delinquency penalty.

(b) ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(c) ORS 480.990 Penalties.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.436, 480.440, 480.450 & 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; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 16-2005, f. & cert. ef. 11-9-05; OSFM 8-2008, f. 9-26-08, cert. ef. 10-1-08

DIVISION 35

FIRE STANDARD COMPLIANT (REDUCED IGNITION PROPENSITY) CIGARETTES

837-035-0000

Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures for *fire standard compliant (reduced ignition propensity)* cigarettes.

(2) The scope of these rules applies to the implementation of ORS 476.755 through 476.806 and 476.995, relating to *fire standard compliant (reduced ignition propensity)* cigarettes.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0020

Effective Dates

OAR 837-035-0000 through 837-035-0340 are effective upon date of filing.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0040

Definitions

For the purpose of these rules, the following definitions apply to OAR 837-035-0000 through 837-035-0340:

(1) "Authorized Representative of the State Fire Marshal" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(2) "Cigarette" means a roll for smoking:

(a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made of paper or other non tobacco materials; and

(b) That, because of its appearance, the type of tobacco used in the filler or its *packaging* and labeling, is likely to be offered to or purchased by consumers as a *cigarette*.

(3) "Distribute" means to do any of the following:

(a) *Sell cigarettes* or deliver *cigarettes* for sale by another person to consumers;

(b) Receive or retain more than 199 *cigarettes* at a place of business where the person receiving or retaining the cigarettes customarily *sells cigarettes* or offers *cigarettes* for sale to consumers;

(c) Place *cigarettes* in vending machines;

(d) *Sell* or accept orders for *cigarettes* to be transported from a point outside this state to a consumer within this state;

(e) Buy *cigarettes* directly from a *manufacturer* or *wholesale dealer* for resale in this state;

(f) Give *cigarettes* as a sample, prize, gift or other promotion.

(4) "Fire standard compliant" (FSC) *cigarette* means a *cigarette* that has been tested and meets the fire safety performance standard described in ORS 476.770.

(5) "Manufacturer" means:

(a) Any entity that produces, or causes the production of, *cigarettes* for sale in this state;

(b) An importer or first purchaser of *cigarettes* that intends to resell within this state *cigarettes* that were produced for sale outside this state; or

(c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this subsection.

(6) "Packaging" means, but is not limited to, *cigarette* soft packs, boxes, cartons and cases.

(7) "Quality control and assurance program" means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing.

(8) "Reduced ignition propensity" means meeting the fire safety performance standard described in ORS 476.770(6), when tested as described in ORS 476.775(2).

(9) "Reduced ignition propensity cigarette" means a *cigarette* that has been tested as described in ORS 476.775(2), and meets the fire safety performance standard described in ORS 476.770(6).

(10) "Repeatability" means the range of values within which the repeat results of ignition propensity testing by a single laboratory will fall 95 percent of the time.

(11) "Retail dealer" means a person, other than a *manufacturer* or *wholesale dealer* that engages in distributing *cigarettes*.

(12) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-monetary consideration.

(13) "Transporter" means any person importing or transporting into this state, or transporting in this state, *cigarettes* obtained from a source located outside this state, or from any person not licensed as a distributor under ORS 323.005 to 323.482. It does not include a licensed distributor, a common carrier to whom is issued a certificate or permit by the United States Surface Transportation Board to carry commodities in interstate commerce, or to a carrier of federal tax-free *cigarettes* in bond, or any person transporting no more than 199 *cigarettes* at any one time.

(14) "Variety" means a type of *cigarette* marketed by the *manufacturer* as being distinct from other types of *cigarettes* on the basis of brand name, length, filter, wrapping, flavoring or other characteristics.

(15) "Wholesale dealer" means a person that *distributes cigarettes* to:

(a) A retail dealer or other person for resale; or

(b) A person that owns, operates or maintains *cigarette* vending machines on premises owned or operated by another person.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0060

General

(1) All *cigarettes* sold or offered for sale in Oregon on or after January 1, 2008, must be *fire standard compliant (reduced ignition propensity)* as required by ORS 476.760(1).

(2) Initial written certification attesting the *cigarette variety* has been subjected to ignition propensity testing under ORS 476.780 and

meets the fire safety performance standard under ORS 476.780(6), must be provided to the Oregon State Fire Marshal (OSFM) prior to selling *cigarettes*, unless the *cigarettes* were included on certification submitted to the State of New York before April 17, 2007. Refer to OAR 837-035-0080 for certification requirements.

(3) Re-certification of *cigarettes* is required after three years. Refer to OAR 837-035-0100 for re-certification requirements.

(4) In addition to the above listed requirements, *cigarette manufacturers*, wholesaler dealers and retailers who sell *cigarettes* in Oregon must also comply with:

(a) ORS 476.755 through 476.806;

(b) OAR 837-035-0000 through 837-035-0340;

(c) All applicable federal, state and local laws, rules and regulations pertaining to *cigarettes*.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0080

Certification Requirements

(1) *Cigarette manufacturers* must submit written certification to the OSFM attesting the *cigarette variety* has been subjected to ignition propensity testing under ORS 476.780, and meets the fire safety performance standard under ORS 476.755 through 476.806 as proof that *cigarette* varieties have *reduced ignition propensity*, if the *cigarette* varieties were not included on a certification submitted to the State of New York before April 17, 2007.

(2) Certifications are valid for three years from the date of receipt by the OSFM.

(3) Written certifications must fulfill the requirements of ORS 476.780, for each *cigarette variety*. In particular, certifications must contain the following information for each *variety* of *cigarette* listed:

(a) The brand name shown on the *cigarette* packaging;

(b) The style, such as light or ultralight;

(c) The length in millimeters;

(d) The circumference in millimeters;

(e) The flavor, such as menthol or chocolate, if applicable;

(f) Whether the *cigarette* is filtered or nonfiltered;

(g) A *packaging* description, such as soft pack or box;

(h) A description of the *packaging* marking approved by the OSFM under ORS 476.785;

(i) The name, address and telephone number of the laboratory conducting the ignition propensity testing, if other than the laboratory of the *manufacturer*;

(j) The date of the ignition propensity testing.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0100

Recertification Requirements

(1) *Manufacturers* must provide written re-certification to the OSFM by either April 17, 2010, (if the OSFM accepted the *cigarette variety* as *fire standard compliant (reduced ignition propensity)* because the *variety* was certified to the State of New York before April 17, 2007) or three years after the certification was received by the OSFM, and each three year period afterward.

(2) The re-certification must fulfill the requirements of ORS 476.780, for each *cigarette variety*.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0120

Test Method

(1) *Cigarette* varieties must be tested using the American Society for Testing & Materials (ASTM) International specification E2187-04, Standard Test Method for Measuring the Ignition Strength of *Cigarettes* or another test method approved by the OSFM consistent with ORS 476.770.

(2) The laboratory conducting ignition propensity testing must have a *quality control and assurance program*. The program must ensure the testing *repeatability* value for all test trials used to certify

a cigarette variety. The repeatability value of ignition propensity testing may not be greater than 0.19.

(3) Ignition propensity testing used in a *manufacturer* certification submitted to the OSFM must be conducted in a laboratory accredited under:

(a) The International Organization for Standardization/International Electrotechnical Commission ISO/IEC 17025 Standard of International Organization for Standardization, or

(b) A standard recognized by the OSFM consistent with ORS 476.775(b).

(4) Refer to ORS 476.770 and 476.775 for all testing and quality control requirements.

(5) A *cigarette manufacturer* may propose a test method and performance standard if OSFM determines that a *variety of cigarettes* cannot be tested as described in OAR 837-035-0120(1). Upon approval by the OSFM, the *manufacturer* may use the test method and performance standard to certify the cigarette.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0140

Performance Standard

(1) As required by ORS 476.770(6), no more than 25 percent of the *cigarettes* tested in a complete test trial conducted in accordance with an ignition propensity testing method described in ORS 476.775, may exhibit full length burns.

(2) Each *cigarette* listed in a certification using lowered permeability bands in the *cigarette* paper to achieve compliance must have (for *cigarettes* on which the bands are not positioned by design):

(a) At least two nominally identical bands on the paper surrounding the tobacco column; and

(b) At least one complete band must be located at least 15 millimeters from the lighting end of the *cigarette*.

(3) For *cigarettes* on which the bands are positioned by design, there must be:

(a) At least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column; or

(b) 10 millimeters from the labeled end of the tobacco column for a non-filtered *cigarette*.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0160

Packaging Marking

(1) *Manufacturers* must mark all *packaging* for *cigarettes* to indicate that cigarettes sold in this state are *fire standard compliant* (reduced *ignition propensity*). A *manufacturer* must submit to the State Fire Marshal a proposal for marking *cigarette packaging*. Proposed *packaging* marking must be in eight-point font or larger and consist of one of the following:

(a) Modification of the universal product code to indicate a visible mark printed at or around the universal product code. The mark may consist of alphanumeric or symbolic characters permanently printed, stamped, engraved or embossed in conjunction with the universal product code;

(b) A visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the *packaging* or cellophane wrapping;

(c) Printed, stamped, engraved or embossed test indicating the *cigarettes* meet the fire safety performance standard established in ORS 476.770(6).

(2) The OSFM will approve or disapprove the proposal for *packaging* marking, and *packaging* marking proposals not approved or denied by the OSFM within 10 days of receipt are deemed approved. In determining whether to approve or disapprove a proposal for *packaging* marking, the OSFM must:

(a) Give preference to *packaging* marking that is consistent with the *packaging* marking in use and approved for that *cigarette variety* in the State of New York; and

(b) Approve *packaging* marking with the letters "FSC" (signifying *fire standard compliant*).

