

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

DEPARTMENT OF OREGON STATE POLICE, OFFICE OF STATE FIRE MARSHAL

**DIVISION 90
HAZARDOUS MATERIALS**

Hazardous Substance Possession Fees

837-090-1000

Coverage

(1) Persons with facilities covered by ORS 453.317 and OAR 837-090-1000 through 837-090-1045 shall be subject to a fee assessment for those hazardous substances classified as minimally, generally, very hazardous, or subject only to a registration fee.

(2) Each facility site shall have a separate fee assessed based upon the amounts and classification of hazardous substances possessed.

(3) Hazardous Substance Possession Fees assessed by local governments based on quantity or the Hazardous Substance Information Survey shall be billed and collected only through contract with the Office of State Fire Marshal.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.396 - ORS 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1005

General

(1) Annually any person possessing a hazardous substance at a covered facility in this state shall pay a fee for each facility site.

(2) The annual fee shall be due following the requirement for submission of a Hazardous Substance Survey. See OAR 837-090-1000 to 837-090-1045.

(3) The annual fee shall be in accordance with the fee schedules in OAR 837-090-1030 unless the substance is subject only to a registration fee.

(4) The assessment of a Hazardous Substance Possession Fee does not relieve any person from any other duty or responsibility imposed by law or rule.

(5) The Hazardous Substance Possession Fee imposed by these rules is in addition to all other state, county, or municipal fees on hazardous substances.

(6) Local government Hazardous Substance Possession Fees shall be in accordance with fee schedules established by local government rule or ordinance.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.398 - ORS 353.402

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1010

Effective Dates

(1) OAR 837-090-1000 through 837-090-1045 are effective upon date of filing.

(2) Local government Hazardous Substance Possession Fee programs shall be in compliance with these rules.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.396 - ORS 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1015

Definitions

- (1) "Aerosol" means any material which is dispensed from its container as a mist, spray or foam by propellant under pressure.
- (2) "Blasting Agent" means any material or mixture consisting of a fuel and oxidizer intended for blasting, not otherwise classified as an explosive, in which none of the ingredients are classified as explosives, provided that the finished product as mixed and packaged for use or shipment cannot be detonated by means of a No. 8 test blasting cap when unconfined. Materials or mixtures classified as nitrocarbonitrates by the Department of Transportation regulations shall be included in this definition.
- (3) "Carcinogen" means any substance that causes the development of cancerous growths in living tissue. A chemical is considered to be a carcinogen if:
 - (a) It has been evaluated by the International Agency for Research on Cancer (IARC) and found to be carcinogenic; or
 - (b) It is listed as a carcinogen in the latest edition of the Annual Report on Carcinogens published by the National Toxicology Program (NTP); or
 - (c) It is regulated by the Occupational Safety and Health Administration (OSHA) as a carcinogen.
- (4) "Combustible Liquid" means any liquid having a flash point at or above 100° F. Combustible liquids shall be subdivided as follows:
 - (a) Class II liquids shall include those having flash points at or above 100° F. and below 140° F.;
 - (b) Class III-A liquids shall include those having flash points at or above 140° F. and below 200° F.;
 - (c) Class III-B liquids shall include those having flash points at or above 200° F.
- (5) "Compressed Gas" means:
 - (a) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70° F.; or
 - (b) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130° F. regardless of the pressure at 70° F.; or
 - (c) A liquid having a vapor pressure exceeding 40 psi at 100° F. as determined by U.F.C. Standard No. 9-5.
- (6) "Corrosive" means any chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. A chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described in the U.S. Department of Transportation in Appendix A to CFR 49 Part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.
- (7) "Corrosive Liquid" means any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action. Examples include acid, alkaline or caustic materials.
- (8) "Cryogenic Fluids" means those fluids having a normal boiling point below 150° F. (See Table No. 75.102-B of the Uniform Fire Code).
- (9) "Cutaneous Hazard" means a substance that damages or causes sensitization of the dermal layer of the body.
- (10) "Department" means the Department of Revenue.
- (11) "Dust" means pulverized particles which, if mixed with air in the proper proportions, become explosive and may be ignited by a flame or spark or other source of ignition.
- (12) "Entity" means any individual, trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the Federal Government and any agency thereof.
- (13) "Explosive" means:
 - (a) A chemical which causes a sudden, almost instantaneous release of pressure, gas and heat when subjected to sudden shock, pressure, or high temperatures; or
 - (b) A material or chemical, other than a blasting agent, that is commonly used or intended to be used for the purpose of producing an explosive effect and is regulated by Article 77 of the Uniform Fire Code.
- (14) "Eye Hazard" means a substance that causes damage to the eyes, except those that cause damage by mechanical means.
- (15) "Facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by or under common control with such person.
- (16) "Fire Hazard" means any thing or act which increases or may cause an increase in the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire; or which may obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire.
- (17) "Firework" means any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedoes, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like construction

