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DEPARTMENT OF OREGON STATE POLICE, OFFICE OF STATE FIRE MARSHAL

**DIVISION 85
COMMUNITY RIGHT-TO-KNOW SURVEY AND
COMPLIANCE PROGRAMS**

837-085-0010

Authority and Application

(1) These rules are promulgated under the Office of State Fire Marshal's authority contained in ORS 453.367 and 453.402(2).

(2) OAR Chapter 837, Division 085 applies to covered employers, owners and operators of fixed facilities where hazardous substances or wastes are likely to be manufactured, generated, used, stored, possessed or disposed of.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0020

Purpose and Scope

(1) The purpose of OAR chapter 837, division 085, is:

(a) To insure that all reportable hazardous substances or wastes manufactured, generated, used, stored, possessed or disposed of at fixed facilities are identified and the information is submitted to the Office of State Fire Marshal;

(b) To address the process by which hazardous substance information is identified and communicated to the Office of State Fire Marshal;

(c) To address the process by which information received through the Office of State Fire Marshal's Hazardous Substance Information Survey and Incident Reporting Systems are distributed to emergency personnel, public agencies, and the public;

(d) To address the process of assessing penalties;

(e) To address the process by which covered employers, owners and operators will be evaluated to determine their level of compliance with the Oregon Community Right-to-Know and Protection Act;

(f) To establish procedures for Notice of Noncompliance and Proposed/Final Penalty Assessment Order to covered employers, owners and operators who fail to comply with the reporting requirements.

(2) The "Community Right-to-Know and Protection Act," ORS 453.307 to 453.414, requires covered employers, owners and operators to report to the Office of State Fire Marshal, the identity, associated hazard classification(s) and other information for all reportable hazardous substances or waste which they manufacture, generate, use, store or dispose of at fixed facilities.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 & 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0030

Covered Employers, Owners, Operators and the North American Industry Classification System (NAICS)

(1) Persons operating one or more facilities, where hazardous substances are present in reportable quantities are required to notify the Office of State Fire Marshal within 30 days and are subject to the hazardous substance information reporting requirements contained in ORS 453.307 to 453.414 and OAR 837-085-0090.

(2) Persons operating facilities within the North American Industry Classification System that have been identified by the Office of State Fire Marshal as having the potential to possess, store or otherwise use hazardous substances in reportable quantities are subject to the hazardous substance information reporting requirements contained in ORS 453.307 to 453.414 and OAR 837-085-0090 if sent a Hazardous Substance Information Survey by the Office of State Fire Marshal.

(3) Persons with facilities not covered may voluntarily complete and submit the Office of State Fire Marshal's Hazardous Substance Information Survey. Such persons shall not be subject to Hazardous Substance Possession Fees.

(4) Person(s) classified within construction or logging NAICS are not required to report their temporary work sites.

(5) Persons having facilities classified within the NAICS 424930 (Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers and/or the NAICS 444220 Nursery, Garden Center, and Farm Supply Stores, that do not sell, or otherwise market, products that require a material safety data sheet to be developed by the manufacture, are not required to report for that facility.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307(2)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0040

Definitions

(1) "Act" means the Community Right-to-Know and Protection Act, ORS 453.307 to 453.414.

(2) "Appeal" means the written request for a contested case in order to contest the required submission of Hazardous Substance Information Survey information or to contest a "Notice of Noncompliance and Proposed/Final Penalty Assessment" order, or a response to a request for exemption.

(3) "Approved Form" means a form either provided by or authorized by the Office of State Fire Marshal.

(4) "Audit" means the evaluation of covered employers, owners or operators to determine their level of compliance with the Oregon Community Right-to-Know and Protection Act.

(5) "Chemical" means any element, chemical compound, or mixture of elements and/or compounds.

(6) "Chemical Name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Services (CAS) rules of nomenclature.

(7) "Common Name" means any designation or identification such as code name, code number, trade name, brand name or generic name, used to identify a chemical other than by its chemical name.

(8) "Compliance Auditor" means a designated employee of the Office of State Fire Marshal whose responsibility is to conduct audits, identify noncompliance issues and propose penalties, establish correction dates and assist employers, owners and operators in voluntarily complying with ORS 453.307 to 453.414.

(9) "Compliance or Due Date" means the date set for submitting a Hazardous Substance Information Survey, substantive change or other information requested by the Office of State Fire Marshal.

(10) "Compressed Gas" means:

(a) A gas or mixture of gases, in a container, having an absolute pressure exceeding 40 psi at 70° F. (21.1° C.); or

(b) A gas or mixture of gases, in a container, having an absolute pressure exceeding 104 psi at 130° F. (54.4° C.) regardless of the pressure at 70° F. (21.1° C.); or

(c) A liquid having a vapor pressure exceeding 40 psi at 100° F. (37.8° C.) as determined by ASTM D-323-72, Test Method of Vapor Pressure of Petroleum Products (Reid Method).

(11) "Confidential" means information submitted to a public body in confidence (ORS 192.502(3)).

(12) "Confidentiality Agreement" means a written agreement between a covered employer, owner or operator and an entity authorized under ORS 453.337 and OAR chapter 837, division 085 to request and receive trade secret information.

(13) "Correction Order" means a written order that directs an employer, owner or operator to submit Hazardous Substance Information Survey information.

(14) "Covered Employer, Owner or Operator" means:

(a) Any person(s) operating a facility possessing reportable quantities of hazardous substances as defined by the Office of State Fire Marshal in OAR 837-085-0070.

(b) Any person(s) operating a facility that the Office of State Fire Marshal believes has the potential to store, generate, use, or otherwise possess hazardous substances in reportable quantities.

(15) "Division" means OAR chapter 837, division 085 of the Office of State Fire Marshal.

(16) "Emergency" means any human caused or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss which includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills of oil or other substances, contamination, utility or transportation accidents, disease, blight, infestation, civil disturbance, riot, sabotage/war.

(17) "Emergency Service(s)" means those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. Without limitation, these activities include coordination, preplanning, training, interagency liaison, fire fighting, hazardous substance management, law enforcement, medical, health and sanitation services, engineering and

public works, search and rescue activities, public information, damage assessment, administration and fiscal management.

(18) "Emergency Service Agency" means an organization, which performs essential services for the public's benefit prior to, during, or following an emergency. This includes, but is not limited to, organizational units within local governments, such as emergency medical technicians, health, medical and sanitation services, public works and engineering, public information and communications.

(19) "Entity" means any individual trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the federal government and any agency thereof.

(20) "Exempted Substance" means a substance that is not required to be reported.

(21) "Exemption" means the written authority given to a person by the Office of State Fire Marshal, granting an exemption from the requirements of a rule or law.

(22) "Explosives" means a hazardous substance that has been classified as an explosive by the U.S. Department of Transportation.

(23) "Extension" means the written authorization of the Office of State Fire Marshal to extend a compliance or due date.

(24) "Facility" means all buildings, equipment structures and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned or operated by a covered employer, owner or operator.

(25) "Facility/Reporting" means all buildings, equipment structures and other stationary items that are located at a single address that are owned and/or operated by a covered employer, owner or operator.

(26) "Facility Representative" means any individual designated by an employer, owner or operator to serve as spokesperson or, in the absence of a designated spokesperson, the person in charge of a facility being audited.

(27) "Filed" means the receipt of a document by the Office of State Fire Marshal, except that an appeal will be considered filed upon receipt at any regional office of the Office of State Fire Marshal.

(28) "Fire District" means any agency having responsibility for providing fire protection services.

(29) "Fixed Facility" means a facility having permanent and/or non-mobile operations.