(3) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0180

Modification of Packaging Markings

(1) Any proposed modifications to *packaging* markings must be submitted to the OSFM for approval before use.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0200

Manufacturer Requirements

(1) In addition to the requirements of this division, effective July 1, 2007, *manufacturers* may sell only *cigarettes* that are *fire standard compliant* (reduced *ignition propensity*) to Oregon wholesaler and retailer dealers.

(2) *Manufacturers* of any cigarette varieties not on a certification submitted to the State of New York before April 17, 2007, must submit written certification to the OSFM and their *wholesale dealers* ensuring their *cigarettes* are *fire standard compliant* (reduced *ignition propensity*).

(3) If a *manufacturer* makes any changes to a *cigarette* that are likely to alter the *cigarette's* compliance with the fire safety performance standard described in ORS 476.770(6), the *manufacturer* must retest to ensure the *cigarette* still is *fire standard compliant* (reduced *ignition propensity*) before distributing.

(4) *Manufacturers* must retain copies of all test data for at least three years, and provide test data to the OSFM or Attorney General upon request.

(5) *Manufacturers* must submit proposals for *packaging* marking to the OSFM for approval. Refer to OAR 837-035-0160 for *packaging* marking requirements.

(6) *Manufacturers* must provide enough copies of the *packaging* marking illustration to *wholesale dealers* to allow them to provide one copy to each *retail dealer*.

(7) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0220

Wholesale Dealer Requirements

(1) *Wholesale dealers* must provide one copy of the *manufacturer's cigarette packaging* marking illustration to each *retail dealer*.

(2) Effective January 1, 2008, *wholesale dealers* may sell only *fire standard compliant/reduced ignition propensity cigarettes*.

(3) *Wholesale dealers* may house non-compliant *cigarettes* in Oregon, provided they are not to be sold in Oregon.

(4) Violations of this section are subject to a civil penalty as referenced in ORS 476.765, 476.995 and OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0240

Retail Dealer Requirements

(1) Effective January 1, 2008, *retail dealers* may sell only *fire standard compliant/reduced ignition propensity cigarettes*.

(2) Violations of this section are subject to a civil penalty as referenced in ORS 476.765 and OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0260

Inspections

The OSFM or an *authorized representative* may inspect Oregon *wholesale dealers, agents, and retailers for compliance with ORS 476.760*. Inspections include *packaging, certification, cigarettes, and any other documents* to determine compliance with ORS 476.760, 476.770 and 476.785.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0280

Cooperative Agreements

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an *authorized representative* of the OSFM for enforcement purposes of this division.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0300

Seizure of Non-Compliant Product

(1) The OSFM, or an *authorized representative*, may seize and make subject to forfeiture any *cigarette* that:

(a) Is not *fire standard compliant/reduced ignition propensity*;

(b) Bears a *packaging* marking not approved by the OSFM.

(2) If seized *cigarettes* are determined to be non-compliant, the *manufacturer* will be given the opportunity to inspect the *cigarettes and packaging*.

(3) Non-compliant *cigarettes* that have been forfeited must be destroyed by the OSFM only after allowing the *manufacturer* to inspect the *cigarettes and packaging*.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0320

Civil Penalties

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of ORS 476.760 through 476.806, or OAR 837-035-0000 through 837-035-0340. Refer to the following penalty matrix for penalties established by ORS 476.995:

(a) Distributing or offering to *sell* non-compliant *cigarettes* to a *wholesale or retail dealer*: \$10,000 or five times the wholesale invoice cost of the *cigarettes* involved in the violation, whichever is greater;

(b) Distributing or offering to *sell* not more than 1,000 non-compliant *cigarettes* to consumers: \$500;

(c) Distributing or offering to *sell* more than 1,000 non-compliant *cigarettes* to consumers: \$1,000 or five times the retail value of the *cigarettes* involved in the violation, whichever is greater.

(2) Each day a person *distributes* or offers to *sell cigarettes* after being notified by the OSFM that the distribution or offer to *sell cigarettes* is in violation of ORS 476.760, constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the Cigarette Fire Safety Fund of the OSFM.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0340

Procedures, Hearings and Judicial Review

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violation;

(b) Recover civil penalty;

(c) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

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 must 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 six program elements:

(a) The criteria and 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 must not be delegated to local jurisdictions under the exempt jurisdiction program;

(d) A description of nonexempt jurisdictions' responsibilities under ORS 476.060 and the enforcement activities including imminent life or property threats, and inspection and enforcement of the state fire code.

(e) 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.

(f) The certification and training requirements for plan reviews and conducting fire code enforcement related to a fire official's scope of practice.

(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; OSFM 4-2008, f. & cert. ef. 7-2-08

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) "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."

(4) "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.

(5) "Classroom" means an instructional environment the instructor believes is most conducive for the student to learn the material in a specific unit.

(6) "Company Inspector" means an individual who has met the job performance requirements to conduct basic fire code enforcement in one- and two-story Business Group B occupancies and Mercantile Group M occupancies with no high-piled or rack storage.

(7) "DPSST" means the Department of Public Safety Standards and Training.

(8) "DPSST's NFPA Fire Inspector I" means an individual who has been certified by DPSST for meeting the requisite knowledge and skills identified in the DPSST NFPA Fire Inspector I task book to conduct basic fire code enforcement and apply codes and standards.

(9) "DPSST's NFPA Fire Inspector II" means an individual who has been certified by DPSST for meeting the requisite knowledge and requisite skills identified in the DPSST NFPA Fire Inspector I and II task books to conduct moderately technically challenging fire code enforcement and interpret codes and standards.

(10) "DPSST's NFPA Fire Inspector III" means an individual who has been certified by DPSST for meeting the requisite knowledge and requisite skills identified in the DPSST NFPA Fire Inspector I, II, and III task books to conduct advanced technically challenging fire code enforcement and resolve complex code-related issues.

(11) "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 479.180.

(12) "Deputy State Fire Marshal" means an employee of the Office of State Fire Marshal as authorized in ORS 476.040.

(13) "Enforcement" means the investigation, inspection, citation, and/or prosecution of alleged violations of state and local fire protection laws, rules and regulations.

(14) "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.

(15) "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.

(16) "Fire Code Official" means the fire chief or other designated authority charged with the administration and enforcement of the fire code, or duly authorized representative.

(17) "Fire Official" means any individual authorized to enforce the state or local fire code.

(18) "Local Appeals Process" means the administrative procedure adopted and operated by a local government subdivision under local ordinance or resolution.

(19) "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.

(20) "NFPA" means National Fire Protection Association.

(21) "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.

(22) "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.

(23) "Promulgate" means to lawfully develop and adopt an administrative rule, local ordinance, code or regulation authorized by law.

(24) "Requisite Knowledge" means the fundamental knowledge one must have in order to perform a specific task.

(25) "Requisite Skills" means the essential skills one must have in order to perform a specific task.

(26) "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.

(27) "Scope of Practice" means an established list of competencies that are required to administer the Oregon fire code in an elected range of complexity.

(28) "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.

(29) "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; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0010

Applications for Exempt Status

(1) Local governmental subdivisions seeking exempt status must submit a written request to the State Fire Marshal that describes in detail the scope of the proposed exemption.

(2) The request must include a detailed explanation of the fire prevention and investigation programs to be provided by the requesting jurisdiction. Such programs must 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 if they adequately demonstrate what must be done and how it is accomplished.

(3) The request must 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 must include an explanation of how the jurisdiction satisfies the qualifications specified in these rules.

(5) The request must 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 must 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, may not be binding on the State Fire Marshal but may be considered by the State Fire Marshal in deciding whether to grant the exemption.

(7) The State Fire Marshal must determine whether to grant the exemption and notify the applicant accordingly within 30 days of receipt of the board's written advisory.

(8) Once granted, exempt status may remain in effect:

(a) Unless terminated by the State Fire Marshal for cause pursuant to ORS 476.030(3) and OAR 837-039-0055; or

(b) Upon 90 days written termination notice by the exempt jurisdiction to the State Fire Marshal; 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; OSFM 8-2006 f. & cert. ef. 5-22-06; OSFM 12-2006, f. & cert. ef. 6-29-06; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0015

Minimum Fire Code Requirements

(1) Under ORS 476.030 and 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 must assure that locally adopted fire codes in both exempt and non-exempt jurisdictions are consistent with minimum state fire code standards. Therefore, in adopting a fire code, local governmental subdivisions must:

(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 may 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, they must provide a draft copy of the proposed fire code or amendment 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 must evaluate the fire codes or amendments submitted under section (5) to assure conformity with state fire protection statutes and the minimum standards established by the State Fire Marshal.

(7) When 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 must issue a consistency finding at the earliest date possible.

(8) When 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 must:

(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) When 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 must process the appeal within a reasonable time.

(10) When 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 must be issued.

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

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3) & 476.120

Hist.: FM 3-1978, f. & cf. 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; OSFM 8-2006 f. & cert. ef. 5-22-06; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0040

Exemption Criteria

(1) In order to qualify for partially exempt status, applicants must 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 must 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-2) and for licensing or certification by the Health Division except for I-2 Nursing Homes; and

(B) Licensed Day Cares (I-4) and for licensing by the Employment Department; and

(C) Mental Hospitals (I-2), Jails (I-3), Prisons (I-3) and Reformatories (I-3) in the applicant's service area.