and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance, except that the term "fireworks" shall not include auto flares, paper caps containing not in excess of an average of 25/100 of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps.

(18) "Fissile Materials" means radioisotopes which may undergo a nuclear fission reaction and are usually found only at reactor sites or as part of a nuclear weapon.

(19) "Flammable Anesthetic" means a compressed gas which is flammable and administered as an anesthetic and shall include among others, cyclopropane, divinyl ether, ethyl chloride, ethyl ether and ethylene.

(20) "Flammable Gas" means a gas which is flammable at a mixture of 13 percent or less (by volume) with air, or the flammable range with air is wider than 12 percent, regardless of the lower limit.

(21) "Flammable Liquefied Gas" means a liquefied compressed gas which under the charged pressure is partially liquid at a temperature of 70° F. and which is flammable.

(22) "Flammable Liquid" means any liquid having a flash point below 100° F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100° F. Flammable liquids shall be subdivided as follows:

(a) Class I-A shall include those having flash points below 73° F. and having a boiling point below 100° F.;

(b) Class I-B shall include those having flash points below 73° F. and having a boiling point at or above 100° F.;

(c) Class I-C shall include those having flash points at or above 73° F. and below 100° F.

(23) "Flammable Solid" means a solid substance, other than one which is defined in Article 9 of the Uniform Fire Code as a blasting agent or explosive, that is liable to cause fire through friction or as a result of retained heat from manufacture, or which has an ignition temperature below 212° F., or which burns so vigorously or persistently when ignited so as to create a serious hazard. Finely divided solid materials which when dispersed in air as a cloud may be ignited and cause an explosion are flammable solids.

(24) "Generally Hazardous" means hazardous substances which present a hazard to public health, welfare or safety or the environment.

(25) "Hazardous Substance" means:

(a) Any substance or waste known to present a physical or health hazard to employees, emergency response personnel, or the public under normal conditions of use and/or during an emergency situation; or

(b) Any hazardous chemical which is required to have a Material Safety Data Sheet pursuant to OAR chapter 437, division 155, the Hazard Communication rules of the Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(c) Any radioactive substance as defined by ORS 453.005(7); or

(d) Any radioactive waste as defined by ORS 469.300; or

(e) Any substance or waste designated as hazardous by the Director of the Department of Insurance and Finance or the State Fire Marshal.

(26) "Hematopoietic Toxin" means a substance which damages or disrupts the blood system.

(27) "Hepatotoxin" means a substance that causes damage to the liver.

(28) "Highly Toxic Material" means a material which produces a lethal dose or lethal concentration which falls within any of the following categories:

(a) A chemical that has a median lethal dose (LD50) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;

(b) A chemical that has a median lethal dose (LD50) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each;

(c) A chemical that has a median lethal concentration (LC50) in air of 200 parts per million by volume or less of gas or vapor, or two milligrams per liter or less of mist, fume or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each;

(d) Mixture of these materials with ordinary materials, such as water, may not warrant a classification of highly toxic. While this system is basically simple in application, any hazard evaluation which is required for the precise categorization of this type of material shall be performed by experienced, technically competent persons.

