

The Oregon Administrative Rules contain OARs filed through February 15, 2008

DEPARTMENT OF OREGON STATE POLICE, OFFICE OF STATE FIRE MARSHAL

**DIVISION 120
HAZARDOUS MATERIALS EMERGENCY
RESPONSE SYSTEM**

837-120-0001

Purpose and Scope

- (1) These rules establish criteria and provisions for the implementation of a statewide hazardous materials emergency response system.
- (2) These rules shall be used to assist and provide direction for owners of facilities, government officials, and officers of the court in the interpretation and application of [ORS 453.374](#) through [453.990](#).
- (3) These rules are intended to be consistent with agreements and contracts entered into by the State of Oregon, and regional and limited hazardous materials emergency response teams.
- (4) These rules also provide for contract team operations and include, but are not limited to:
 - (a) Provisions for coordinating team dispatch, duties, and responsibilities;
 - (b) Criteria for the types of hazardous materials emergencies that qualify for regional or limited response team responses;
 - (c) Establishment of fee schedules for computing the reimbursement of contractor team response costs arising from hazardous materials emergencies; and
 - (d) Procedures for state recovery of emergency response costs from the person(s) responsible for causing a hazardous materials emergency.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0005

Effective Dates

OAR 837-120-0001 through 837-120-0150 are effective upon date of filing.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0010

Definitions

For the purposes of these rules the following definitions apply:

- (1) "Clean-Up" shall mean the measures taken after emergency response mitigation and which are intended to permanently remove the hazard from the incident site.
- (2) "Contract" shall mean the entire written agreement between the State of Oregon and a Regional or Limited Hazardous Materials Emergency Response Team contractor.
- (3) "Contractor" shall mean the local government agency(ies) which provide(s) regional or limited hazardous materials emergency response services under a state contract and this Division.
- (4) "Documentation" shall mean the State Fire Marshal billing form, State Fire Marshal hazardous materials incident form, the team incident report, and the Decision Matrix if used, or a form incorporating these forms.
- (5) "Emergency Response" shall mean those actions taken to respond to a hazardous materials incident. See also OAR 837-120-0020(3).

- (6) "Emergency Response Cost(s)" shall mean the total emergency response expenses arising from a hazardous materials incident. See also OAR 837-120-0090(2) and (3).
- (7) "Extraordinary Response Cost(s)" shall mean and is equivalent to Team Response cost(s). See also section (28) of this rule and OAR 837-120-0090(4).
- (8) "Facility" shall mean any building, structure, installation, equipment, pipe or pipe-lines, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, aircraft, or any other place where there is a release, or threatened release, of a hazardous material.
- (9) "Hazardous Materials" shall mean "hazardous substance" as that term is defined in [ORS 453.307\(4\)](#).
- (10) "Hazardous Materials Emergency Response" shall mean and be equivalent to emergency response as defined and described in section (5) of this rule and OAR 837-120-0020(3).
- (11) "Hazardous Materials Emergency Response Team" shall mean an organized group of employees, designated by a contractor, who are expected to respond under state contract to control and/or stabilize actual or potential emergency releases of hazardous materials. Teams shall be designated according to staffing level, the type of personal protective equipment and training set forth in **CFR 29, Parts 1910.120(q)** and its "**Appendix A**", as adopted by Oregon-OSHA's OAR 437-002-0100, and level of response.
- (12) "Incident" shall mean any spill or release, or threat thereof, rupture, fire or accident that results, or has the potential to result, in the involvement, loss or escape of a hazardous material.
- (13) "Incident Termination" shall mean the process of completing mitigation actions, securing supplies, equipment, materials, information and communication with command as it relates to a hazardous materials incident.
- (14) "Limited Hazardous Materials Emergency Response Team or Limited Response Team" shall mean a hazardous materials emergency response team operating in conjunction with and providing assistance to a Regional Response Team in a limited manner or area of the state. See also section (23) of this rule.
- (15) "Local Emergency Planning Committee (LEPC)" shall mean the statewide hazardous materials emergency planning committee designated by the Oregon Interagency Hazard Communication Council in its role as the State Emergency Response Commission under [ORS 453.520](#) and the Emergency Planning and Community Right-to-Know Act (Public Law 99-499).
- (16) "Local Government Agency" shall mean a city, county, special function district or subdivision thereof.
- (17) "Local Response" shall mean a hazardous materials emergency response in the local governmental area where team members normally conduct emergency response activities and those areas where the local government has a hazardous materials mutual response agreement in place and the responding team does not respond as a state team.
- (18) "Mitigation" shall mean actions taken to bring an emergency incident under control using fire suppression containment, confinement and other protocols.
- (19) "Motor Vehicle" shall mean, but is not limited to, any vessel, aircraft or automobile, motorcycle or other conveyance driven upon public or private lands.
- (20) "ORS" shall mean Oregon Revised Statutes.
- (21) "Person" shall mean any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of this state, and interstate bodies.
- (22) "Primary Response Area" shall mean that geographical region where a contractor is principally responsible for providing regional or limited hazardous materials emergency response services.
- (23) "Regional Hazardous Materials Emergency Response Team or Regional Response Team" shall mean a contractor's hazardous materials emergency response team capable of operating within a region of the state using any of the personal protective equipment safety limits set forth in **CFR 29, Parts 1910.120(q)** and its "**Appendix A**", as adopted by Oregon-OSHA's OAR 437-002-0100.
- (24) "Release" shall mean the same as that term is defined in ORS 465.200(14).
- (25) "Responsible Party" shall mean the person(s) responsible for causing the emergency incident. (See [ORS 453.382](#).)
- (26) "State" shall mean the State of Oregon acting by and through the State Fire Marshal.
- (27) "State Spill Response Revolving Fund" shall mean the revolving fund established under [ORS 453.390](#) et seq.
- (28) "Team Response Cost(s)" shall mean those regional or limited hazardous materials emergency response team contractor expenses which are expressly allowed under the agreement and contract and