(30) "Hazard Classification" means the U.S. Department of Transportation hazard class as published in the Bureau of Explosives Tariff No. BOE-6000-E, effective June 14, 1985. However, when the definitions in Tariff No. BOE-6000-E refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage and/or other regulated activities under OAR chapter 837, division 085.

(31) "Hazardous Substance" means:

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the Office of State Fire Marshal; or

(b) Any substance required to have a Material Safety Data Sheet (MSDS) pursuant to Oregon Occupational Safety and Health Division's OAR 437, division 2 (CFR 1910.1200), subdivision Z, and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienist (ACGIH); or

(c) Any substance required to have an MSDS pursuant to Oregon Occupational Safety and Health Division's OAR 437, division 2 (CFR 1910.1200), subdivision Z, except:

(A) Substances exempted by designation of the Office of State Fire Marshal; or

(B) Substances which are solids and do not react or dissolve and are stored in unprotected areas; or

(C) Substances exempted by the rules of OAR chapter 837, division 085; or

(D) Gases intended and used for human ingestion and/or inhalation either directly or added to a product, if the gas is present at the site where ingestion and/or inhalation occurs; and the gas is not being used in a manufacturing process; and the gas is not a cryogenic; and the gas is not being stored at the site in a quantity that exceeds 1,000 cubic feet. This rule applies to gases used for animals as well.

(d) Any substance for which a manufacturer is required to develop an MSDS, that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use and/or during an emergency situation; or

(e) Any waste substance that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use and/or during an emergency situation; or

(f) Any radioactive waste and/or radioactive material as defined in ORS 469.300(19) and radioactive substance as defined in ORS 453.005.

(32) "Hazardous Substance Information Survey" means a hazardous substance report that covered employers, owners or operators are required to submit, on an approved form, to the Office of State Fire Marshal.

(33) "Health Professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(34) "Identity" means any chemical or common name that is indicated:

(a) On a Material Safety Data Sheet (MSDS) as required under OAR 437, division 2 (CFR 1910.1200), subdivision Z; or

(b) On shipping documents as required under 49 CFR Part 171-177 under the Transportation Safety Act of 1974 (49 U.S.C. 1801 et seq.) and as published in the Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985; or

(c) On hazardous waste manifests as required by OAR chapter 340, division 102 as adopted by the Department of Environmental Quality; or

(d) On packaging or container labels as required under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and labeling regulations issued under the Act by the Environmental Protection Agency; or

(e) On a radioactive material license as issued under OAR chapter 333, divisions 100 through 113 as adopted by the Radiation Control Section of the Health Division of the Oregon Department of Human Resources.

(35) "Incident" means the threatened or actual injury or damage to a human, wildlife, domestic animal or the environment, or any property loss resulting from a hazardous substance release.

(36) "Law Enforcement Agency" means county sheriffs, municipal police departments, state police, other police officers of this and other states and law enforcement agencies of the federal government.

(37) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of pressure and/or cryogenic conditions.

(38) "Material Safety Data Sheet (MSDS)" means written printed or electronic material concerning a hazardous chemical which is prepared in accordance OAR 437, division 2 (CFR 1910.1200), subdivision Z, Hazard Communication rules of the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(39) "North American Industry Classification System" means a system developed by the Office of Management and Budget for the purpose of classifying establishments by the type of activity they engage in. The number assigned to each group classified is called the NAICS code.

(40) "No Longer Reportable" means a previously reported substance was not on site in a reportable quantity during the current survey period.

(41) "Noncompliance" means failure of a covered employer, owner or operator to comply with the Community Right-to-Know and Protection Act and/or its administrative rules.

(42) "Noncompliance Classification" means the category assigned to issues of noncompliance for the purposes of assessing a penalty.

(43) "Notice of Noncompliance and Proposed/Final Penalty Assessment Order" means a written document issued to covered employers, owners or operators that advises them they were not complying with the Community Right-to-Know and Protection Act, establishes correction dates and notifies them of penalty assessments.

(44) "Person" means: Any entity including, but not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof, and the federal government and any agency thereof;

(45) "Poison Class A and B" means a poisonous substance as defined in 49 CFR, Part 173.326 as published in the Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985.

(46) "Record" means any recorded information.

(47) "Repeat Noncompliance" means a covered employer, owner and or operator has failed to comply with the same rule(s) of OAR 837-085 two or more times within a five year period of time.

(48) "Reportable Hazardous Substance" is a hazardous substance that is manufactured, generated, used, stored, possessed, or disposed of at a fixed site location(s) by covered employers, owners and operators at or above the reportable quantities at any time during the survey period.

(49) "Reportable Quantity" means the amount of hazardous substance that must be present at a facility before reporting is required.

(50) "Reporting Range" means a range of quantities assigned by the Office of State Fire Marshal for reporting hazardous substances.

(51) "Significant Maximum Daily Amount Change" means a change in the maximum daily quantity reporting range to a higher reporting range than previously was reported.

(52) "Single Combined Survey" means a survey that has multiple substations reported on it.

(53) "Source Generation Sites" means facilities generating that which is relayed, pumped and/or stored by substations.

(54) "State Fire Marshal" means the State Fire Marshal or designee.

(55) "Substantive Change" means a change(s) in hazardous substance reporting information that requires notification to the Office of State Fire Marshal.

(56) "Substation" means facilities that function only as electrical transmission relays, telephone transmission relays, pager transmission relays, cable TV transmission relays, cellular phone transmission relays, radar transmission relays,

water storage reservoir, water pump and/or chlorinating stations, sewerage/storm water pump stations, natural gas pump stations and/or road sand storage.

(57) "Survey Period" means the 12 months preceding the date the Hazardous Substance Information Survey is mailed to, or completed by, the covered employer, owner and/or operator.

(58) "Temporary Worksite" means a single site location where activities, such as construction and logging, will likely occur for less than 24 months.

(59) "Trade Name" means the brand name or trademark given to a hazardous substance by a manufacturer or distributor.

(60) "Trade Secret(s)" means, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented; which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances having commercial value; and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(61) "Waste Hazardous Substance" means any substance, which meets the Department of Environmental Quality's definition of "hazardous waste."

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99 & cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0050

Hazardous Substance Information Survey -- General

(1) The Office of State Fire Marshal shall develop and distribute an annual Hazardous Substance Information Survey to covered employers, owners and operators. The information received shall be used to establish and maintain the hazardous substance information program required by the Community Right-to-Know and Protection Act.

(2) The Hazardous Substance Information Survey period shall be for the 12 months preceding the date the survey is mailed to, or completed by the facility.

(3) Covered employers, owners and/or operators operating facilities where hazardous substances are present in reportable quantities shall notify the Office of State Fire Marshal that the substances are present. This notification shall be made within 30 days of the substance being on site and at a minimum shall include the information required in OAR 837-085-0090(6)(b), (D), (E), (F), (G), and (H).

(4) Covered employers, owners and/or operators operating facilities where hazardous substances were present in reportable quantities during the survey period shall complete and submit a Hazardous Substance Information Survey.

(5) Covered employers, owners and/or operators operating facilities receiving the Hazardous Substance Information Survey for the first time shall complete and submit the survey by the due date.

(6) Covered employers, owners and/or operators that reported hazardous substances were present in reportable quantities during the previous survey period shall complete and submit a Hazardous Substance Information Survey.

(7) Covered employers, owners and/or operators that have had changes or additions to the information previously reported on their Hazardous Substance Information Survey shall complete and submit the survey.