(29) "Licensed Vehicle" means a motorized vehicle licensed by the State of Oregon for travel using its own power on public highways.

(30) "Hypergolic Materials" means any materials which are capable of igniting spontaneously upon contact with another substance.

(31) "Highly Hazardous" means and is equivalent to very hazardous. See section (56) of this rule.

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

- (33) "Liquefied Petroleum Gas" means any material which is composed predominantly of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or isobutane) and butylenes.
- (34) "Material Safety Data Sheet" means written or printed material concerning a hazardous chemical which is prepared pursuant to rules OAR chapter 437, division 2 (29 CFR 1910.1200), Subdivision Z, the Hazard Communication Rules of the Oregon OSHA Occupational Safety and Health Division of the Department of Consumer and Business Services.
- (35) "Minimally Hazardous" means hazardous substances which present little hazard to public health, welfare, safety or the environment.
- (36) "Mutagen" means a substance that causes genetic (heritable) changes in the DNA of chromosomes.
- (37) "Nephrotoxin" means a substance that is poisonous to the kidneys.
- (38) "Neurotoxin" means a substance that causes damage to the nervous system.
- (39) "Non-hazardous" means a substances which present no hazard to public health, welfare, safety or the environment.
- (40) "Organic Peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms have been replaced by an organic radical. Organic peroxides may present an explosion hazard (detonation or deflagration) or they may be shock sensitive. They may also decompose into various unstable compounds over an extended period of time.
- (41) "Oxidizer" means a chemical other than a blasting agent or explosive as defined in Article 9 of the Uniform Fire Code that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.
- (42) "Peroxide-Forming Chemical" means a chemical which, when exposed to air, will form explosive peroxides which are shock, pressure or heat sensitive.
- (43) "Person" means:
- (a) Any entity including, but not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the Federal Government and any agency thereof;
- (b) Any entity operating a facility that is included in one or more of the standard industrial classification categories identified by the State Fire Marshal under ORS 453.408(2).
- (44) "Pesticide" means any substance or mixture of substances, including fungicides, intended for preventing, destroying, repelling or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. Products defined as drugs in the Federal Food, Drug and Cosmetic Act are exempt.
- (45) "Possess" or "Possession" means the physical possession of a hazardous substance within the state.
- (46) "Pyrophoric" means a chemical that will spontaneously ignite in air at or below a temperature of 130° F (54.4° C).
- (47) "Quantity Range(s)" means a range of values assigned for reporting the quantities of hazardous materials. It is equivalent to the term Reporting Range.
- (48) "Radioactive Material" means any material or combination of materials that spontaneously emits ionizing radiation.
- (49) "Reactive Materials" means those materials which can enter into a hazardous chemical reaction with other stable or unstable materials.
- (50) "Registration Fee" means a Hazardous Substance Possession Fee assessed in lieu of that set by a fee schedule.
- (51) "Respiratory Hazard" means those materials which cause damage to the respiratory system.
- (52) "Sensitizer" means a chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.
- (53) "Toxic Material" means a material which produces a lethal dose or a lethal concentration within any of the following categories:
- (a) A chemical or substance that has a median lethal dose (LD50) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;
- (b) A chemical or substance that has a median lethal dose (LD50) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 20 hours) with the bare skin of albino rabbits weighing between 2 and 3 kilograms each;
- (c) A chemical or substance that has a median lethal concentration (LC50) in air more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.
- (54) "Unstable (reactive) Liquid" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shock, pressure or temperature.
- (55) "Unstable Materials" means those materials, other than explosives, which in the pure state or as commercially produced will vigorously polymerize, decompose, condense or become self-reactive and undergo other violent chemical

changes, including explosion, when exposed to heat, friction, shock, or in the absence of an inhibitor or in the presence of contaminants or in contact with non-compatible materials.

(56) "Very Hazardous" means hazardous substances which present a significant hazard to public health, welfare or safety or the environment.

(57) "Water-Reactive Materials" means materials which explode violently, react, produce flammable, toxic or other hazardous gases, or evolve enough heat to cause self-ignition or ignition of nearby combustibles upon exposure to water or moisture.