approved by the state. This term is equivalent to "Extraordinary Response Cost(s)". See also OAR 837-120-0090(4).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0020

Hazardous Materials Response System and Response Team Contracts

- (1) The State Fire Marshal shall develop and implement a statewide hazardous materials emergency response system.
- (2) The statewide hazardous materials emergency response system shall focus on response activities and augment emergency response systems at local, state and national levels.
- (3) Emergency response(s) for hazardous materials incidents shall include:
 - (a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release;
 - (b) First aid, rescue or medical services; and
 - (c) Fire suppression, containment, confinement, or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release, or threatened spill or release, of a hazardous material if action is not taken.
- (4) The statewide hazardous materials emergency response system shall include provisions for contracts for regional and limited hazardous materials emergency response teams.
- (5) Regional and limited hazardous materials emergency response teams shall operate under intergovernmental agreement between the state and local government agencies.
- (6) Regional and limited hazardous materials emergency response team contracts shall include:
 - (a) An applicable intergovernmental agreement and contract, together with all attachments, exhibits, and addenda, if any; and
 - (b) Referenced documents including but not limited to, correspondence between the state and contractor, contract proposals, and the state's Request for Proposal including its specifications, terms and conditions, in that order of precedence.
- (7) Contractor compensation shall generally include:
 - (a) Training for regional and limited response team members;
 - (b) Loans of state emergency response vehicles to contractors;
 - (c) Loans of state emergency operations equipment to contractors;
 - (d) Protection of regional and limited response team members from tort liability as set forth in [ORS 453.384](#);
 - (e) Recovery of team response costs on behalf of contractors; and
 - (f) Payment of contractor's team response costs under OAR 837-120-0090 when no payments are forthcoming from responsible person(s).
- (8) Except as specifically agreed to by agreement and contract, a contractor's compensation will not include:
 - (a) Personnel costs associated with non-emergency activities; or
 - (b) Team response costs not directly arising from an actual or threatened release of a hazardous material or which do not otherwise qualify under section (7) of this rule.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0030

Emergency Response Criteria

- (1) Responses of regional and limited hazardous materials emergency response teams shall be controlled due to limited discretionary (State Spill Response Revolving Fund) operating monies.
- (2) Regional and limited response teams will only be dispatched when the reported incident meets the minimum response criteria described in **Appendix 1** or the dispatch procedures in OAR 837-120-0040.

(3) The State Fire Marshal Hazardous Materials Duty Officer shall have final authority to determine whether an incident qualifies for a response by one or more regional or limited hazardous materials emergency response teams.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0040

Dispatch Process

(1) Before a regional or limited response team may respond to an incident, an initial assessment or size-up of the emergency shall be made.