(8) Covered employers, owners and/or operators operating facilities where hazardous substances were not present in reportable quantities during the survey period and did not have hazardous substances on the previous Hazardous Substance Information Survey are not required to submit a Hazardous Substance Information Survey, provided they are not otherwise required to do so by these rules

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0060

Hazardous Substance Information Survey- General

Covered employers, owners and operators shall identify and evaluate all substances or wastes manufactured, generated, used, stored, possessed, or disposed of at their facilities to determine if they are hazardous substances and reportable on the survey. The definition of hazardous substance in OAR 837-085-0040(31) shall be used.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0070

Hazardous Substance Information Survey -- Reportable Quantities

(1) If at anytime during the survey period, a covered employer, owner or operator has manufactured, generated, used, stored, possessed, or disposed of hazardous substance(s) in an amount at or above the reportable quantities, they shall report the hazardous substance.

(2) The hazardous substance reportable quantities shall be as follows:

(a) Any quantity of radioactive substance including radioactive wastes; Exception: Sealed source radioactive materials, as defined by OAR 333-100-0005(118) contained in smoke detectors, survey equipment and small laboratory testing equipment are not required to be reported.

(b) Any Class A or B poison or explosive in quantities equal to or greater than ten pounds, five gallons or 20 cubic feet;

(c) Any Extremely Hazardous Substance that meets or exceeds the Threshold Planning Quantities as defined by Sara Title III-Emergency Planning and Community Right to Know Act under Section 302.

(d) Any other hazardous substance in quantities equal to or greater than 50 gallons, 200 cubic feet, or 500 pounds.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0080

Hazardous Substance Information Survey -- Reportable Quantities

(1) Covered employers, owners and operators shall calculate the following for each hazardous substance manufactured, generated, used, stored, possessed or disposed of during the survey period:

(a) Average daily amount;

(b) Total Maximum daily amount for each substance reported;

(c) Maximum daily amount for each storage location reported;

(d) Total amount transported to the facility;

(e) Total amount transported from the facility.

(2) The quantities of hazardous substances shall be measured in the physical state assumed at "Standard Temperature and Pressure" (STP) or when released uncontrolled into the environment.

NOTE: Although liquefied gases are reported in gallons, their reportability is determined by measuring them in cubic feet.

(3) The total amounts of hazardous substances shall be reported in the following units:

(a) Solids shall be reported in units of pounds;

(b) Liquids shall be reported in units of gallons;

(c) Liquefied gases shall be reported in units of gallons;

(d) Compressed gases that are not liquefied shall be reported in units of cubic feet;

(e) Radioactive materials shall be reported in units of millicuries.

(4) The following methods shall be used to calculate reportable amounts:

(a) The "Average Amount" of each hazardous substance may be calculated by dividing the total amount of the hazardous substance on-site during the year by the total estimated number of days on-site.

(b) The "Maximum Daily Amount" of each hazardous substance shall be determined by reviewing purchasing records, inventory records, production records, receiving records, etc., to identify the one day during the survey period that the highest amount of the hazardous substance was on-site for more than 24 hours;

(c) The "Amount In" may be calculated for each hazardous substance by reviewing purchasing records, inventory records, receiving records, etc., to identify the total amount of the substance transported to the facility during the survey period;

(d) The "Amount Out" may be calculated for each hazardous substance by reviewing inventory records, production records, shipping records, etc., to identify the total amount of the substance transported from the facility during the survey period.

(5) For a mixture, the total amount of the substance is reported regardless of the concentration of hazardous substance(s) in the mixture.

(6) The amounts of a hazardous substance with the same chemical composition in separate containers at one facility shall be added together for reporting purposes.

(7) Like substances which are exempted from the Hazardous Substance Possession Fee shall be grouped and reported together. Examples of these groups include but are not limited to: Gasoline, motor oils, asphalt emulsion, and diesels.

(8) Water based paints with the same major components shall be grouped and reported together. Solvent based paints with the same major components shall be grouped and reported together.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0090

Hazardous Substance Information Survey -- Reporting Requirements

(1) Covered employers, owners and operators shall report hazardous substance information as required by these rules on the survey form provided or approved by the Office of State Fire Marshal.

(2) Covered employers, owners and operators who receive the Office of State Fire Marshal's annual Hazardous Substance Information Survey shall complete and return it to the Office of State Fire Marshal by the due date indicated on the survey in accordance with OAR 837-085-0050(3) through (8) of these rules.

(3) Covered employers, owners and operators receiving a survey for one or more of their facilities shall submit a separate survey for each of their facilities that are subject to the reporting requirements.

(4) Covered employers, owners and operators who operate substations, as defined by OAR 837-085-0040(55), that are of the same type may report all their substations on a single combined survey instead of reporting each location separately.

(a) Source generation sites, as defined by OAR 837-085-0040(53), must be reported separately.

(b) Substations that have no hazardous substances are exempt from reporting.

(c) Each Substation reported on a single combined survey must have identification posted at it that identifies the site by a company unique number or name and the survey (Facility) ID number issued by the Office of State Fire Marshal.

(A) The identification must be readable from a distance of 50 feet.

(B) Substations that are completely underground and can only be accessed through a manhole or excavation are exempt from this posting requirement.

(5) Within 30 days of receiving a survey, covered employers, owners and operators shall request a survey from the Office of State Fire Marshal for each of their subject facilities not receiving a survey.

(6) Covered employers, owners and operators receiving the survey shall provide the following information:

(a) The facilities reporting status, including:

(A) Whether or not hazardous substances were present at the site in reportable quantities;

(B) Whether or not extremely hazardous substances were present that met or exceeded the threshold planning quantity of CFR Title 40, Part 355, Appendix A and B;

(C) Whether or not the facility is subject to the reporting requirements of Section 112(r) of the Clean Air Act;

(D) Whether or not the facility is subject to the Process Safety Management requirements.

(b) Demographic information including:

(A) The primary and, if applicable, secondary North American Industry Classification System code for the facility;

(B) A description of the type of business. Examples: An automotive repair shop, silicon chip manufacturing, a chemical warehouse;

(C) The Dun and Bradstreet Number, if applicable, which can often be obtained by checking with the firm's Certified Public Accountant (CPA);

(D) The name of the Owner/CEO/Reg Agent of the entity;

(E) The known business name, which the firm operates under as well as the department, division;

(F) The physical site address including the street, city, county, and zip code or grid location acceptable to responding fire department if no address exists, as well as a phone number for the site;

(G) The e-mail address of the business or contact person if available;

(H) The mailing address if different from the site address;

(I) The number of employees at the site;

(J) The name and telephone number(s) of personnel qualified to give technical, on-site information about hazardous substances present at the facility in the event of an emergency. Listed phone numbers shall include both business and after-hours contact information;

(K) The name of the responding fire department by local jurisdiction;

(L) A brief summary of any procedures established by the covered employer, owner or operator for the control of hazardous substances in the event of an emergency; and

(M) Whether the hazardous substance storage location(s) for each reportable hazardous substance(s) is placarding according to National Fire Protection Association (NFPA) Standard 704.

(c) The name and signature of the person completing the survey and the date the survey was completed.