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

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.396 - ORS 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; FM 5-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1020

Hazardous Classification

(1) Hazardous substances shall be classified according to the hazard(s) they present.

(2) Hazardous substances shall be classified as generally hazardous unless they meet the criteria for classification as minimally hazardous, very hazardous or are subject only to a registration fee.

(3) For purposes of the Hazardous Substance Possession Fee, the most hazardous classification that can be assigned to a substance will be used.

(4) A hazardous substance shall be classified as subject only to a registration fee if, under normal or reasonably expected conditions:

(a) Its primary hazard is that only of a nuisance dust and/or minor irritant; and

(b) It has no other hazard that would classify it as a minimally, generally or very hazardous substance; or

(c) It is classified as such by the Office of State Fire Marshal.

(5) A hazardous substance may be classified as minimally hazardous if, under normal or reasonably expected conditions:

(a) It has a National Fire Protection Association (NFPA) 704 rating of 1 or less; and

(b) It is not required to have either the signal Words Danger or Warning on container labels; and

(c) It does not have a Threshold Limit Value (TLV), Permissible Exposure Limit (PEL) or Recommended Exposure (REL) less than 10 mg/m³ of total particulate, 5,000 ppm of gas or vapor or 10 fibers/cc; and

(d) There has been not one reliable animal or human study showing that it is a hepatotoxin, nephrotoxin, neurotoxin, carcinogen, sensitizer, corrosive, hematopoietic toxin, respiratory hazard, reproductive toxin, mutagen, eye hazard, or cutaneous hazard; and

(e) It is not a hazardous waste; and

(f) It is not an aerosol, blasting agent, combustible liquid, compressed gas, corrosive, corrosive liquid, cryogenic fluid, explosive, fire hazard, fireworks, fissile materials, flammable anesthetic flammable gas, flammable liquefied gas, flammable liquid, flammable solid or metal, highly toxic material, highly toxic pesticide, hypergolic material, liquefied petroleum gas, natural gas, organic peroxide, oxidizer, peroxide, peroxide-forming chemical, pesticide, pyrometric, radioactive material, reactive material, sensitizer, toxic material, unstable (reactive) liquid, unstable material or water-reactive material; or

(g) It is classified as such by the Office of State Fire Marshal.

(6) A hazardous substance will be classified as very hazardous if, under normal or reasonably expected conditions:

(a) It has a National Fire Protection Association (NFPA), 704 health and/or reactivity rating of 4; or

(b) It is required to have the signal word Danger on container labels; or

(c) It is a highly toxic material, human carcinogen, high explosive, highly combustible dust or metal, Class 4 oxidizer, Class I organic peroxide, pyrophoric, Class 4 unstable (reactive) material, Class 3 water-reactive material, radioactive material, hypergolic; or

(d) It is classified as such by the Office of State Fire Marshal.

(7) The Office of State Fire Marshal shall make an initial hazard classification of hazardous substances:

(a) In the absence of information to support classification as minimally hazardous, very hazardous or subject only to a registration fee, each hazardous substance shall be classified as generally hazardous;

(b) Requests for changes in hazard classifications shall be made in writing to the Office of State Fire Marshal. The request shall include the facility ID number, company name, address and telephone number of the facility requesting the change, the name of the person making the request, the name of the substance and a Material Safety Data Sheet for the substance.

(8) If the Material Safety Data Sheet (MSDS) states, or indicates by content a mixture of hazardous substances has been tested as a whole to determine its hazards, the results of such testing shall be used to determine the mixture's hazard classification.

(a) If there is other documentation available that indicates there may be other hazards associated with the substance being evaluated, the State Fire Marshal may also consider that information to assist in determining the hazard rank classification.

(9) If a mixture of hazardous substances has not been tested as a whole, the health hazard established for the product will be the same as the most hazardous ingredient that makes up 20 percent (by weight or volume) or more of the mixture. The mixture shall be considered to have carcinogenic hazards if it contains a listed carcinogen in amounts of 5 percent or more.