(2) The initial assessment or size-up will usually be made by either local government officials (including team members), the County Sheriff, or Oregon State Police personnel.

(3) If, after making an assessment or size-up of the incident, the on-scene governmental official determines that the emergency involves a hazardous material and that it cannot be successfully controlled with local resources, the on-scene official may request assistance from the regional or limited response team in whose region the incident occurs.

(4) The general boundaries of the primary response areas for regional response teams are depicted on the map in **Appendix 1**.

(5) Emergency response requests shall be directed to the appropriate regional response team. A list of the teams and their contact numbers are included in **Appendix 1**.

(6) If contact with the appropriate regional response team dispatch center cannot be made, or if the incident occurs in an area outside of a primary response area, the requesting on-scene government official shall direct the response request to the Oregon Emergency Response System (OERS) at 1-800-452-0311 any time or day.

(7) Regional response team contractors, when acting under state authority, may respond outside of their local jurisdiction in accordance with the criteria established by OAR 837-120-0030(2) and (3), or under specific written or verbal approval of the State Fire Marshal Hazardous Materials Duty Officer.

(8) Granting of emergency response approval by the State Fire Marshal Hazardous Materials Duty Officer constitutes the State's agreement to pay Contractor's team expenses from the State Spill Response Revolving Fund if full recovery of emergency response costs from a responsible party(ies) is not possible under OAR 837-120-0090.

(9) The State Fire Marshal's emergency response approval may take the form of written Standard Operating Guidelines wherein the State Fire Marshal grants regional and limited response team contractor pre-authorization to respond to well-defined types of emergency incidents when time is of the essence.

NOTE: To aid in understanding the dispatch process, a graphic depiction is provided in **Appendix 1**.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0050

Regional and Limited Response Team Services

(1) Regional and limited hazardous materials emergency response team activities shall be limited to emergency responses and the evaluation and documentation functions arising from hazardous materials emergency incidents which threaten life, property, or the environment.

(2) State regional or limited response teams may sample, test, analyze, treat, remove, recover, package, monitor or track the involvement of hazardous materials only if it is necessary and incidental for identifying; preventing a release, or threat of release, of a hazardous material; or to stabilize an emergency incident.

(3) Regional and limited hazardous materials emergency response teams shall respond to the best of their abilities, subject to the limitations of available equipment and personnel.

Stat. Auth.: ORS 453.367
Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)
Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0060

Regional and Limited Response Team Performance Conditions

(1) Approved regional and limited hazardous materials emergency response team activities shall be limited to those which can be safely done to stabilize a hazardous materials emergency and, except as may be incidentally necessary, do not include the transport, storage, disposal, or remedial clean-up of hazardous materials.

(2) Regional and limited hazardous materials emergency response teams shall *not* be required to maintain general security and/or safety perimeters, locate underground utilities, insure appropriate traffic control services, conduct hydrological investigations and analysis, or to provide testing, removal and disposal of underground storage tank contamination at or near the hazardous materials incident to which the contract team is dispatched.

NOTE: These functions are generally the responsibility of the responsible party, the Oregon Department of Environmental Quality, or the local governmental jurisdiction in which the incident occurs. To be absolutely clear, regional and limited response teams shall not perform "clean-up activities" nor do they contract for the storage and/or disposal of hazardous materials; however, they do make contact with and request the Department of Environmental Quality to do these things.

(3) Regional and Limited response teams are *not* authorized to assume command of the hazardous materials emergency unless they are the only ones present and/or until a local on-scene Incident Commander arrives and/or if the on-scene Incident Commander has transferred the command authority to a regional or limited response team.

Stat. Auth.: ORS 453.367
Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)
Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0070

Emergency Preplanning

(1) Government entities who expect to request assistance from a regional or limited response team shall be prepared to provide the regional or limited response team with the following information upon its arrival:

(a) Sufficient site-specific information, such as drainage locations, to support tactical decisions by the team officer; and

(b) Sufficient geographical and topological information to support tactical decisions by the team officer.

(2) In addition to the information described in section (1) of this rule, local government officials who wish to utilize regional or limited response team services shall also provide any other information the regional or limited response team officer reasonably requests in advance of an incident. Such preplanning data may include, but shall not be limited to:

(a) Facility site-specific floor plans and occupancy information;

(b) Local maps;

(c) Local resource information;

(d) The types and level of emergency operational support and resources available locally; and

(e) Any other necessary information.