(d) Information about each reportable hazardous substance meeting the reportable quantity thresholds including, but not limited to:

(A) The common name or trade name for each reportable hazardous substance;

(B) The chemical name of the hazardous ingredient present in the highest concentration in each reportable hazardous substance;

- (C) Whether or not the substance reported contains a CFR Title 40, Part 355, listed extremely hazardous substance;
 - (D) Whether or not the substance reported contains a Clean Air Act, Section 112(r), listed chemical;
 - (E) Whether or not the substance reported contains a Process Safety Management, listed chemical;
 - (F) Information regarding whether the substance is pure or a mixture;
 - (G) The physical state of the hazardous substance as it is released into the environment at STP (Standard Temperature and Pressure) relating whether it is a solid, liquid or a gas;
 - (H) The unit of measure used to report the quantity range of the hazardous substance, i.e., relating whether it is reported in pounds, gallons, cubic feet or millicuries;
 - (I) The average amount of each reportable hazardous substance;
 - (J) The total maximum amount of each reportable hazardous substance;
 - (K) The maximum amount of each reported hazardous substance for each location reported;
 - (L) The total amount of each reportable hazardous substance transported to the facility;
 - (M) The total amount of each reportable hazardous substance transported from the facility;
 - (N) The total estimated number of days each hazardous substance was on-site;
 - (O) The type(s) of containers used for storage of each reportable hazardous substance(s);
 - (P) The pressure and temperature at which the substance is stored;
 - (Q) The primary and secondary associated U.S. Department of Transportation hazard classification(s) for each reportable hazardous substance;
 - (R) The Chemical Abstract Service (CAS) number, if known, for each reportable hazardous substance;
 - (S) The four-digit United Nations (UN) or North American (NA) number, if known, for each reportable hazardous substance;
 - (T) The EPA Pesticide Registration number for each reportable hazardous substance; and
 - (U) The storage location (s) for each reportable hazardous substance(s).
- (e) Upon request of the Office of State Fire Marshal, covered employers, owners and operators shall provide Material Safety Data Sheets (MSDSs) for clarification, evaluation and reference purposes;
- (f) Other information that may be requested by the Office of State Fire Marshal in order to meet the intent of The Community Right-to-Know and Protection Act.

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(1) & 453.317(2)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0100

Hazardous Substance Information Survey -- Substantive Changes

- (1) Covered employers, owners and operators shall notify the Office of State Fire Marshal whenever a substantive change occurs. This notification shall be made within 30 days of the substantive change on a form provided or approved by the Office of State Fire Marshal.
- (2) The occurrence of any of the following events shall constitute a substantive change and shall be reported:
 - (a) A covered employer, owner or operator has become exempt from reporting requirements;
 - (b) A covered employer, owner or operator who was previously surveyed and placed in the inactive files because they had no reportable quantities now has reportable quantities of hazardous substances on site;
 - (c) Hazardous substance(s) not previously reported have been introduced at the facility;
 - (d) A significant maximum daily amount change, as defined by OAR 837-085-0040(49), has occurred (occurs) for a previously reported hazardous substance;
 - (e) The reported location of a reportable hazardous substance has changed and it is now located in another building at the same site or it has been moved 300 feet or more from its previously reported location within the same building or it has been moved to a different floor level;
 - (f) A change of mailing or site address has occurred;
 - (g) A change of emergency contact person has occurred;
 - (h) A change of phone numbers has occurred; or
 - (i) A change of ownership or business name has occurred;
 - (j) The facility has been closed or has gone out of business.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0110

Record Keeping Requirements

(1) Covered employers, owners and operators shall maintain complete and accurate records of each hazardous substance they manufacture, generate, use, store, possess or dispose of (ORS 453.406):

- (a) These records shall be maintained for a period of three calendar years;
- (b) Copies of these records shall be kept at the facility for which they apply. EXCEPTION: Records for facilities and/or remote sites, where the covered employer, owner or operator is not set up to maintain such records, may be maintained at another of their facilities within the state.
- (c) Examples of hazardous substance records include, but are not limited to:
 - (A) Material Safety Data Sheets (MSDSs);
 - (B) Invoice and purchase records;
 - (C) Receiving and shipping papers;
 - (D) Bills of lading;
 - (E) Production records;
 - (F) Waste/recycling records; and
 - (G) Inventory/dispensing records.
- (H) Risk Management Plan if facility is required to create one by the Environmental Protection Agency.

(2) Covered employers, owners and operators shall maintain a copy of Hazardous Substance Information Survey:

- (a) Copies of the survey shall be maintained for a period of three calendar years;
- (b) Copies of the survey shall be kept at the facility for which they apply. EXCEPTION: Surveys for facilities and/or remote sites where the employers, owners and operators do not have staff available to complete the survey, may be kept at the facility where the person responsible for submitting the survey works.
- (3) Covered employers, owners and operators shall maintain copies of Notice of Noncompliance and Proposed/Final Penalty Assessment Order issued by the Office of State Fire Marshal:

- (a) Copies of Notice of Noncompliance and Proposed/Final Penalty Assessment Order shall be maintained for a period of five years;
- (b) These copies shall be kept with the covered employer, owner or operator's Hazardous Substance Information Survey.

(4) Covered employers, owners and operators shall, upon request, make records information available and provide copies of those records to the Office of State Fire Marshal (ORS 453.317(2)).

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.406

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0120

Application for an Exemption

(1) Any covered employer, owner or operator may apply for an exemption from all or part of reporting requirements of the Community Right-to-Know and Protection Act and its administrative rules.

(2) An application for an exemption must be in writing and contain the following:

- (a) The name and mailing address of the person making application;
- (b) The site address and location of the facility;
- (c) The facility number assigned by the Office of State Fire Marshal;
- (d) The rule or law, identified by number, from which the exemption is sought; and
- (e) The basis for the request.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0130

Administrative Action on Exemption Application

(1) After an exemption request is determined to be complete and procedurally adequate, as provided in OAR 837-085-0120(2), the Office of State Fire Marshal shall review the request.

(2) The Office of State Fire Marshal may conduct an on-site review of the facility involved in the requested exemption.

(3) An application for an exemption shall be granted only if the applicant demonstrates and the Office of State Fire Marshal determines that the exemption requested is consistent with all applicable ORSs and OARs.

(4) An exemption, if granted, will not be the basis for amending or withdrawing a previously submitted survey, Notice of Noncompliance and Proposed/Final Penalty Assessment Order, or hazardous substance fee not under contest.

(5) If an exemption is granted, written notification shall be given to the employer, owner or operator specifying the terms of the exemption.

(6) Affected applicants may appeal the decision on an exemption application in accordance with OAR 837-085-0330.
(7) If an exemption is denied, a written notice of denial shall be issued to the requesting employer, owner or operator.
The notice will:

- (a) Give reasons for the denial;
- (b) Notify the applicant of their appeal rights.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 - ORS 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0140

Trade Secrets -- General

(1) A covered employer, owner or operator may request to withhold the specific chemical identity, including the chemical name and other specific identification of a reportable substance, from the Hazardous Substance Information Survey provided that:

- (a) The claim that the information withheld is a trade secret can be supported with the burden of proof placed on the covered employer, owner or operator;
- (b) The information required by the Office of State Fire Marshal concerning the properties and effects or reportable substances are disclosed; and
- (c) The specific chemical identity is made available to health professionals in accordance with OAR 837-085-0170(1) and (2).

(2) Any claim of trade secret by a covered employer, owner or operator must be made in writing and submitted at the time they return the Hazardous Substance Information Survey or a substantive change notice to the Office of State Fire Marshal.

(3) A claim of trade secret by a covered employer, owner or operator may be recognized by the Office of State Fire Marshal as sufficient if the claim is substantiated by the Occupational Safety and Health Division of the Department of Consumer and Business Services or the U.S. Environmental Protection Agency.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.327 - ORS 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0150

Trade Secrets -- Claim Submissions

(1) To substantiate a trade secret claim, a covered employer, owner or operator must submit both of the following:

- (a) Hazardous Substance Information Survey with the generic name(s) included and the information being claimed as Trade Secret deleted; and

NOTE: Only the identities and/or percentages of the chemical component(s) can be claimed as trade secrets.

