

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form..

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on May 29, 2009, by the  
Date prior to or same as filing date

Oregon State Police, Office of State Fire Marshal ORS 837  
Agency and Division Administrative Rules Chapter Number  
Pat Carroll 4760 Portland Rd NE, Salem, OR 97305 503-934-8276  
Rules Coordinator Address Telephone

to become effective June 2, 2009 through November 20, 2009  
Date upon filing or later A maximum of 180 days including the effective date.

**RULE CAPTION**

Implement rules for Oregon's Novelty/Toylike Lighter Laws.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**  
List each rule number separately, 000-000-0000.

**ADOPT:** Secure approval of rule numbers with the Administrative Rules Unit prior to filing.  
**837-046-0000, 837-046-0020, 837-046-0040, 837-046-0060, 837-046-0080, 837-046-0100, 837-046-0120, 837-046-0140, 837-046-0160, 837-046-0180.**

**AMEND:**

**SUSPEND:**

2009 HB 2365 Other Authority  
Stat. Auth.  
2009 HB 2365  
Stats. Implemented

**RULE SUMMARY**

The purpose of these rules is to implement rules for Oregon's Novelty/Toylike Lighter laws.

\_\_\_\_\_  
Authorized Signer Pat Carroll \_\_\_\_\_  
Printed name Date

Secretary of State  
**STATEMENT OF NEED AND JUSTIFICATION**  
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon State Police, Office of State Fire Marshal  
Agency and Division

837  
Administrative Rules Chapter Number

In the Matter of: Adopting 837-046-000 through 837-046-0180

Rule Caption: Implement Temporary Administrative Rules for Oregon's Novelty/Toylike Lighter Laws

Statutory Authority: 2009 HB 2365

Other Authority:

Stats. Implemented: 2009 HB 2365

Need for the Temporary Rule(s):

A new law prohibiting the sale of Novelty/Toylike lighters in Oregon after June 2, 2009, was recently signed into law. This law will prevent injuries and fatalities caused by novelty/toylike lighters. These rules allow the State Fire Marshal to implement and regulate this law.

Documents Relied Upon, and where they are available:

2009 HB 2365

Advisory Committee Meeting notes and draft rules are available at the State Fire Marshal's Office.

Justification of Temporary Rule(s):

The Novelty/Toylike Lighter law was recently signed into law with an effective date of June 2, 2009. The rules have been developed through collaboration with stakeholders and the fire service. Due to the deadlines required for compliance, the temporary rules need to be in place by June 2, 2009.

\_\_\_\_\_  
Authorized Signer

Pat Carroll  
Printed name

\_\_\_\_\_  
Date

# OFFICE OF STATE FIRE MARSHAL

## NOVELTY/TOYLIKE LIGHTERS ADMINISTRATIVE RULES



**OFFICE OF STATE FIRE MARSHAL  
OREGON STATE POLICE  
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## 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*.

### 837- 046-0020

#### Effective Dates

OAR 837-046-0000 through 837-046-0180 are effective upon the date of filing.

### 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.

### 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*.

#### **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.

#### **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.

#### **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.

#### **837-046-0140**

##### **Seizure of Non-Compliant Product**

(1) 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.

#### **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.

#### **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.