(3) Regional and limited hazardous materials emergency response teams shall be supplied with the information contained in the state's Community Right-to-Know survey database.

Stat. Auth.: ORS 453.367
Stats. Implemented: [ORS 453.347](#)
Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0080

Response Fee Schedules

(1) The fee schedules agreed to by the state and contractors as part of the regional and limited hazardous materials emergency response team agreements and contracts, shall serve as the basis for assessment of response costs.

(2) The fee schedules shall be changed as necessary to accurately reflect response costs.

(3) Current regional and limited hazardous materials emergency response team agreements and contracts are available for review upon appointment at the central Offices of the State Fire Marshal between the hours of 8 a.m. and 5 p.m. weekdays.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#)

Hist.: FM 8-1992, f. 7-15-92, cert. ef. 8-15-92

837-120-0090

Response Costs and Financial Liability

(1) Notwithstanding any other provision of rule or law, whenever the State Fire Marshal dispatches a regional or limited hazardous materials emergency response team to an emergency involving hazardous materials, the State Fire Marshal may bill the person(s) responsible for causing the emergency for the costs of responding to the emergency.

(2) Emergency response costs include all response costs incurred as a result of a hazardous materials emergency. Such costs generally include, but are not limited to, all state and local government expenses that result from the assessment and emergency response phases of hazardous materials incidents.

(3) Emergency response costs do not include clean-up or disposal costs of hazardous materials, except as they may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous material or for stabilizing the emergency response incident.

(4) Team response costs do not include the wide range of emergency costs associated with a hazardous materials emergency, but shall be limited to those expenses agreed to by contract as directly related to regional hazardous materials emergency response team operations.

(5) The person(s) responsible for causing the emergency shall be liable for:

(a) All emergency response costs including, but not limited to, team expenses incurred by the regional or limited hazardous materials 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: The publication(s) referred to or incorporated by reference in this rule 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](#) - [ORS 453.390](#)
Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0310

Definitions

- (1) "Applicant" shall mean any individual or organization considering itself capable of developing training programs as required in OAR 437-002-0100, **29 CFR 1910.120(q)(6)(iii)** and **(iv)** that wishes to apply for State Fire Marshal approval of its program(s) under this rule.
- (2) "Training Program" shall mean an individual course, class, or instruction on a specific topic or subject area or a composite of individual courses, classes or instructions addressing all subject areas identified in OAR 837-120-0340(1).
- (3) "Approval" and "Approved" shall mean only that the State Fire Marshal has identified an applicant's training program as having met the eligibility requirements identified in OAR 837-120-0320(1) for expenditure of state funds for training regional hazardous materials emergency response teams organized in accordance with [ORS 453.374](#) and 453.380.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 453.367
Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)
Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0320

Requests for Training Program Approval

Eligibility:

- (1) The applicant shall provide, as a minimum, the following information:
 - (a) The applicant's name, address and telephone number;
 - (b) The name, title, address and telephone number of person who will act as liaison with the State Fire Marshal;
 - (c) Length of training in hours;
 - (d) Amount and type of hands-on training;
 - (e) The training program curriculum including the topics to be covered and the length, format, content and passing scores of examinations;
 - (f) A copy of all course materials (i.e., student manuals, instructor manual, lesson plans, and handout materials upon application; audiovisual aids, etc.) upon initial application for course approval; and second reviews, upon request of the State Fire Marshal. Proprietary and copyrighted course materials shall be denoted by the applicant. The State Fire Marshal shall not duplicate, copy, disseminate, or release course materials so designated without the written permission of the applicant;
 - (g) A table identifying all student performance objectives for each course submitted;

(h) A table identifying which training requirements in the following documents that the training program is targeted to meet and an analysis of how the training program meets them:

- (A) OAR 437-002-0100, **29 CFR 1910.120(q)** Hazardous Waste Operations and Emergency Response;
- (B) **NFPA 472** Standard for Professional Competence of Responders to Hazardous Materials Incidents; and
- (C) OAR 838-010-0005(11) Accreditation Guide for Hazardous Materials Responders.