- (b) A Material Safety Data Sheet (MSDS) (as released to the public) for each chemical or formulation for which the covered employer is claiming trade secret protection.

(2) Covered employers, owners and operators must submit a justification to support their trade secret claims. In order to substantiate a claim, the following must be provided for each chemical or formulation for which trade secret protection is being requested:

- (a) The specific measures the covered employer has taken to safeguard the confidentiality of any chemical identity claimed as trade secret;
- (b) Whether the chemical identity has been disclosed to any person not an employee of the covered employer or of a local, state, or federal government entity, who has not signed a confidentiality agreement requiring the person to refrain from disclosing the chemical identity to others;
- (c) A list of all local, state and federal government entities to which the covered employer has disclosed the specific chemical identity. For each, indicate whether or not a confidentiality claim was asserted for the chemical identity, and whether or not the government entity denied that claim;
- (d) The measures that have been taken with respect to distribution of the product to maintain trade secrets;
- (e) Whether discovery of trade secret information is feasible by sophisticated chemical analysis ("reverse engineering"). The covered employer, owner or operator must provide evidence to support their answer;
- (f) An explanation of why the covered employer owner or operator's use of the substance would be valuable information to their competitors;
- (g) An analysis of the nature of the harm to the covered employer, owner or operator's competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss in sales and profitability; and

(h) Whether the substance, or the covered employer, owner or operator's use of it, is subject to any U.S. patent of which the covered employer is aware. If so, identify the patent and explain why this does not protect the covered employer from competitive harm.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.327 - ORS 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0160

Trade Secrets -- Determinations and Response

The Office of State Fire Marshal shall respond in writing to the requesting employer, owner or operator for trade secret protection within 60 days after the request has been received:

- (1) The response shall advise the requesting employer, owner or operator as to whether or not trade secret protection is granted.
- (2) The employer, owner or operator will be advised of disclosure requirements if trade secret protection is granted.
- (3) If trade secret protection is denied, the Office of State Fire Marshal shall provide the employer, owner or operator with the criteria used to make the determination.
- (4) If trade secret protection is denied, the Office of State Fire Marshal shall state the reasons why.
- (5) The employer, owner or operator will be advised of the appeal rights.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.327 - ORS 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0170

Trade Secrets -- Disclosures

- (1) Where a treating physician, registered nurse, or emergency medical technician determines that a medical emergency exists and the specific identity of a chemical substance or waste is necessary for emergency or first-aid treatment, the covered employer, owner or operator shall immediately disclose the specific identity of a trade secret chemical to that treating physician, registered nurse, or emergency medical technician regardless of a written statement of need or a confidentiality agreement. The covered employer may require a written statement of need and a confidentiality agreement in accordance with the provisions of sections (2) and (3) of this rule as soon as the circumstances permit.
- (2) In a non-emergency situation, a covered employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under OAR 837-085-0140(1), to a health professional, if:
 - (a) The request is in writing on a form approved by the Office of State Fire Marshal;
 - (b) The request describes, with reasonable detail, one or more of the following community health needs for information:
 - (A) To assess the hazards of the chemical substance or waste to which emergency service personnel will be exposed;
 - (B) To provide medical treatment to exposed employees, emergency service personnel or members of the community;
 - (C) To select or assess appropriate protective equipment for potential exposures;
 - (D) To design or assess engineering controls or other protective measures for emergency situations.
 - (c) The request explains, in detail, why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional to provide the services described in subsection (2)(b) of this rule:
 - (A) The properties and effects of the chemical;
 - (B) Measures for controlling community exposure to the chemical; and
 - (C) Methods of diagnosing and treating harmful exposures to the chemical.
 - (d) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and
 - (e) The health professional, and the covered employer, owner or operator agree in a written confidentiality agreement that the health professional will not use the trade secret information for any purpose other than the health need(s) asserted and will not release the information under any circumstances other than to the Office of State Fire Marshal, except as authorized by the terms of the agreement or by the covered employer.
- (3) The confidentiality agreement authorized by section (1) of this rule:
 - (a) May restrict the use of the information for the purposes as indicated in the written statement of need;
 - (b) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and
 - (c) May not include requirements for the posting of a penalty bond.
- (4) If the health professional receiving the trade secret information decides that there is a need to disclose it to the Office of State Fire Marshal, the covered employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.327 - ORS 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0180

Trade Secrets -- Refusal to Disclose

(1) If the covered employer denies a written request, submitted in accordance with OAR 837-085-0170(2), for disclosure of a specific chemical identity, the denial must:

- (a) Be provided to the health professional within 30 days of the request;
- (b) Be in writing;
- (c) State the specific reasons why the request is being denied;
- (d) Include evidence to support the claim that the specific chemical identity is a trade secret; and
- (e) Explain in detail how alternative information may satisfy the specific planning or health need without revealing the specific chemical identity.

(2) The health professional whose request for information, as authorized by OAR chapter 837, division 085, is denied may refer the request and the covered employer's written denial to the Office of State Fire Marshal for consideration.

(3) When the health professional refers the denial to the Office of State Fire Marshal, the State Fire Marshal shall consider the evidence to determine if:

- (a) The covered employer has supported the claim that the specific chemical identity is a trade secret;
- (b) The health professional has supported the claim that there is a medical, planning, or health need for the information; and
- (c) The health professional has demonstrated adequate means to protect the confidentiality.

(4) If a covered employer, owner or operator demonstrates to the Office of State Fire Marshal that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of trade secret data, the State Fire Marshal may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the health or planning services are provided without undue risk of harm to the covered employer.

(5) If the Office of State Fire Marshal determines that the specific chemical identity requested under OAR 837-085-0140 is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate need for the information, has executed a written confidentiality agreement and has shown adequate means to protect the confidentiality of the information, the covered employer, owner or operator shall provide the requested information.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.327 - 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0190

Hazardous Substance Information Survey -- Availability of Survey Information

(1) The Office of State Fire Marshal shall provide a summary report computer printout, or copies of the information furnished by covered employers to:

- (a) Each county public health authority;
- (b) Each local fire district; and
- (c) Each county emergency manager.

(2) Upon request, the Office of State Fire Marshal shall also provide information to the following agencies located in the geographic jurisdiction of the local fire district:

- (a) Emergency service personnel responding to a hazardous substance incident;
- (b) Health professionals;
- (c) Law enforcement agencies;
- (d) Local emergency management agencies; and
- (e) Any public or private safety agency administering an emergency telephone system pursuant to ORS 401.710 to 401.790.

(3) If the Office of State Fire Marshal considers the information essential to the safe control of an emergency, the Office of State Fire Marshal may distribute the information to persons outside the jurisdiction of the fire district.

(4) The Office of State Fire Marshal shall provide, upon request, access to reportable substance information, except for trade secret restrictions identified in OAR 837-085-0140, to any agency of this state.

(5) Site specific information regarding the exact amount and/or the exact storage location of reportable substances provided to the Office of State Fire Marshal shall be treated as confidential:

- (a) The Office of State Fire Marshal may require written statement of need and a written confidentiality agreement to be executed by the requesting agency prior to the release of confidential information; and

(b) During emergency situations, the Office of State Fire Marshal may immediately release confidential information and require requesting agencies to complete a written statement of need as soon as circumstances permit.