(c) Inspect licensed Boarding/Residential Schools (E), 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 Ambulatory Health Care Facilities (I-2) and Clinic-outpatient (B) and then every three years. A self inspection program may be initiated in the two intervening years. The process for the self inspection must 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) Fire code administration personnel must meet the competency requirements for their elected scope of practice as outlined in section 837-039-0120.

(5) Applicants must provide evidence that they assure coordination among all authorities responsible for structural fire safety and fire protection within the applicant's service area.

(6) Applicants must:

(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 must 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) When a fire code delegated appeals process or board has been established under section (6) of this rule, applicants must:

(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 must 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 must 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 must substantiate that their investigators are reasonably qualified through:

(a) Being DPSST certified as a NFPA Fire Investigator; 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 must 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 must maintain records of their fire code administration and delegated appeal activities or other related functions as follows:

(a) Fire prevention inspection records must 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 must 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 must be maintained for a period of 75 years. Other investigation records must 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 must 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 must 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 must be maintained by the jurisdiction as per the Records Retention Schedule of the Secretary of State Archives Division.

(12) Applicants must 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) Is 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; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0050

Programs Eligible for Delegation

(1) As indicated by statutory reference and title, the administration of the following functional areas must 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 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 837, division 012, ORS 480.130, Permits Required for Sale or Public Display of Fireworks; fee.

(m) Except as otherwise provided in OAR 837, division 012, ORS 480.150, Permits for Fireworks Sales or Displays; Rules; Security.

(n) Except as otherwise provided in OAR 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; OSFM 4-2008, f. & cert. ef. 7-2-08

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) When a termination is proposed under section (1) of this rule, the State Fire Marshal must 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 must initiate an administrative appeals process. The process must conform to the contested case provisions of ORS Chapter 183.

(5) The results of the appeals process conducted under section (4) of this rule must 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; OSFM 4-2008, f. & cert. ef. 7-2-08

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 & 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0070

Nonexempt Response to Imminent Life or Property Threats

(1) When an Assistant to the State Fire Marshal in a nonexempt jurisdiction encounters a situation which presents an imminent threat to life or property, the Assistant to the State Fire Marshal must:

(a) Take such measures as are reasonably necessary to stabilize the situation including, but not limited to closing the building or premises for use or occupancy under ORS 479.170 until such dangerous conditions are remedied; and

(b) Notify the Office of State Fire Marshal.

(2) Any enforcement action taken under this section by an Assistant to the State Fire Marshal must be considered an act of the State Fire Marshal.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.060 & 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0080

Inspections or Other Activities by Nonexempt Jurisdictions

(1) When an Assistant to the State Fire Marshal in a nonexempt jurisdiction administers a fire prevention program, the Assistant must do so in conformance with this section.

(2) The Assistant to the State Fire Marshal must 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 Assistant to the State Fire Marshal must ensure personnel that are responsible for fire code administration meet the competency recognition requirements for their scope of practice as outlined in section 837-039-0120.

(4) Records must be maintained of all fire code inspections and reinspections, investigations, appeal activities and any other related functions.

(5) When any lawful order of the Assistant to the State Fire Marshal is appealed, the State Fire Marshal must 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 must be available and prepared to participate in the appeals process;

(b) The State Fire Marshal must pursue and present the state through the appeals process; and

(c) The State Fire Marshal must 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; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0110

Certification and Training Requirements for Plan Review

(1) These rules establish standards for certification of fire officials who review plans for input to a building official 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 must obtain an ICC Fire Inspector II and ICC Fire Plans Examiner certification or equivalent certification approved by the State Fire Marshal.

(3) Fire Officials who review plans only for fire department access and fire protection water supplies must successfully complete the State Fire Marshal's Fire and Life Safety Awareness courses on fire department access, water supply, and fire flow.

(4) All fire chiefs and every assistant to the state fire marshal meeting the definition under ORS 476.060 must complete the state fire marshal's Fire and Life Safety Awareness course module 1, Scope of Authority and Assembly Group A Occupancies.

(5) The State Fire Marshal must maintain a roster of ICC Fire Inspector II and ICC Fire Plans Examiner certified fire officials. A current list of ICC Fire Inspector II and ICC Fire Plans Examiners certified fire officials are provided to each building jurisdiction annually. Certifications 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; OSFM 8-2006 f. & cert. ef. 5-22-06; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0120

Certification and Training Requirements for Conducting Fire Code Enforcement

(1) These rules establish statewide standards for certification and training requirements of fire officials responsible for administration of a Fire Code approved by the State Fire Marshal.

(a) Every person who performs fire code enforcement must possess an Oregon Fire and Life Safety Competency Recognition certificate for the scope of work being performed.

(A) Company Inspector certificate for fire officials performing fire code enforcement at this scope of practice. Fire officials have until January 1, 2009 to comply with the Oregon Fire and Life Safety Competency certificate provisions;

(B) Fire and Life Safety Specialist I certificate for fire officials whose scope of practice is equivalent to DPSST's NFPA Fire Inspector I. Fire officials have until July 1, 2010 to comply with the Oregon Fire and Life Safety Competency certificate provisions;

(C) Fire and Life Safety Specialist II certificate for fire officials whose scope of practice is equivalent to DPSST's NFPA Fire Inspector II. Fire officials have until January 1, 2011 to comply with the Oregon Fire and Life Safety Competency certificate provisions;

(D) Fire Marshal certificate for fire officials whose scope of practice is equivalent to DPSST's, NFPA Fire Inspector III. Fire officials have until July 1, 2011 to comply with the Oregon Fire and Life Safety Competency certificate provisions.

(b) Every person who is transitioning between recognition levels or newly hired must receive the necessary on-the-job training experience and related technical instruction under the direct supervision of an appropriately recognized fire official.

(A) When the fire code official determines that a newly promoted or hired fire official responsible for fire code enforcement are fully qualified to perform the duties of a Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal, the newly hired fire official may work independently without direct supervision.

(B) The newly promoted or hired fire official responsible for fire code enforcement must meet the requirements of OAR 837-039-0120 (1)(a) within 12 months from date of hire.

(2) All persons who seek to perform the scope of practice of a Company Inspector must successfully complete the State Fire Marshal's course Company Inspection.

(3) All persons who seek to perform the scope of practice of a Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal must apply for the Oregon Fire and Life Safety Competency Recognition certificate as follows: Submit a Fire and Life Safety Competency Recognition application to the Office of State Fire Marshal. Include proof of certifications held and training completed.

(4)(a) Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, and Fire Marshal certificates expire three years from the issue date, unless renewed.

(b) The issue date is printed on all certificates.

(5)(a) Fire officials who fail to renew their Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal certificates must not perform work within the respective scope of practice.

(b) A fire official who fails to renew a competency recognition certificate may reapply for certification. Include with application proof of certifications held and trainings completed.

Stat. Auth.: ORS 476.030 (1)

Stats. Implemented: ORS 476.030

Hist.: OSFM 4-2008, f. & cert. ef. 7-2-08

DIVISION 40

FIRE AND LIFE SAFETY REGULATIONS

837-040-0001

Scope

(1) The **International Fire Code** and the Oregon amendments represent a total scope of regulation.

(2) None of the individual chapters in the International Fire Code and Oregon amendments are stand alone requirements. (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09

837-040-0010

Adoption of the International Fire Code

(1) The Oregon Fire Code is generally adopted every three years coinciding with the publication of a nationally recognized fire code.

(2) Effective April 1, 2007 the 2007 Oregon Fire Code is the 2006 edition of the International Fire Code, as published by the International Code Council, and as amended by the Office of State Fire Marshal. (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

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; FM 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; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 8-2004(Temp), f. 12-29-04, cert. ef. 1-3-05 thru 6-30-05; OSFM 11-2005, f. & cert. ef. 6-27-05; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07

837-040-0015

Proposed Code Amendment Criteria

(1) All proposed code amendments are submitted to the Office of State Fire Marshal in writing or on an agency approved form.

(2) All proposed code amendments must provide justification and the particular circumstances requiring the amendment.

(3) The Office of State Fire Marshal screens proposed code amendments to determine whether they substantially meet the requirements of OAR 837-040-0015(5). Proposed code amendments not

substantially meeting the requirements of OAR 837-040-0015(5) may be returned to the applicant with specific reasons included in the returned application.

(4) Proposed Code amendments that substantially meet the requirements of OAR 837-040-0015(5) will be reviewed by a fire code advisory committee. Final approval or denial of the proposed code amendment will be at the discretion of the State Fire Marshal.

(5) As required by OAR 837-040-0015(2), a proposed code amendment must address, where applicable, whether or not the proposed code amendment:

(a) Is necessary to correct any unforeseen or probable outcomes resulting from the application of a code section, and if so, why;

(b) Is needed to protect the health, safety, welfare, comfort and security of occupants, emergency responders, and the public, and if so, why;

(c) Corrects inadequate application by a code section to a method, material or design, and if so, how;

(d) Is necessary to address unique geographic or climatic conditions within Oregon, and if so, why;

(e) Is needed to eliminate conflicting, obsolete, or duplicative code provisions or standards between Oregon adopted codes, statutes or regulations, and if so, why;

(f) Provides for the use of unique or emerging technologies, or promote advances in construction methods, devices, materials and techniques, and if so, how;

(g) Any adverse fiscal impact or cost savings passed on to the general public, the construction industry, local and state governments, and small businesses. If applicable, an interested person must describe the added or reduced cost of a proposed code amendment, describe the adverse fiscal impact or cost savings in relation to the current Oregon Fire Code and include any standards of measure used to arrive at the result given.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09

837-040-0020

Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal may amend the **Oregon Fire Code** approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

(2) Any time between publications of the international Fire Code, the Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumscribed merit.