(i) A detailed statement about the development process of the examinations used in the training program, including skill demonstration examinations;

(j) The maximum number of students to be accepted into a given training program course;

(k) The ratio of instructors to students for each hands-on subject;

(l) Required qualifications for each instructor position by subject area. Instructors shall have completed an acceptable "train-the-trainer" type of training session for their subject training area or shall have the academic credentials, field experience or a combination of both and the training experience for the specific subject they are teaching. Instructors for "hands-on" skills training shall have actual field experience in the skills subject(s) they teach;

(m) A copy of the roster specified in OAR 837-120-0390(4) that would identify students who would attend and successfully complete the training program;

(n) A description of the applicant's experience in providing related training programs;

(o) Written certification by the applicant that the information submitted in the application is accurate and complete.

(2) Filing location. Applications shall be submitted to the headquarters of the Office of State Fire Marshal.

(3) Amendments and withdrawals:

(a) The applicant shall be permitted to revise an application any time prior to a final decision on the approval application;

(b) The applicant shall be permitted to withdraw an application, without prejudice, at any time prior to the final decision on the approval application.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0330

Review Process

Acknowledgement. The State Fire Marshal shall acknowledge in writing the receipt of all applications it receives. The State Fire Marshal may request additional information if the State Fire Marshal believes information relevant to the requirements for approval has been omitted or is incomplete. The State Fire Marshal may use an advisory group to review the applications for completeness, competency and adequacy of credentials.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0340

Decision Process

Requirements for approval. The requirements for approval are:

(1) That the applicant must demonstrate that it has a written training program that meets the applicable paragraphs of this section and its program will train students in topics required in the following:

(a) OAR 437-002-0100, **29 CFR 1910.120(q)(6) (iii)** and **(iv)**; and

(b) OAR 838-010-0005(11):

(A) Section 3041 Hazardous Materials Technician/Specialist and Task Performance Criteria; or

(B) Section 3042 Hazardous Materials Team Leader.

(2) That its training program is capable of effectively training students in the topics required in the standards identified in section (1) of this rule;

(3) That it has an effective method of measuring whether the students have been adequately trained in the areas of required training;

- (4) That it will maintain adequate records of the program and of employees who have successfully completed the program; and
- (5) That its training program is capable of and will continue to meet the requirements for approval.
- [Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0350

Terms and Conditions of Approval

(1) Issuance of approval. If the State Fire Marshal finds that a training program, course or instruction thereof satisfies the minimum requirements established therefor pursuant to OAR 837-120-0340, the State Fire Marshal shall issue approval to the applicant of any such training program, course or instruction, for such a term and upon such conditions as the State Fire Marshal shall prescribe in accordance with subsection (2)(b) of this rule. An individual complies with any minimum requirement of [ORS 476.850\(1\)](#) when the individual receives training that is approved under this section.

(2) Approval of program. The following terms and conditions shall be part of every approval:

(a) The approval of each training program will be evidenced by a letter of approval from the State Fire Marshal. The letter will provide the specific details of the scope of the approval as well as any conditions imposed by the State Fire Marshal;

(b) The approval of each training program shall be valid for up to three years after the initial approval, and valid for up to five years for each subsequent renewal unless revoked for good cause. The dates of the period of approval will be stated in the approval letter;

(c) The applicant of an approved program shall continue to satisfy all the requirements of this section and the letter of approval during the period of approval.

(3) Revision of an approved program. The applicant may change elements of its approved training program by notifying the State Fire Marshal of the change, certifying that the reviewed program change meets the requirements of OAR 837-120-0340, that the entire approved program continues to meet the requirements of OAR 837-120-0340, and that supporting documentation is provided upon which its conclusions are based. The applicant may make the change upon notification to the State Fire Marshal. However, if on subsequent review, the State Fire Marshal determines the change is inconsistent with OAR 837-120-340 and so notifies the applicant, the applicant must revert to the original elements.

(4) Lapse of approval; reapplication. The approval of a training program shall automatically lapse on the date specified in accordance with subsection (2)(b) of this rule. An applicant of an approved program may renew its approval by filing a renewal request with the State Fire Marshal not less than 180 calendar days, nor more than one year, before the expiration date of its current approval. When the applicant has filed such a renewal request, the current approval will not expire until a final decision has been made on the renewal request. The renewal request will be processed in accordance with the procedures of OAR 837-120-0320 through 837-120-0340.