(6) The public shall be permitted access to hazardous substance information that is not otherwise protected as a trade secret or is designated as confidential under OAR 837-085-0140(1) and ORS 453.332(3) and (4):

(a) Public access to Hazardous Substance Information Survey information may be provided through the Office of State Fire Marshal in Salem;

(b) If, in the discretion of the Office of State Fire Marshal, it is necessary to protect the public safety and welfare, the Office of State Fire Marshal may require a person requesting information to complete an approved form which includes their name, address and proof of identity.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.322

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-085-0200

Compliance Audit Program -- General

(1) The Office of State Fire Marshal shall provide a compliance audit program to assist and ensure covered employers, owners and operators comply with the statutes, regulations, rules, standards or orders of the Community Right-to-Know and Protection Act.

(2) The compliance audit program shall include, but is not limited to:

(a) Providing training, guidance and assistance to covered employers, owners and operators and the community;

(b) Evaluating and auditing facilities where hazardous substances are likely to be manufactured, generated, used, stored, possessed, or disposed of;

(c) Issuing Notice of Noncompliance and Proposed/Final Penalty Assessment Order for noncompliance with the Community Right-to-Know and Protection Act and administrative rules;

(d) Issuing correction orders;

(e) Assessing civil monetary penalties for noncompliance;

(f) Holding informal conferences with covered employers, owners and operators or their representatives to discuss notices of noncompliance and penalty assessments, penalties, survey requirements or correction orders without limiting or extending their appeal rights;

(g) Granting or denying requests for extensions of the time set by correction orders; and

(h) Examining and auditing a covered employer, owner or operator's hazardous substance information records.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(8)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0210

Scheduling and Selection of Compliance Audits

(1) Compliance audits may be conducted when the Office of State Fire Marshal deems it necessary to confirm or validate hazardous substance information surveys.

(2) The reasons the Office of State Fire Marshal would deem it necessary to conduct an audit include, but are not limited to, the following:

(a) A covered employer, owner or operator fails to submit their survey;

(b) A review of survey records show reporting errors may have been made;

(c) Information is received that indicates reporting errors may have been made;

(d) A covered employer, owner or operator requests an audit be conducted;

(e) A North American Industry Classification System code review indicates misreporting may exist;

(f) To verify survey information.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(8)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0220

Right of Entry

(1) In accordance with ORS 453.317(8), a compliance auditor has the right to enter and audit any facility of a covered employer, owner or operator during normal working hours or at other reasonable times.

(2) If the covered employer, owner or operator or their representative are not present at the facility, an audit will not be conducted. Exceptions:

(a) When executing an inspection warrant;

(b) The covered employer, owner or operator has been notified that the audit is to be conducted.

(3) Compliance auditors will identify themselves as representatives of the State Fire Marshal and, as necessary, present their credentials to the covered employer, owner or operator or their representative to establish the right of entry.

(4) The compliance auditor will not sign any form of liability release or agree to waive any rights of the agency.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(8)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0230

Compliance Audit Warrants

If a compliance auditor is denied entry, the Office of State Fire Marshal may institute action(s) to obtain an inspection warrant, as provided for in ORS 476.155.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(8)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0240

Compliance Audit Activities

During a compliance audit, the compliance auditor is authorized, but not limited to, the following activities:

- (1) Conduct an audit without unreasonably disrupting operations in the facility;
- (2) Conduct a physical audit of the facility and all of its operations;
- (3) Examine and obtain copies of hazardous substance information records;
- (4) Inform the covered employer, owner or operator of reporting errors; and
- (5) Conduct interviews and receive information from anyone in the facility.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(8)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0250

Notice of Noncompliance and Proposed/Final Penalty Assessment Order

(1) If, during an audit initiated by the Office of State Fire Marshal, it is concluded that a covered employer, owner or operator has not complied with the Community Right-to-Know and Protection Act and its administrative rules, a Notice of Noncompliance and Proposed/Final Penalty Assessment Order will be issued to the covered employer, owner or operator which shall:

- (a) State the name of the covered employer, owner or operator, location of the facility, and the date of the compliance audit. The period of time the employer, owner or operator is in noncompliance will be included;
- (b) Describe how the covered employer, owner or operator was in noncompliance, such description to take the form of findings of fact and inclusion of law and rule;
- (c) State the classification(s) of noncompliance;
- (d) Identify the rule or order the covered employer, owner or operator failed to comply with and any other statute or rules involved;
- (e) Establish a compliance date if compliance is not obtained prior to issuing a Notice of Noncompliance and Proposed/Final Penalty Assessment Order;
- (f) State the total dollar amount of penalties assessed and the amount subject to suspension;
- (g) Inform the covered employer, owner or operator of the right to appeal the Notice of Noncompliance and Proposed/Final Penalty Assessment Order and the compliance date; and
- (h) Notify the covered employer, owner or operator that the Office of State Fire Marshal has designated its file in this matter as the record in this case and that the Notice of Noncompliance and Proposed/Final Penalty Assessment Order becomes final if a written appeal is not filed within 30 days of its service.

(2) The Notice of Noncompliance and Proposed/ Final Penalty Assessment Order shall be served on the covered employer, owner or operator in person or by:

- (a) Regular mail, postage prepaid, true, exact and full copies when penalties for noncompliance have been suspended in full;
- (b) Certified or registered mail, postage prepaid, true, exact and full copies when penalties for noncompliance have been assessed.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1995, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0260

Covered Employer, Owner or Operator Response to Notice of Noncompliance and Proposed/Final Penalty Assessment Order

(1) After receipt of a Notice of Noncompliance and Proposed/Final Penalty Assessment Order, the covered employer, owner or operator shall submit all information requested by the Office of State Fire Marshal on or before the established compliance date.

(2) The above requirements shall not limit a covered employer's appeal rights.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0270

Penalty Criteria for Noncompliance -- General

(1) Issuance of any penalty is subject to appeal in accordance with OAR 837-085-0330 through 837-085-0370.

(2) Any covered employer, owner or operator found to be in noncompliance may be assessed a penalty of up to a maximum of \$1,000 per day for each day of noncompliance in accordance with ORS 453.357.

(a) The daily penalty maximum for failing to comply with OAR 837-085 shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(b) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-085-0170(1) and/or (2) the required information is received by the requesting health professional.

(c) The daily maximum penalty shall be calculated by dividing the total penalties assessed by the number of days it takes the covered employer, owner or operator to achieve compliance.

(3) The noncompliance classification established in OAR 837-085-0280 shall be used to determine the penalty, if any, that will be assessed.

(4) Covered employers, owners or operators found to be in noncompliance in more than one Noncompliance Class (OAR 837-085-0280) shall have a penalty calculated and assessed for each Noncompliance Class.

(5) Covered employers, owners or operators found to be in noncompliance with the same administrative rule(s) within a five year period of time will be assessed additional penalties for the repeat noncompliance.

(a) If a covered employer, owner or operator is found to be in repeat noncompliance within any classification the penalty for that classification shall be based on the repeat noncompliance.

(b) The maximum amount of penalty for each classification can not exceed the amount of 5th instance penalty identified in OAR 837-085-0290(2) or 837-085-0300(7).

(c) OAR 837-085-0270(5) does not apply to class V Noncompliance.

(6) At any time prior to a Notice of Noncompliance and Proposed/Final Penalty Assessment Order becoming final, the Office of State Fire Marshal may modify the notice to reflect the correct noncompliance classification and/or penalty assessment.

(7) Nothing in these rules shall affect the ability of the Office of State Fire Marshal to modify penalties through a Stipulated Final Order.

(8) Penalty suspensions may be made in accordance with OAR 837-085-0310.

(9) Daily penalties shall be assessed in accordance with OAR 837-085-0305.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0280

Noncompliance Classes

For the purpose of determining the penalties that may be assessed for noncompliance, the following "Noncompliance Classes" are established:

(1) Class I Noncompliance. Covered employers, owners and operators who fail to notify the Office of State Fire Marshal they have reportable quantities of hazardous substances, or fail to request and/or submit their Hazardous Substance Information Survey or substantive changes when required, shall be considered in Class I Noncompliance.