(Referenced publications are available for review at the agency web site for information on where to purchase publications).

(3) Effective October 1, 2008 the 2007 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Amend Section 102.3 by replacing the words Fire Code Official with Building Code Official.

(b) Amend Section 202, Definitions for Group I-4, Day Care Facilities and R-3 Residential Occupancies.

(c) Section 307.1.1. Delete wording that refers to, offensive or objectionable smoke or odor emissions, to eliminate a possible conflict with Oregon Department of Environmental Quality (ODEQ) rules.

(d) Amend Section 605.10 to delete references to heating elements and tip over switch in the Exception.

(e) Amend Section 902.1, Definitions for Substantial Alterations and Substantial Damage to correlate with changes to the **2007 Oregon Structural Specialty Code (OSSC)**.

(f) Delete Section 903.2.7.1 to correlate with changes to the 2007 Oregon Structural Specialty Code (OSSC).

(g) Amend and renumber Section 903.2.7.2 to correlate with the changes to the 2007 Oregon Structural Specialty Code (OSSC).

(h) Amend Section 1019.2 and Table 1019.2 to correlate with the changes to the 2007 Oregon Structural Specialty Code (OSSC).

(i) Add a new Section 1305 to correlate with the 2007 Oregon Mechanical Specialty Code (OMSC) for dust collection.

(j) Amend Appendix Section SR107.3 and SR 108.3.2 to correlate with the changes to the 2007 Oregon Structural Specialty Code (OSSC).

(k) Amend Chapter 45, National Fire Protection Association (NFPA) Standards, to current editions as follows:

NFPA 10 to the 2007 edition. Section 7.1.2.3 will be effective December 31,

2009. NFPA 11 to the 2005 edition. NFPA 13, 13R and 13D to the 2007 edition. NFPA 14 to the 2007 edition. NFPA 40 to the 2007 edition. NFPA 58 to the 2008 edition. NFPA 72 to the 2007 edition. NFPA 101 to the 2006 edition. NFPA 409 to the 2004 edition.

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

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 6-2008, f. 9-2-08, cert. ef. 10-1-08; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09

837-040-0140

Adoption of the Oregon Structural Specialty Code and Oregon Mechanical Specialty Code

The fire and life safety provisions of the 2007 edition of the Oregon Structural Specialty Code and the 2007 edition of the Oregon Mechanical Specialty Code is hereby adopted as a standard for the purpose of evaluation of existing buildings. (Referenced publications are available for review at the agency. See Building Codes Division web site for information on where to purchase publications.)

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; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07

DIVISION 41

FIRE PROTECTION REGULATIONS RELATING TO EXISTING NON-CONFORMING, HIGH LIFE HAZARD FACILITIES

Exitway Protection

837-041-0050

Protection of the Means of Egress — 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 2007 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, 2002, 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 2002 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. Direct exterior exits shall consist of doors, landings, and necessary stairs or ramps complying with the 2007 Edition of the Oregon Structural Specialty Code.

(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 judgment on a case-by-case basis as to reasonableness of the degree of hazard and adequacy of exit safety after evaluating all of the relevant factors stated in the rule and any other factors unique to the building or structure (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; OSFM 5-2008, f. 8-29-08, cert. ef. 9-1-08

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 & 479.295

Stats. Implemented: ORS 479.250 - 479.300 & 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, 476.060, 479.250 - 479.300 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0050

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 as per the applicable requirements of the State Building Code at the time of construction and in the corridor or area giving access to sleeping areas according to the manufacturer's instructions. 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 & 479.295

Stats. Implemented: ORS 479.250 - 479.300

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00; OSFM 5-2002, f. 3-26-02, cert. ef. 4-1-02

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 & 479.295

Stats. Implemented: ORS 479.250 - 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 & 479.295

Stats. Implemented: ORS 479.250 - 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 & 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, 479.295 & 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.

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

Stat. Auth.: ORS 479.280, 479.295 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0080

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, 479.295 & 479.990

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

Stats. Implemented: ORS 479.250 - 479.300 & 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 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0090

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 post-marked 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 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0095

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 & 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 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0105

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 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

837-045-0110

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 & 479.990

Stats. Implemented: ORS 479.250 - 479.300 & 479.990

Hist.: OSFM 10-2000, f. 9-14-00, cert. ef. 10-1-00

DIVISION 46

NOVELTY/TOYLIKE LIGHTERS

837-046-0000

Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures pertaining to the regulation of novelty lighters by the Office of State Fire Marshal (OSFM).

(2) The scope of these rules applies to the implementation of 2009 HB 2365, relating to novelty lighters.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0020

Effective Dates

OAR 837-046-0000 through 837-046-0180 are effective upon the date of filing.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0040

Definitions

For the purpose of these rules, the following definitions apply to OAR 837-046-0000 through 837-046-0180:

(1) "Audio effects" means music, animal sounds and whistles, buzzers, beepers or other noises not pertinent to the flame-producing function of a lighter.

(2) "Authorized Representative of the State Fire Marshal" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(3) "Distribute" means to:

(a) Deliver to a person other than the purchaser; or

(b) Provide as part of a commercial promotion or as a prize or premium.

(4) "Importer" means a person who causes a lighter to enter this state from a manufacturing, wholesale, distribution or retail sales point outside this state, for the purpose of selling or distributing the lighter within this state or with the result that the lighter is sold or distributed within this state.

(5) "Lighter" means a handheld device of a type typically used for igniting tobacco products by use of a flame.

(6) "Manufacturer" means a person or business that makes lighters by hand or by machine.

(7) "Misleading design" means a lighter that has a shape that resembles or imitates an object other than a lighter. Misleading design applies to lighters of all types and includes lighters that resemble or imitate:

(a) Cartoon characters, figurines or action figures;

(b) Toys or game pieces;

(c) Musical instruments;

(d) Vehicles;

(e) Animals;

(f) Human body parts;

(g) Food, beverages or food or beverage packages;

(h) Weaponry;

(i) Furniture;

(j) Sports equipment;

(k) Holiday decoration;

(l) Tools; or

(m) Household products.

(8) "Novelty lighter":

(a) Means a lighter that has misleading design, audio effects or visual effects, or that has other features of a type that would reasonably be expected to make the lighter appealing or attractive to a child less than 10 years of age.

(b) Does not mean:

(A) A lighter manufactured before January 1, 1980;

(B) A lighter that has been rendered permanently incapable of producing a flame or otherwise causing combustion; or

(C) A lighter with only logos, decals, decorative artwork or heat-shrinkable sleeves.

(9) "Retail dealer" means a person, other than a manufacturer or wholesale dealer that engages in distributing novelty lighters.

(10) "Sell" means to provide or promise to provide to a wholesale, retail, mail-order or other purchaser in exchange for consideration.

(11) "Visual effect" means flashing lights, color-changing lights and changing images. Visual effect does not mean a continuous LED light used as a flashlight.

(12) "Wholesale dealer" means a person that distributes novelty lighters to a retail dealer or other person for resale.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0060

General

(1) As of June 2, 2009, lighters meeting the definition of novelty lighters may not be sold, offered for sale, distributed in Oregon or manufactured or possessed for the purpose of sale or distribution in Oregon.

(2) Wholesale dealers, importers or retail dealers must comply with:

(a) 2009 HB 2365; and

(b) OAR 837-046-0000 through 837-046-0180.

(3) A list of lighters, classes and types of lighters determined to be novelty lighters is available on the OSFM website or upon request. Photographs of novelty lighters are representative of lighter types, but may not include all prohibited lighters.

(4) Photographs of acceptable lighters are available on the OSFM website or upon request. Photographs of acceptable lighters are examples and do not include all acceptable lighters.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0080

Inspections

The OSFM or an authorized representative may inspect Oregon wholesale dealers, agents, and retailers for compliance with 2009 HB 2365. Inspections include any documents to determine compliance with 2009 HB 2365.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0100

Lighter Review Committee

Requests may be made for a review of a lighter determined to be a novelty lighter by the OSFM. Submit a written request and color photo to the OSFM. The lighter review committee will review the lighter and make a recommendation to the OSFM.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0120

Cooperative Agreements

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an authorized representative of the OSFM for enforcement purposes of this division.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0140

Seizure of Non-Compliant Product

The OSFM, an authorized representative, or a law enforcement agency may seize and make subject to forfeiture any lighter described in OAR 837-046-0040 and 2009 HB 2365.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0160

Civil Penalties

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of 2009 HB 2365 or OAR 837-046-0000 through 837-046-0180. Refer to the following penalty matrix for penalties established by 2009 HB 2365:

(a) \$10,000 if the person is a manufacturer or importer of lighters;

(b) \$1,000 if the person is a wholesale dealer of lighters or distributes lighters by means other than distribution directly to consumers;

(c) \$500 if the person is:

(A) A retail seller of lighters; or

(B) A person distributing lighters, if the person is other than a manufacturer, importer or wholesale dealer.

(2) Each day a person distributes or sells novelty lighters after being notified of the violation by the OSFM constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the State Fire Marshal Fund.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0180

Procedures, Hearings and Judicial Review

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violation;

(b) Recover civil penalties;

(c) Obtain access for inspections; or

(d) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

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 - 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, 1998 edition."