(5) Transfer of an approved program. An applicant may not transfer the approval of its program to any other person or organization without prior written authorization from the State Fire Marshal.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0360

Grounds for Revocation of Approval

The State Fire Marshal may revoke the approval of a training program after written notice and hearing as provided in [ORS 476.830](#), if the State Fire Marshal finds that the applicant of the approved program has failed to continue to satisfy the requirements of OAR 837-120-0340 or 837-120-0350 or the State Fire Marshal's letter of approval, or has misrepresented itself in its application.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0370

Procedure for Revocation of Approval

(1) If the State Fire Marshal believes that grounds exist under OAR 837-120-0360 for the revocation of approval of a training program approved under OAR 837-120-0350(1) and (2), the State Fire Marshal shall give notification to the applicant of intention to consider revocation of the approval. Each such notification shall include a statement of the basis for considering such revocation and a statement that, within ten days after the date of the notice, such applicant may request a hearing before the State Fire Marshal on the matter. (ORS 476.830(1))

(2) If any applicant to whom notice has been sent under section (1) of this rule requests a hearing before the State Fire Marshal within the periods indicated in that section, the State Fire Marshal shall hold a hearing on the matter within 30 days after the date of the request for such a hearing. The State Fire Marshal shall give notification of the time and place of a hearing held under this section. (ORS 476.830(2))

(3) A hearing held as provided in section (2) of this rule shall be limited to the basis for the proposed revocation as stated in the notification sent to the applicant under section (1) of this rule. Any applicant appearing before the State Fire Marshal at any such hearing is entitled to be present at such hearing and to be represented by counsel. (ORS 476.830(3))

(4) Within 20 days after the date of the completion of a hearing held as provided in section (2) of this rule, the State Fire Marshal shall give notification in writing of the decision to all parties to the hearing. If the State Fire Marshal finds grounds for the revocation of approval, the State Fire Marshal shall issue an order revoking such approval. If the State Fire Marshal finds that no grounds exist for such revocation, the State Fire Marshal shall dismiss the proceedings. (See ORS 476.830(4).)

(5) Any interested party may file a complaint stating that the applicant is not meeting the requirements of approval or of the State Fire Marshal's approval letter, or has misrepresented itself in its application. Such complaint shall contain specific information as to the deficiencies identified. The State Fire Marshal will acknowledge such complaints in writing and provide the applicant with a copy of the complaint subject to federal Privacy Act limitations.

(6) The State Fire Marshal will investigate such complaints and upon completion of such investigation may invoke the revocation procedures described in this section. If the decision is not to pursue revocation, the complainant will be notified in writing by the State Fire Marshal of the investigation findings and reasons why the approval remains valid.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0380

Appeal of Order Revoking Approval; Reapplication

(1) Within 60 days after receiving written notice of the findings of the State Fire Marshal, any applicant aggrieved by the findings and order may file an appeal from the final order with the Oregon Court of Appeals in the manner provided for in [ORS 183.482](#).

(2) Any applicant whose training program, course or instruction has suffered a loss of approval status pursuant to OAR 837-120-0350(4), 837-120-0360 or section (1) of this rule may reapply for approval at any time after the expiration of two years after the date on which the order revoking approval became final.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0390

Requirements of an Applicant Following Program Approval

Each applicant whose program has been approved shall:

(1) Allow the State Fire Marshal or his/her authorized representative(s) to attend, evaluate, and monitor any part of the approved training program without charge or cost to the State Fire Marshal. The State Fire Marshal need not give advance notice of attendance at the training program.

(2) Agree to modify the approved training program if the training requirements of this section or the referenced documents are changed or if any other applicable federal or state standard which is the subject of training is changed so that it will affect this section. The modification in the training program shall take place no later than 30 days after this section or other relevant standard becomes effective.

(3) Agree to modify the approved training program if the "state of the art" changes relative to any of the topics provided in the training program.

(4) Agree to provide the State Fire Marshal, no later than ten business days after the final date of delivery of each approved program, the name and location of each program given, the date given, the names, addresses, social security number, and employer of participants in each program, and the names of participants that were certified as having successfully completed each program. Such information shall be provided on a roster approved by the State Fire Marshal.

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91

837-120-0400

Examinations

Examinations shall cover the necessary skills and knowledge. Each examination shall adequately cover the important topics included in the training program and shall be based on the student performance objectives for that program as identified in OAR 837-120-0320(1)(g).

Stat. Auth.: ORS 453.367

Stats. Implemented: [ORS 453.374](#) - [ORS 453.390](#)

Hist.: FM 1-1991(Temp), f. & cert. ef. 3-5-91; FM 2-1991, f. & cert. ef. 8-5-91