(2) Class II Noncompliance. Covered employers, owners and operators who fail to maintain records in accordance with OAR 837-085-0110; or when requested by the Office of State Fire Marshal, fail to provide an MSDS or other hazardous substance information not elsewhere classified, shall be considered in Class II Noncompliance.

(3) Class III Noncompliance. Covered employers, owners and operators who report all their hazardous substances but fail to submit the information required by OAR 837-085-0090 or who report the information incorrectly shall be considered in Class III Noncompliance. Exceptions: Failing to submit or submitting incorrect information on the following will not be considered Class III Noncompliance or any other class of noncompliance:

(a) North American Industry Classification System;

- (b) Dun and Bradstreet Number;
- (c) Send to Attention of;
- (d) E-Mail Address;
- (e) Department or Division;
- (f) Number of Employees;
- (g) Special Fire Department Information including, but not limited to:
 - (A) Written Emergency Plan and, if so, the location;
 - (B) Automatic Fire Suppression System;
 - (C) NFPA 704 Placarding;
 - (D) Other Types of Placarding.
- (h) Pure or Mixture;
- (i) Chemical Abstract Service Number; or
- (j) UN or NA Numbers.

(4) Class IV Noncompliance. Covered employers, owners and operators who, when submitting their Hazardous Substance Information Survey, substantive changes or survey corrections, fail to report all reportable hazardous substances or fail to report the correct maximum daily quantity shall be considered in Class IV Noncompliance.

(5) Class V Noncompliance. Covered employers, owners and operators who intentionally misreport on their Hazardous Substance Information Survey, substantive changes, survey corrections or records of hazardous substance(s) or fail to provide health professionals with any pertinent hazardous substance information, in accordance with OAR 837-085-0170, shall be considered in Class V Noncompliance.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0290

Penalties for Class I, II and III Noncompliance

(1) Covered employers, owners or operators identified as being in Class I, II, III Noncompliance shall be assessed a penalty for each Noncompliance Class for which they are found to be in noncompliance. The penalty assessments shall be made using the penalty schedule set forth in subsection 2 of this section.

(2) Class I, II and III Noncompliance Penalty Schedule:

Class -- 1st Instance -- 2nd Instance -- 3rd Instance -- 4th Instance -- 5th Instance

I -- \$1000 -- \$2000 -- \$4000 -- \$8000 -- \$16000

II -- \$100 -- \$200 -- \$400 -- \$800 -- \$1600

III -- \$50 -- \$100 -- \$200 -- \$400 -- \$800

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0300

Penalties for Class IV Noncompliance

(1) A penalty shall be calculated for the total quantity of unreported radioactive substances, radioactive waste, Class A and B poisons and explosives. These substances are required to be reported at the "Lower Reporting Levels" (LRL) of five gallons, ten pounds or 20 cubic feet.

(a) Penalties for all Extremely Hazardous Substances shall be calculated at the LRL.

(b) For the purpose of determining Class IV Noncompliance penalties, radioactive substances, radioactive waste, Class A and B poisons, explosives and Extremely Hazardous Substances shall be identified as LRL substances.

(2) A separate penalty shall be calculated for the total quantity of all other unreported quantities of hazardous substances. These substances are required to be reported at the "Upper Reporting Levels" (URL) of their reportable quantity. For the purpose of determining Class IV Noncompliance penalties, these substances shall be identified as URL substances.

(3) To calculate the penalty for LRL and URL substances the following criteria shall be used:

(a) A "Total Quantity Range" shall be determined and established for LRL substances, by adding together the daily maximum quantity amounts of all LRL substances, not reported;

(b) A "Total Quantity Range" shall be determined and established for URL substances, by adding together the daily maximum quantity amounts of all URL substances, not reported;

(c) The daily maximum quantity amounts shall be added together as though they were measured in the same unit of measurement;

(d) The Total Quantity Range(s) shall be converted to a Total Quantity Range Code using the Total Quantity Range Code Chart in subsection 5 of this section.

(4) A penalty determination shall be made for Lower Reporting Levels (LRL) and Upper Reporting Levels (URL) substances using the "Class IV Noncompliance Penalty Schedule in subsection 5 of this section:

(a) Penalties will be determined by intersecting the appropriate "Reporting Level," i.e., LRL or URL with the corresponding Penalty Quantity Code;

(b) If penalties are determined for both LRL and URL substances, the higher penalty shall be assessed.

(5) Class IV Noncompliance Penalty Calculation Chart and Schedule:

Total Quantity Range Code Chart

From -- To -- Code

0 -- 999 -- 01
1,000 -- 4,999 -- 02
5,000 -- 9,999 -- 03
10,000 -- 49,999 -- 04
50,000 -- 99,999 -- 05
100,000 -- 499,999 -- 06
500,000 -- 999,999 -- 07
1,000,000 -- 49,999,999 -- 08
50,000,000 -- 99,999,999 -- 09
100,000,000 -- higher than 100,000,000 -- 10

Penalty Schedule

Penalty Quantity Code -- Lower Reporting Levels (LRL) -- Upper Reporting Levels (URL)

01 -- \$100 -- \$75
02 -- \$200 -- \$150
03 -- \$300 -- \$225
04 -- \$400 -- \$300
05 -- \$500 -- \$375
06 -- \$600 -- \$450
07 -- \$700 -- \$525
08 -- \$800 -- \$600
09 -- \$900 -- \$675
10 -- \$1000 -- \$750

(6) Penalties for repeat noncompliance of class IV Noncompliance within a five year period of time shall be calculated in accordance with 837-085-0300 and increased using the following schedule:

2nd Instance -- 3rd Instance -- 4th Instance -- 5th Instance

penalty x 2 -- penalty x 4 -- penalty x 8 -- penalty x 16

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0305

Penalties for Class V Noncompliance

(1) Covered employers, owners or operators identified as being in Class V Noncompliance shall be assessed a \$1000 penalty for each day they are in noncompliance.

(2) The number of days the covered employer owner or operator is considered in noncompliance shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(3) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-085-0170(1) and/or (2) the required information is received by the requesting health professional.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0310

Penalty Suspensions

(1) Penalties assessed for Class I, II, III and IV Noncompliance will be suspended in accordance with the following criteria:

(a) To receive a penalty suspension covered employers, owners or operators receiving a Notice of Noncompliance and Proposed/Final Penalty Assessment Order must comply with all the noncompliance issues identified in the notice.

(b) Penalty suspensions will be calculated from the date the Notice of Noncompliance and Proposed/Final Penalty Assessment Order was issued to the date the complete and accurate hazardous substance information is received by the Office of State Fire Marshal.

(c) Penalty suspensions will be based on the number of days it takes the affected covered employer, owner or operator to comply with the Notice of Noncompliance and Proposed/Final Penalty Assessment Order and the number of instances involved with the notice.

(d) Penalty suspensions will be calculated for each class of noncompliance identified in the Notice of Noncompliance and Proposed/Final Penalty Assessment Order.

(e) Penalty suspensions will be determined using the Penalty Suspension Schedule set forth in subsection 3 of this section.

(2) If a covered employer, owner or operator is found to be in repeat noncompliance the amount of penalty suspended shall be reduced based on the instance of the repeat noncompliance.