(b) All fire apparatus carrying hose equipped with non-threaded couplings shall also carry inlet and discharge adapters in accordance with the following: 3-1/2 inch or larger Hose: — For the initial 1,000 feet, or portion thereof, and each additional 1,000 feet, or major portion thereof (500 feet or more);

(A) Inlet — Minimum of one 2 or 3-way 2-1/2 inch threaded female with inlets (clappered) adapted to non-threaded coupling hose size;

(B) Discharge — Minimum of one 2 or 3-way 2-1/2 inch threaded male 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 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;

OSFM 4-2003, f. 7-2-03, cert. ef. 7-3-03

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 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 - 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0020

Purpose and Scope

(1) The purpose of OAR 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 Information 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 Oregon Community Right-to-Know and Protection Act;

(f) To establish procedures for Notice of Noncompliance 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 & 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0030

Covered Employers, Owners, Operators and the North American Industry Classification System (NAICS)

(1) Persons operating one or more facilities, where hazardous substances are present in reportable quantities are required to notify the Office of State Fire Marshal within 30 days and are subject to the hazardous substance information reporting requirements contained in ORS 453.307 to 453.414 and OAR 837-085-0090.

(2) Persons operating facilities within the North American Industry Classification System that have been identified by the Office of State Fire Marshal as having the potential to possess, store or otherwise use hazardous substances in reportable quantities are subject to the hazardous substance information reporting requirements contained in ORS 453.307 to 453.414 and OAR 837-085-0090 if sent a Hazardous Substance Information Survey by the Office of State Fire Marshal.

(3) Persons with facilities not covered may voluntarily complete and submit the Office of State Fire Marshal's Hazardous Substance Information Survey. Such persons shall not be subject to Hazardous Substance Possession Fees.

(4) Person(s) classified within construction or logging NAICS are not required to report their temporary work sites.

(5) Persons having facilities classified within the NAICS 424930 (Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers and/or the NAICS 444220 Nursery, Garden Center, and Farm Supply Stores, 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.

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;

OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 Information 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, owners or operators 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 date set for submitting a Hazardous Substance Information 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 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 Information Survey information.

(14) "Covered Employer, Owner or Operator" means:

(a) Any person(s) operating a facility possessing reportable quantities of hazardous substances as defined by the Office of State Fire Marshal in OAR 837-085-0070.

(b) Any person(s) operating a facility that the Office of State Fire Marshal believes has the potential to store, generate, use, or otherwise possess hazardous substances in reportable quantities.

(15) "Division" means OAR 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/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, inter-agency 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, 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 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, division 2 (CFR 1910.1200), subdivision Z, 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, division 2 (CFR 1910.1200), subdivision Z, 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 837, division 085; or

(D) Gases intended and used for human ingestion and/or inhalation either directly or added to a product, if the gas is present at the site where ingestion and/or inhalation occurs; and the gas is not being used in a manufacturing process; and the gas is not a cryogenic; and the gas is not being stored at the site in a quantity that exceeds 1,000 cubic feet. This rule applies to gases used for animals as well.

(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 Information 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, division 2 (CFR 1910.1200), subdivision Z; 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 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 OAR 437, division 2 (CFR 1910.1200), subdivision Z, Hazard Communication rules of the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(39) "North American Industry Classification System" means a system developed by the 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 NAICS code.

(40) "No Longer Reportable" means a previously reported substance was not on site in a reportable quantity during the current survey period.

(41) "Noncompliance" means failure of a covered employer, owner or operator to comply with the Community Right-to-Know and Protection Act and/or its administrative rules.

(42) "Noncompliance Classification" means the category assigned to issues of noncompliance for the purposes of assessing a penalty.

(43) "Notice of Noncompliance and Proposed/Final Penalty Assessment Order" means a written document issued to covered employers, owners or operators that advises them they were not com-

plying with the Community Right-to-Know and Protection Act, establishes correction dates and notifies them of penalty assessments.

(44) "Person" means: 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;

(45) "Poison Class A and B" means a poisonous substance as defined in 49 CFR, Part 173.326 as published in the Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985.

(46) "Record" means any recorded information.

(47) "Repeat Noncompliance" means a covered employer, owner and/or operator has failed to comply with the same rule(s) of OAR 837-085 two or more times within a five year period of time.

(48) "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.

(49) "Reportable Quantity" means the amount of hazardous substance that must be present at a facility before reporting is required.

(50) "Reporting Range" means a range of quantities assigned by the Office of State Fire Marshal for reporting hazardous substances.

(51) "Significant Maximum Daily Amount Change" means a change in the maximum daily quantity reporting range to a higher reporting range than previously was reported.

(52) "Single Combined Survey" means a survey that has multiple substations reported on it.

(53) "Source Generation Sites" means facilities generating that which is relayed, pumped and/or stored by substations.

(54) "State Fire Marshal" means the State Fire Marshal or designee.

(55) "Substantive Change" means a change(s) in hazardous substance reporting information that requires notification to the Office of State Fire Marshal.

(56) "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.

(57) "Survey Period" means the 12 months preceding the date the Hazardous Substance Information Survey is mailed to, or completed by, the covered employer, owner and/or operator.

(58) "Temporary Worksite" means a single site location where activities, such as construction and logging, will likely occur for less than 24 months.

(59) "Trade Name" means the brand name or trademark given to a hazardous substance by a manufacturer or distributor.

(60) "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.

(61) "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 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99 & cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0050

Hazardous Substance Information Survey — General

(1) The Office of State Fire Marshal shall develop and distribute an annual Hazardous Substance Information 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 Information 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/or operators operating facilities where hazardous substances are present in reportable quantities shall notify the Office of State Fire Marshal that the substances are present. This notification shall be made within 30 days of the substance being on site and at a minimum shall include the information required in OAR 837-085-0090(6)(b), (D), (E), (F), (G), and (H).

(4) Covered employers, owners and/or operators operating facilities where hazardous substances were present in reportable quantities during the survey period shall complete and submit a Hazardous Substance Information Survey.

(5) Covered employers, owners and/or operators operating facilities receiving the Hazardous Substance Information Survey for the first time shall complete and submit the survey by the due date.

(6) Covered employers, owners and/or operators that reported hazardous substances were present in reportable quantities during the previous survey period shall complete and submit a Hazardous Substance Information Survey.

(7) Covered employers, owners and/or operators that have had changes or additions to the information previously reported on their Hazardous Substance Information Survey shall complete and submit the survey.

(8) Covered employers, owners and/or operators operating facilities where hazardous substances were not present in reportable quantities during the survey period and did not have hazardous substances on the previous Hazardous Substance Information Survey are not required to submit a Hazardous Substance Information Survey, provided they are not otherwise required to do so by these rules.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 - 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0060

Hazardous Substance Information Survey — General

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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0070

Hazardous Substance Information Survey — Reportable Quantities

(1) If at anytime during the survey period, 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 Extremely Hazardous Substance that meets or exceeds the Threshold Planning Quantities as defined by Sara Title III-Emergency Planning and Community Right to Know Act under Section 302.

(d) 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0080

Hazardous Substance Information Survey — Reportable Quantities

(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) Total Maximum daily amount for each substance reported;

(c) Maximum daily amount for each storage location reported;

(d) Total amount transported to the facility;

(e) 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 millicuries.

(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 facility shall be added together for reporting purposes.

(7) Like substances which are exempted from the 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 with the same major components shall be grouped and reported together. Solvent based paints with the same major components shall 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0090

Hazardous Substance Information 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 Information Survey shall complete and return it to the Office of State Fire Marshal by the due date indicated on the survey in accordance with OAR 837-085-0050(3) through (8) of these rules.

(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 that are subject to the reporting requirements.

(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(53), 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.

(A) The identification must be readable from a distance of 50 feet.

(B) Substations that are completely underground and can only be accessed through a manhole or excavation are exempt from this posting requirement.

(5) Within 30 days of receiving a survey, covered employers, owners and operators shall request a survey from the Office of State Fire Marshal for each of their subject 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;

(D) Whether or not the facility is subject to the Process Safety Management requirements.

(b) Demographic information including:

(A) The primary and, if applicable, secondary North American Industry Classification System code 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 Owner/CEO/Reg Agent of the entity;

(E) The known business name, which the firm operates under as well as the department, division;

(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 e-mail address of the business or contact person if available;

(H) The mailing address if different from the site address;

(I) The number of employees at the site;

(J) 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;

(K) The name of the responding fire department by local jurisdiction;

(L) 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

(M) 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) Whether or not the substance reported contains a Process Safety Management, listed chemical;

(F) Information regarding whether the substance is pure or a mixture;

(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 millicuries;

(I) The average amount of each reportable hazardous substance;

(J) The total maximum amount of each reportable hazardous substance;

(K) The maximum amount of each reported hazardous substance for each location reported;

(L) The total amount of each reportable hazardous substance transported to the facility;

(M) The total amount of each reportable hazardous substance transported from the facility;

(N) The total estimated number of days each hazardous substance was on-site;

(O) The type(s) of containers used for storage of each reportable hazardous substance(s);

(P) The pressure and temperature at which the substance is stored;

(Q) The primary and secondary associated U.S. Department of Transportation hazard classification(s) for each reportable hazardous substance;

(R) The Chemical Abstract Service (CAS) number, if known, for each reportable hazardous substance;

(S) The four-digit United Nations (UN) or North American (NA) number, if known, for each reportable hazardous substance;

(T) The EPA Pesticide Registration number for each reportable hazardous substance; and

(U) The 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) & 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0100

Hazardous Substance Information 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 placed in the inactive files because they had no reportable quantities now has reportable quantities of hazardous substances on site;

(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;
 - (j) The facility has been closed or has gone out of business.
- 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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.

