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DEPARTMENT OF OREGON STATE POLICE, OFFICE OF STATE FIRE MARSHAL

**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. [Initial documents may be photocopies or facsimiles of the original documents. Subsequent d] 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 of 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

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*, 2006 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

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 OAR 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 dispenses *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 nonretail 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

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