(3) Penalty Suspension Schedule:

Instance -- **Complete and accurate hazardous substance information is received within** 1-45 days -- 46-60 days --

61-75 days -- 76-90 days -- After 90 days

1st -- 100% -- 75% -- 50% -- 25% -- 0%

2nd -- 75% -- 50% -- 25% -- 0% -- 0%

3rd -- 50% -- 25% -- 0% -- 0% -- 0%

4th -- 25% -- 0% -- 0% -- 0% -- 0%

5th -- 0% -- 0% -- 0% -- 0% -- 0%

(4) Penalty suspensions will not be made on Class V Noncompliance penalty assessments.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0320

Payment of Penalties

(1) All civil penalties become due and owing ten days after the Notice of Noncompliance and Proposed/Final Penalty Assessment Order becomes final.

(2) If payment is not received within ten days after the order becomes final, it may be docketed as a judgment as provided by law.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0330

Appeals Process -- General

(1) Any person directly affected may appeal, in part or in total, Notice of Noncompliance and Proposed/Final Penalty Assessment Order and decisions related to the application for exemption.

(2) Any person directly affected may participate in the appeals process which includes, but is not limited to:

(a) An informal conference to discuss, consider and determine if there is a basis for informal disposition of an appeal by stipulation, agreed settlement, consent order, default or other means; or

(b) A formal hearing before a hearing officer where the laws, rules and evidence are presented and considered and a proposed opinion and order is issued.

(3) The appeals process shall comply with the requirements of the Administrative Procedures Act (APA), ORS 183.025 to 183.725, unless specifically addressed in these rules.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0340

Filing an Appeal

(1) Appeals shall be filed in writing, within 30 days following:

(a) The issuance of Notice of Noncompliance and Proposed/Final Penalty Assessment Order;

(b) Issuance of decision related to an application for exemption.

(2) Appeals shall be sent to the Office of State Fire Marshal and shall include:

(a) The name, address and telephone number of the person making the appeal;

(b) The facility's name and address;

- (c) The facility number assigned to the firm by the Office of State Fire Marshal;
 - (d) The Notice of Noncompliance and Proposed/Final Penalty Assessment Order number and amount of penalty for which the appeal is made; and
 - (e) The basis upon which the appeal is being made and the specific defense relied upon.
- (3) The filing of an appeal shall stay payment of penalties until the Notice of Noncompliance and Proposed Final Penalty Assessment Order or an Opinion and Order become final.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0350

Informal Conference

- (1) The Office of State Fire Marshal will provide an opportunity for a person to discuss their appeal informally. An informal conference may be requested and held prior to or in lieu of a formal hearing.
- (2) An informal conference concerning survey reporting requirements, Notice of Noncompliance and Proposed/Final Penalty Assessment Order *shall not* extend the 30 days allowed for filing appeals.
- (3) The informal conference may be used to:
 - (a) Clarify requirements of the Community Right-to-Know and Protection Act;
 - (b) Discuss the basis for any Notice of Noncompliance and Proposed/Final Penalty Assessment Order;
 - (c) Discuss correction dates;
 - (d) Clarify the wording and meaning of the Notice of Noncompliance and Proposed/Final Penalty Assessment Order;
 - (e) Improve a person's understanding of the Community Right-to-Know and Protection Act;
 - (f) Correct errors in a Notice of Noncompliance and Proposed/Final Penalty Assessment Order or penalty;
 - (g) Narrow issues of concern; and/or
 - (h) Arrive at the basis for an informal disposition of an appeal.
- (4) As the result of an informal conference, the Office of State Fire Marshal may amend, withdraw, extend, delete or reduce a Notice of Noncompliance and Proposed/Final Penalty Assessment Order, for good cause.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

837-085-0360

Formal Hearing

- (1) The Office of State Fire Marshal will arrange for a hearings officer to conduct a formal hearing if it is deemed that the issues being appealed cannot be resolved informally.
- (2) The Office of State Fire Marshal will set a date, time and location for the formal hearing.
- (3) The Office of State Fire Marshal will notify, by letter, the person filing an appeal or their designated representative of the date, time, location and hearings officer conducting the formal hearing.
- (4) The hearings officer will hear the case and render a proposed Opinion and Order, including recommended findings of fact and conclusion of law, according to the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0370

Manifest Injustice

- (1) To prevent a manifest injustice, if a timely appeal has not been filed, the Office of State Fire Marshal, at the State Fire Marshal's own discretion or upon request from the affected employer, owner or operator, may vacate or amend the Community Right-to-Know reporting requirements, Notice of Noncompliance and Proposed/Final Penalty Assessment Order for a facility.
- (2) The Office of State Fire Marshal may refer a matter arising under this rule to a hearings officer for a formal hearing or a regional appeals advisory board.
- (3) All requests by an employer, owner or operator for consideration based on a manifest injustice shall be in writing and contain a statement indicating the basis of their request.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0380

Incident Reporting System

(1) Emergency service personnel responding to an incident of threatened or actual injury to a human, wildlife, domestic animal, or in which damage to the environment, or any property loss occurs resulting from a chemical substance or waste incident shall make a written report of the incident to the Office of State Fire Marshal:

(a) This report shall be on a form approved by the Office of State Fire Marshal (Form #814-440-170);

(b) Only one written incident report for each incident is required. Responsibility for completing the written report shall be in the following order:

(A) Where fire department unit(s) have responded to the incident, the fire department having jurisdiction shall be responsible for completing and forwarding the written report;

(B) Where no fire department unit(s) has responded to the incident and where one or more law enforcement agency(s) is at the scene, the first law enforcement agency to have arrived at the scene shall be responsible for completing and forwarding the written report;

(C) Where no fire department unit(s) or law enforcement agency(s) has responded to the incident and where health professional(s), including emergency medical technicians or ambulance personnel, are at the scene, the first health professional to arrive at the scene shall be responsible for completing and forwarding the written report; and

(D) Where no fire department unit(s), law enforcement agency(s) or health professional(s) has responded to the incident, any other emergency service agency, including agencies of this state, who are at the scene shall confer and determine who shall be responsible for completing and forwarding the written report.

(2) The written report required under section (1) of this rule should be submitted to the Office of State Fire Marshal no later than ten working days after the incident occurs.

(3) The following incidents are exempted from the reporting requirements of section (1) of this rule:

(a) Motor fuels which are spilled in quantities of less than 42 gallons from a vehicle, unless it enters a waterway; or is determined to endanger the public safety or immediate or surrounding environment, including groundwater; or

(b) Sewage overflows; or

(c) Structure fires or other emergencies where hazardous substances are involved as exposures, if the quantities exposed are less than 42 gallons. This means that a Hazardous Materials Incident Report would not be required for a structure fire or other emergency if consumer quantities of hazardous substances did not directly relate to the cause of the emergency or to injuries or death. If these consumer quantities caused the incident or contributed to an injury or death, a written Oregon State Fire Marshal Hazardous Materials Incident Report would be required. As with any fire, a State Fire Marshal Fire Report (Form #814-440-10) is required.

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94

837-085-0390

Annual Summaries

The Office of State Fire Marshal shall annually summarize all incidents reported and information received from the Hazardous Substance Information Survey. Copies of these summaries will be distributed at no charge to:

(1) Governor;

(2) Legislative Assembly;

(3) Department of Environmental Quality;

(4) Workers' Compensation Division;

(5) Department of Transportation;

(6) Health Division of the Department of Human Resources;

(7) Environmental Health Sciences Center at Oregon State University;

(8) Poison Control Center at Oregon Health Sciences University;

(9) Oregon Emergency Management Division of the Department of State Police;

(10) Oregon State Police;

(11) Every public library as defined in ORS 357.400;

(12) Public fire departments;

(13) Local law enforcement agencies.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02