(H) Risk Management Plan if facility is required to create one by the Environmental Protection Agency.

(2) Covered employers, owners and operators shall maintain a copy of Hazardous Substance Information 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 Notice of Noncompliance and Proposed/Final Penalty Assessment Order issued by the Office of State Fire Marshal:

(a) Copies of Notice of Noncompliance and Proposed/Final Penalty Assessment Order 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 Information 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 - 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 837-085-0120(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 - 453.372
 Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 Information 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 they return the Hazardous Substance Information 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 - 453.337
 Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 Information 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 owner 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 employer, owner or operator's 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, owner 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 - 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 - 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 - 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, submitted in accordance with OAR 837-085-0170(2), 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 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 plan-

ning 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 - 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0190

Hazardous Substance Information 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 employers 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 Information 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 North American Industry Classification System 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; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 Assessment Order

(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; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 compliance date.

(2) The above requirements shall not limit a covered employer's appeal rights.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 non-compliance may be assessed a penalty of up to a maximum of \$1,000 per day for each day of noncompliance in accordance with ORS 453.357.

(a) The daily penalty maximum for failing to comply with OAR 837-085 shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(b) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-085-0170(1) and/or (2) the required information is received by the requesting health professional.

(c) The daily maximum penalty shall be calculated by dividing the total penalties assessed by the number of days it takes the covered employer, owner or operator to achieve compliance.

(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 non-compliance in more than one Noncompliance Class (OAR 837-085-0280) shall have a penalty calculated and assessed for each Noncompliance Class.

(5) Covered employers, owners or operators found to be in non-compliance with the same administrative rule(s) within a five year period of time will be assessed additional penalties for the repeat non-compliance.

(a) If a covered employer, owner or operator is found to be in repeat noncompliance within any classification the penalty for that classification shall be based on the repeat noncompliance.

(b) The maximum amount of penalty for each classification can not exceed the amount of 5th instance penalty identified in OAR 837-085-0290(2) or 837-085-0300(7).

(c) OAR 837-085-0270(5) does not apply to class V Noncompliance.

(6) At any time prior to a Notice of Noncompliance and Proposed/Final Penalty Assessment Order becoming final, the Office of State Fire Marshal may modify the notice to reflect the correct non-compliance classification and/or penalty assessment.

(7) Nothing in these rules shall affect the ability of the Office of State Fire Marshal to modify penalties through a Stipulated Final Order.

(8) Penalty suspensions may be made in accordance with OAR 837-085-0310.

(9) Daily penalties shall be assessed in accordance with OAR 837-085-0305.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 notify the Office of State Fire Marshal they have reportable quantities of hazardous substances, or fail to request and/or submit their Hazardous Substance Information 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 or any other class of noncompliance:

- (a) North American Industry Classification System;
- (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) Chemical Abstract Service Number; or
- (j) UN or NA Numbers.

(4) Class IV Noncompliance. Covered employers, owners and operators who, when submitting their Hazardous Substance Information 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 IV Noncompliance.

(5) Class V Noncompliance. Covered employers, owners and operators who intentionally misreport on their Hazardous Substance Information Survey, substantive changes, survey corrections or records of hazardous substance(s) or fail to provide health professionals with any pertinent hazardous substance information, in accordance with OAR 837-085-0170, shall be considered in Class V 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0290

Penalties for Class I, II and III Noncompliance

(1) Covered employers, owners or operators identified as being in Class I, II, III 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 penalty schedule set forth in subsection 2 of this section.

(2) Class I, II and III Noncompliance Penalty Schedule:

Class — 1st Instance — 2nd Instance — 3rd Instance — 4th Instance — 5th Instance

I — \$1000 — \$2000 — \$4000 — \$8000 — \$16000

II — \$100 — \$200 — \$400 — \$800 — \$1600

III — \$50 — \$100 — \$200 — \$400 — \$800

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0300

Penalties for Class IV Noncompliance

(1) A penalty shall be calculated for the total quantity of unreported 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.

(a) Penalties for all Extremely Hazardous Substances shall be calculated at the LRL.

(b) For the purpose of determining Class IV Noncompliance penalties, radioactive substances, radioactive waste, Class A and B poisons, explosives and Extremely Hazardous 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 their reportable quantity. For the purpose of determining Class IV 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 Total Quantity Range Code using the Total Quantity Range Code Chart in subsection 5 of this section.

(4) A penalty determination shall be made for Lower Reporting Levels (LRL) and Upper Reporting Levels (URL) substances using the "Class IV Noncompliance Penalty Schedule in subsection 5 of this section:

(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.

(5) Class IV Noncompliance Penalty Calculation Chart and Schedule:

Total Quantity Range Code Chart

From — To — 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

Penalty Schedule

Penalty Quantity Code — Lower Reporting Levels (LRL) — Upper Reporting Levels (URL)

01 — \$100 — \$75

02 — \$200 — \$150

03 — \$300 — \$225

04 — \$400 — \$300

05 — \$500 — \$375

06 — \$600 — \$450

07 — \$700 — \$525

08 — \$800 — \$600

09 — \$900 — \$675

10 — \$1000 — \$750

(6) Penalties for repeat noncompliance of class IV Noncompliance within a five year period of time shall be calculated in accordance with 837-085-0300 and increased using the following schedule:

2nd Instance — 3rd Instance — 4th Instance — 5th Instance

penalty x 2 — penalty x 4 — penalty x 8 — penalty x 16

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0305

Penalties for Class V Noncompliance

(1) Covered employers, owners or operators identified as being in Class V Noncompliance shall be assessed a \$1000 penalty for each day they are in noncompliance.

(2) The number of days the covered employer owner or operator is considered in noncompliance shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(3) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-085-0170(1) and/or (2) the required information is received by the requesting health professional.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0310

Penalty Suspensions

(1) Penalties assessed for Class I, II, III and IV Noncompliance will be suspended in accordance with the following criteria:

(a) To receive a penalty suspension covered employers, owners or operators receiving a Notice of Noncompliance and Proposed/Final Penalty Assessment Order must comply with all the noncompliance issues identified in the notice.

(b) Penalty suspensions will be calculated from the date the Notice of Noncompliance and Proposed/Final Penalty Assessment

Order was issued to the date the complete and accurate hazardous substance information is received by the Office of State Fire Marshal.

(c) Penalty suspensions will be based on the number of days it takes the affected covered employer, owner or operator to comply with the Notice of Noncompliance and Proposed/Final Penalty Assessment Order and the number of instances involved with the notice.

(d) Penalty suspensions will be calculated for each class of non-compliance identified in the Notice of Noncompliance and Proposed/Final Penalty Assessment Order.

(e) Penalty suspensions will be determined using the Penalty Suspension Schedule set forth in subsection 3 of this section.

(2) If a covered employer, owner or operator is found to be in repeat noncompliance the amount of penalty suspended shall be reduced based on the instance of the repeat noncompliance.

(3) Penalty Suspension Schedule:

Instance — **Complete and accurate hazardous substance information is received within** 1-45 days — 46-60 days — 61-75 days — 76-90 days —

After 90 days

1st — 100% — 75% — 50% — 25% — 0%

2nd — 75% — 50% — 25% — 0% — 0%

3rd — 50% — 25% — 0% — 0% — 0%

4th — 25% — 0% — 0% — 0% — 0%

5th — 0% — 0% — 0% — 0% — 0%

(4) Penalty suspensions will not be made on Class V Noncompliance penalty assessments.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 Order becomes final.

(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; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 Notice of Noncompliance 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; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

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 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 Information 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

DIVISION 90

HAZARDOUS MATERIALS

Hazardous Substance Possession Fees

837-090-1000

Coverage

(1) Persons with facilities covered by ORS 453.317 and OAR 837-090-1000 through 837-090-1045 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 Information 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 - 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 837-090-1000 to 837-090-1045.

(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 - 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.396 - 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 nitro-

carbonitrates 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 carcinogenic; or

(b) It is listed as a carcinogen in the latest edition of the Annual Report on Carcinogens published by the National Toxicology Program (NTP); or

(c) It is regulated by the Occupational Safety and Health Administration (OSHA) as a carcinogen.

(4) "Combustible Liquid" means any liquid having a flash point at or above 100° F. Combustible liquids shall be subdivided as follows:

(a) Class II liquids shall include those having flash points at or above 100° F. and below 140° F.;

(b) Class III-A liquids shall include those having flash points at or above 140° F. and below 200° F.;

(c) Class III-B liquids shall include those having flash points at or above 200° F.

(5) "Compressed Gas" means:

(a) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70° F.; or

(b) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130° F. regardless of the pressure at 70° F.; or

(c) A liquid having a vapor pressure exceeding 40 psi at 100° F. as determined by U.F.C. Standard No. 9-5.

(6) "Corrosive" means any chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. A chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described in the U.S. Department of Transportation in Appendix A to CFR 49 Part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

(7) "Corrosive Liquid" means any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action. Examples include acid, alkaline or caustic materials.

(8) "Cryogenic Fluids" means those fluids having a normal boiling point below 150° F. (See Table No. 75.102-B of the Uniform Fire Code).

(9) "Cutaneous Hazard" means a substance that causes or causes sensitization of the dermal layer of the body.

(10) "Department" means the Department of Revenue.

(11) "Dust" means pulverized particles which, if mixed with air in the proper proportions, become explosive and may be ignited by a flame or spark or other source of ignition.

(12) "Entity" means any individual, trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the Federal Government and any agency thereof.

(13) "Explosive" means:

(a) A chemical which causes a sudden, almost instantaneous release of pressure, gas and heat when subjected to sudden shock, pressure, or high temperatures; or

(b) A material or chemical, other than a blasting agent, that is commonly used or intended to be used for the purpose of producing an explosive effect and is regulated by Article 77 of the Uniform Fire Code.

(14) "Eye Hazard" means a substance that causes damage to the eyes, except those that cause damage by mechanical means.

(15) "Facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by or under common control with such person.

(16) "Fire Hazard" means any thing or act which increases or may cause an increase in the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire; or which may obstruct, delay, hinder or interfere with

the operations of the fire department or the egress of occupants in the event of fire.

(17) "Firework" means any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedoes, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like construction and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance, except that the term "fireworks" shall not include auto flares, paper caps containing not in excess of an average of 25/100 of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps.

(18) "Fissile Materials" means radioisotopes which may undergo a nuclear fission reaction and are usually found only at reactor sites or as part of a nuclear weapon.

(19) "Flammable Anesthetic" means a compressed gas which is flammable and administered as an anesthetic and shall include among others, cyclopropane, divinyl ether, ethyl chloride, ethyl ether and ethylene.

(20) "Flammable Gas" means a gas which is flammable at a mixture of 13 percent or less (by volume) with air, or the flammable range with air is wider than 12 percent, regardless of the lower limit.

(21) "Flammable Liquefied Gas" means a liquefied compressed gas which under the charged pressure is partially liquid at a temperature of 70° F. and which is flammable.

(22) "Flammable Liquid" means any liquid having a flash point below 100° F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100° F. Flammable liquids shall be subdivided as follows:

(a) Class I-A shall include those having flash points below 73° F. and having a boiling point below 100° F.;

(b) Class I-B shall include those having flash points below 73° F. and having a boiling point at or above 100° F.;

(c) Class I-C shall include those having flash points at or above 73° F. and below 100° F.

(23) "Flammable Solid" means a solid substance, other than one which is defined in Article 9 of the Uniform Fire Code as a blasting agent or explosive, that is liable to cause fire through friction or as a result of retained heat from manufacture, or which has an ignition temperature below 212° F., or which burns so vigorously or persistently when ignited so as to create a serious hazard. Finely divided solid materials which when dispersed in air as a cloud may be ignited and cause an explosion are flammable solids.

(24) "Generally Hazardous" means hazardous substances which present a hazard to public health, welfare or safety or the environment.

(25) "Hazardous Substance" means:

(a) Any substance or waste known to present a physical or health hazard to employees, emergency response personnel, or the public under normal conditions of use and/or during an emergency situation; or

(b) Any hazardous chemical which is required to have a Material Safety Data Sheet pursuant to OAR 437, division 155, the Hazard Communication rules of the Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services; 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 437, division 2 (29 CFR 1910.1200), Subdivision Z, the Hazard Communication Rules of the Oregon OSHA Occupational Safety and Health Division of the Department of Consumer and Business Services.

(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 substances which present 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.

(48) "Radioactive Material" means any material or combination of materials that spontaneously emits ionizing radiation.

(49) "Reactive Materials" means those materials which can enter into a hazardous chemical reaction with other stable or unstable materials.

(50) "Registration Fee" means a Hazardous Substance Possession Fee assessed in lieu of that set by a fee schedule.

(51) "Respiratory Hazard" means those materials which cause damage to the respiratory system.

(52) "Sensitizer" means a chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

(53) "Toxic Material" means a material which produces a lethal dose or a lethal concentration within any of the following categories:

(a) A chemical or substance that has a median lethal dose (LD50) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;

(b) A chemical or substance that has a median lethal dose (LD50) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 20 hours) with the bare skin of albino rabbits weighing between 2 and 3 kilograms each;

(c) A chemical or substance that has a median lethal concentration (LC50) in air more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

(54) "Unstable (reactive) Liquid" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shock, pressure or temperature.

(55) "Unstable Materials" means those materials, other than explosives, which in the pure state or as commercially produced will vigorously polymerize, decompose, condense or become self-reactive and undergo other violent chemical changes, including explosion, when exposed to heat, friction, shock, or in the absence of an inhibitor or in the presence of contaminants or in contact with non-compatible materials.

(56) "Very Hazardous" means hazardous substances which present a significant hazard to public health, welfare or safety or the environment.

(57) "Water-Reactive Materials" means materials which explode violently, react, produce flammable, toxic or other hazardous gases, or evolve enough heat to cause self-ignition or ignition of nearby combustibles upon exposure to water or moisture.

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

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.396 - 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 hazardous, 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 chemical, 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, 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 hazardous, 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 in writing to the Office of State Fire Marshal. The request shall include the facility ID number, company name, address and telephone number of the facility requesting the change, the name of the person making the request, the name of the substance and a Material Safety Data Sheet for the substance.

(8) If the Material Safety Data Sheet (MSDS) states, or indicates by content 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. If there is other documentation available that indicates there may be other hazards associated with the substance being evaluated, the State Fire Marshal may also consider that information to assist in determining the hazard rank classification.

(9) If a mixture of hazardous substances has not been tested as a whole, the health hazard established for the product will be the same as the most hazardous ingredient that makes up 20 percent (by weight or volume) or more of the mixture. The mixture shall be considered to have carcinogenic hazards if it contains a listed carcinogen in amounts of 5 percent or more.

(10) If the MSDS indicates the ingredients of a mixture are neutralized or would not create a hazard under normal or reasonably expected conditions due to a chemical reaction of ingredients, by encapsulation or bound in a compound, the potential hazard will be evaluated using the MSDS and any other applicable documents.

(11) 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.

(12) If there is evidence to indicate that a component present in the mixture in concentrations of less than 30 percent (or in the case of

carcinogens, less than 10 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 Information Surveys as required by OAR 837-085-0010 to 837-085-0090.

(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 Information 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 - 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 Information Survey (see OAR 837-090-1000 to 837-090-1045) 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 Information 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 465.381, 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) Employers that believe a billing error has occurred may request a fee review. Fee review requests must be made in writing to the Office of State Fire Marshal within 20 days of the billing mail date. Fee review requests must include the company name, facility ID number, site address, name of the substance the fee was based on, amount of the fee assessed, telephone number and the reason for requesting a review.

(5) Any dispute as to the amount or validity of a hazardous substance fee assessment shall be resolved in accordance with the appeals process procedures outlined in the Administrative Procedures Act (APA), ORS 183.025 to 183.725, unless specifically addressed in these rules.

(6) Hazardous Substance Possession Fee schedules are available from the agency.

(7) 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;

(8) 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.

Stat. Auth.: ORS 453.408, 833 & 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

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 837-090-1000 to 837-090-1045. Requests for such exemptions shall be made according to the exemption provisions in OAR 837-090-1040.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.402 & 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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1045

Local Government Fees

(1) Local government Hazardous Substance Possession Fees based on quantity or the Hazardous Substance Information 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 Information Survey, 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 Possession 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 Possession 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 Possession 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

Hist.: FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1145

Petroleum Load Fee

(1) As provided in ORS 465.101 to 465.131, the petroleum load withdrawal fee is established 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. Effective October 1, 2005 the fee shall be \$2.50 per load, effective July 1, 2007 the fee shall be \$4.00 per load and effective July 1, 2009 the fee shall be \$6.00 per load.

(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; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 12-2005, f. & cert. ef. 8-15-05

DIVISION 110

FIELD BURNING AND PROPANING RULES

837-110-0005

Purpose and Scope

The purpose of these rules is to increase the degree of public safety by preventing unwanted wild fires and smoke from field burning and propaning near highways and freeways within the State of Oregon. These rules shall apply to that area west of the crest of the Cascade Range and south to the Douglas/Lane County lines.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0007

Definitions

(1) Local services road: Serves isolated areas that have little or no potential for further development and those serving a minimal number of parcels of land. Most of these roads will not be through roads (connected to public roads on both ends) but will dead end at the service to the last parcel on the road.

(2) Trained Flagger: Has successfully completed a training course taught by a competent person. The training course must comply in substance with Oregon Department of Transportation flagging course content.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

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, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0020

Firefighting Water Supplies

(1) When burning acreage, the following firefighting vehicles shall be provided:

(a) Up to 50 acres — At least two water tank vehicles with a minimum of 1,000 gallon water capacity shall be on site;

(b) 50 to 200 acres — At least three water tank vehicles with a minimum of 1,500 gallon water capacity shall be on site;

(c) Over 200 acres — At least four water tank vehicles with a minimum of 3,000 gallon water capacity shall be on site.

(2) Refill Requirements: During actual firefighting operations the water requirements described in this section shall be maintained at or above 25 percent of the specified amount. Within the buffer zone described in OAR 837-110-0080, this requirement shall be raised to at least 50 percent.

NOTE: Vehicles with smaller capacity water tanks may be used to meet the total gallonage capacity required by subsections (1)(a) through (c) of this rule.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0030

Firefighting Equipment

The person(s) responsible for the acreage to be burned shall use firefighting equipment that meets or exceeds the following standards:

(1) All water tank vehicles shall be equipped with a pump in working order with a pumping capability of 30 gallons per minute or more and capable of extinguishing a flame at a distance of at least 40 feet.

(2) All required firefighting vehicles shall be adequately staffed to assure proper operation. It is recommended that at least two employees who have received basic safety training be assigned to each firefighting vehicle.

(3) All water tanks shall be filled to 90 percent of their capacity prior to ignition of the field.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0040

Ignition Criteria

(1) To ensure an adequate, complete, and even burn over the entire field to be burned, a minimum of two drip torches, propane lighters, or other pressurized fuel torches shall be on the burn site at the time of ignition.

(2) Whenever possible ignition shall cause the edges of the field to burn first and the burn to continue toward the field's center.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0050

Prohibited Use

The use of pitch forks, harrows, or the dragging of burning tires to ignite the fire is prohibited.

Stat. Auth.: ORS 476 & 478

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89

837-110-0060

Communication

The ability to call assistance and summon help from an appropriate emergency response agency shall be maintained at all times by phone, or by radio communications between all firefighting equipment used in the burning of the field and a constantly staffed base station or home with phone access.

Stat. Auth.: ORS 476 & 478

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

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.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

837-110-0075

Traffic Safety

The person responsible for the acreage being burned shall provide signage and trained flaggers for traffic safety. The person responsible:

(1) May allow a field to burn next to a state highway without designated buffer zones or next to an arterial route as long as there are trained flaggers and warning signage on the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur next to a state highway without designated buffer zones or an arterial route only if there are no combustibles or brush between the edge of the field and the highway or route.

(2) May allow a field to burn next to a rural collector road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead and they should be prepared to stop. Trained flaggers shall be available in the vicinity to immediately respond with flagging signs to the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur along a rural collector road only if there are no combustibles or brush between the edge of the field and the rural collector road.

(3) May allow a field to burn next to a rural local service road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead. Trained flaggers shall be available to be on the road with flagging signs at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary.

NOTE: For purposes of these rules, state highway, arterial routes and collector roads are defined by the Federal Highway Administration and the Oregon Department of Transportation. Before burning a field, contact your county road authority for road designation and county regulations.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

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, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0090

Ban on Burning

All field burning shall be banned when any two of the following criteria are present:

(1) Temperature of 95 degrees Fahrenheit or above;

(2) Relative humidity of 30 percent or below;

(3) Wind speed of 15 miles per hour or higher.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

Propaning

837-110-0110

Field Preparation

(1) Prior to propaning, all fields shall be prepared by providing a barrier around the perimeter free of combustible materials.

(2) The barrier may be provided by green cover crop, bare earth, or other method(s) to prevent any fire spread, and shall be prepared by using one or more of the following methods:

(a) Plowing or disking a 10-foot strip around the field perimeter; or

(b) Plowing or disking a 5-foot strip around the field perimeter and removal of loose, combustible straw from a 12-foot strip immediately adjacent to the 5-foot strip; or

(c) Retaining at least a 50-foot strip of green crop or bare earth in the immediately adjacent field(s) at the time of propaning; or

(d) Having a 17-foot strip of green cover crop or bare earth; or

(e) Other alternatives may be used with the specific written approval of the State Fire Marshal.

(3) The barrier need not be provided where the perimeter of the field lies adjacent to a field that meets the provisions of this section.

Stat. Auth.: ORS 476.030, 476.380 & 478.960

Stats. Implemented: ORS 476.380 & 478.960

Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0120

Firefighting Water Supplies

When propaning acreage, the following safety measures shall apply:

(1) At least one firefighting water tank vehicle meeting the equipment requirements of OAR 837-110-0120 through 837-110-0140 and which has a minimum water tank capacity of 200 gallons shall be on site.

(2) If additional firefighting assistance is more than five minutes from a burn site within a fire safety buffer zone, or ten minutes otherwise, then water tank capacity mentioned in section (1) of this rule shall be raised to 500 gallons.

(3) A means to refill the tanks mentioned in sections (1) and (2) of this rule shall be provided within a ten minute turn around time.

EXCEPTION: Water tank vehicles of smaller capacity may be used provided the total gallonage capacity complies with the above.
Stat. Auth.: ORS 476.030, 476.380 & 478.960
Stats. Implemented: ORS 476.380 & 478.960
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0130

Firefighting Equipment

The person(s) responsible for the acreage to be propaned shall use firefighting equipment that meets or exceeds the following standards:

(1) All water tank vehicles shall be equipped with a pump in working order with a pumping capability of 30 gallons per minute or more and capable of extinguishing a flame at a distance of at least 40 feet.

(2) All required water tank vehicles shall be adequately staffed to assure proper operation. It is recommended that at least two employees who have received basic safety training be assigned to each firefighting vehicle.

(3) All water tanks shall be filled to 90 percent of their capacity prior to ignition of the field.

Stat. Auth.: ORS 476.030, 476.380 & 478.960
Stats. Implemented: ORS 476.380 & 478.960
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 2-1994, f. & cert. ef. 2-7-94

837-110-0140

Communication

The ability to call for assistance and summon help from an appropriate emergency response agency shall be maintained at all times by phone or radio communications between all firefighting equipment used in the burning of the fields and a constantly staffed base station or home with phone access.

Stat. Auth.: ORS 476 & 478
Stats. Implemented: ORS 476.380 & 478.960
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

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.

Stat. Auth.: ORS 476.030, 476.380 & 478.960
Stats. Implemented: ORS 476.380 & 478.960
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

837-110-0155

Traffic Safety

The person responsible for the acreage being burned shall provide signage and trained flaggers for traffic safety. The person responsible:

(1) May allow a field to burn next to a state highway without designated buffer zones or next to an arterial route as long as there are trained flaggers and warning signage on the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur next to a state highway with out designated zones or an arterial route only if there are no combustibles or brush between the edge of the field and the highway or route.

(2) May allow a field to burn next to a rural collector road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead and they should be prepared to stop. Trained flaggers shall be available in the vicinity to immediately respond with flagging signs to the road at both ends of the field during

the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur along a rural collector road only if there are no combustibles or brush between the edge of the field and the rural collector road.

(3) May allow a field to burn next to a rural local services road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead. Trained flaggers shall be available to be on the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary.

NOTE: For purposes of these rules, state highway, arterial routes and collector roads are defined by the Federal Highway Administration and the Oregon Department of Transportation. Before burning a field, contact your county road authority for road designation and county regulations.
Stat. Auth.: ORS 476.030, 476.380 & 478.960
Stats. Implemented: ORS 476.380 & 478.960
Hist.: OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

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 & 478
Stats. Implemented: ORS 476.380 & 478.960
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93

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 - 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 - 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 Communication Council in its role as the State Emergency Response Commission under ORS 453.520 and the Emergency Planning and Community Right-to-Know Act (Public Law 99-499).

(16) "Local Government Agency" shall mean a city, county, special function district or subdivision thereof.

(17) "Local Response" shall mean a hazardous materials emergency response in the local governmental area where team members normally conduct emergency response activities and those areas where the local government has a hazardous materials mutual response agreement in place and the responding team does not respond as a state team.

(18) "Mitigation" shall mean actions taken to bring an emergency incident under control using fire suppression containment, confinement and other protocols.

(19) "Motor Vehicle" shall mean, but is not limited to, any vessel, aircraft or automobile, motorcycle or other conveyance driven upon public or private lands.

(20) "ORS" shall mean Oregon Revised Statutes.

(21) "Person" shall mean any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of this state, and interstate bodies.

(22) "Primary Response Area" shall mean that geographical region where a contractor is principally responsible for providing regional or limited hazardous materials emergency response services.

(23) "Regional Hazardous Materials Emergency Response Team or Regional Response Team" shall mean a contractor's hazardous materials emergency response team capable of operating within a region of the state using any of the personal protective equipment safety limits set forth in **CFR 29, Parts 1910.120(q)** and its "**Appendix A**," as adopted by Oregon-OSHA's OAR 437-002-0100.

(24) "Release" shall mean the same as that term is defined in ORS 465.200(14).

(25) "Responsible Party" shall mean the person(s) responsible for causing the emergency incident. (See ORS 453.382.)

(26) "State" shall mean the State of Oregon acting by and through the State Fire Marshal.

(27) "State Spill Response Revolving Fund" shall mean the revolving fund established under ORS 453.390 et seq.

(28) "Team Response Cost(s)" shall mean those regional or limited hazardous materials emergency response team contractor expenses which are expressly allowed under the agreement and contract and approved by the state. This term is equivalent to "Extraordinary Response Cost(s)." See also OAR 837-120-0090(4).

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - 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 - 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 are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - 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 outside of a primary response area, the requesting on-scene government official shall direct the response request to the Oregon Emergency Response System (OERS) at 1-800-452-0311 any time or day.

(7) Regional response team contractors, when acting under state authority, may respond outside of their local jurisdiction in accordance with the criteria established by OAR 837-120-0030(2) and (3), or under specific written or verbal approval of the State Fire Marshal Hazardous Materials Duty Officer.

(8) Granting of emergency response approval by the State Fire Marshal Hazardous Materials Duty Officer constitutes the State's agreement to pay Contractor's team expenses from the State Spill Response Revolving Fund if full recovery of emergency response costs from a responsible party(ies) is not possible under OAR 837-120-0090.

(9) The State Fire Marshal's emergency response approval may take the form of written Standard Operating Guidelines wherein the State Fire Marshal grants regional and limited response team contractor pre-authorization to respond to well-defined types of emergency incidents when time is of the essence.

NOTE: To aid in understanding the dispatch process, a graphic depiction is provided in **Appendix 1**.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.374 - 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 - 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 - 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 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 837-090-0000.

(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 - 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 - 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 - 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 - 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 - 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 837-120-0340 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 - 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 - 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 - 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 - 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 - 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 - 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 & 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 & 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 & 478.310
Stats. Implemented: ORS 453.550, 476.560, 476.290 & 478.310
Hist.: FM 1-1993, f. 5-13-93, cert. ef. 6-1-93