(10) If the MSDS indicates the ingredients of a mixture are neutralized or would not create a hazard under normal or reasonably expected conditions due to a chemical reaction of ingredients, by encapsulation or bound in a compound, the potential hazard will be evaluated using the MSDS and any other applicable documents.

(11) If a mixture of hazardous substances has not been tested as a whole to determine whether the mixture is a physical hazard, the Office of State Fire Marshal may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture and its hazard classification.

(12) If there is evidence to indicate that a component present in the mixture in concentrations of less than 30 percent (or in the case of carcinogens, less than 10 percent) could be released in concentrations which would exceed an established Permissible Exposure Limit, ACGIH Threshold Limit Value, or Recommended Exposure Limit, or could present a health hazard in those concentrations, the mixture shall be assumed to present the same hazard as the component.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.402(2)

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; FM 5-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1025

Payments and Billings

(1) Hazardous Substance Possession Fee payments are due by January 1 unless otherwise specified on the fee assessment statement.

(2) Hazardous Substance Possession Fees shall be due retroactively to January 1 of each year, for those persons who had been notified but failed to previously submit required complete and accurate Hazardous Substance Information Surveys as required by OAR 837-085-0010 to 837-085 0090.

(3) In the absence of other data, current survey data will be used to assess the fee(s) for the previous year(s) when a firm was subject to the Hazardous Substance Information Survey and assessed fees.

(4) Persons who fail to pay the assessed fee within 60 days of the due date shall be assessed a late penalty fee of five percent of the fee amount.

(5) Persons who pay the assessed fee 60 days or more after the due date on the fee assessment statement shall be subject to payment of interest at the rate prescribed under ORS 305.220.

(6) Persons subject to retroactive fee assessments shall be subject to payment of interest at the rate prescribed under ORS 305.220.

(7) The Office of State Fire Marshal shall, for each year a fee is due, send a statement to each person subject to the fee indicating the amount of fee due and the due date.

(8) The Office of State Fire Marshal may extend for good cause, up to one month, the due date for fee payment:

(a) The extension may be granted at any time if a written request is filed with the State Fire Marshal within or prior to the period for which the extension may be granted;

(b) If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid.

(9) If the person fails to pay the amount due, the State Fire Marshal may either:

(a) Bring an action for the recovery of the fee due; or

(b) Initiate a contested case hearing according to the applicable provisions of ORS 183.310 to 183.550.

(10) Notwithstanding any provision of ORS 183.310 to 183.550, nothing in section (9) of this rule shall be considered to require the State Fire Marshal to conduct a contested case hearing as a prerequisite to bringing an action under subsection (9)(a) of this rule.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.400 - ORS 403.404

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1030

State Fee Schedules

(1) Three state fee schedules shall be developed annually as the basis for assessing each person returning a Hazardous Substance Information Survey (see OAR 837-090-1000 to 837-090-1045) a Hazardous Substance Possession Fee.

(2) The annual fee assessed under each schedule shall be based upon the single largest maximum aggregate quantity of substance reported in the Hazardous Substance Information Survey, that is manufactured, stored, or otherwise possessed by a facility during the survey year.

(3) The programs to be funded from fees collected under ORS 453.396 to 453.414 and these rules, and the range of the fee schedules that may be considered, beginning July 1989, are as follows:

(a) For funding the Community Right to Know and Protection Act, not less than \$25 and not more than \$2,000 per facility;

(b) For funding the Toxics Use Reduction and Hazardous Waste Reduction Act, not less than \$25 and not more than \$2,000 per facility;

(c) For each employer's share of a total of up to \$1 million to be deposited into the Orphan Site Account established under ORS 465.381, not less than zero and not more than \$9,000 per facility. This schedule shall not require an employer to pay a total more than \$25,000 for all facilities.

(4) Employers that believe a billing error has occurred may request a fee review. Fee review requests must be made in writing to the Office of State Fire Marshal within 20 days of the billing mail date. Fee review requests must include the company name, facility ID number, site address, name of the substance the fee was based on, amount of the fee assessed, telephone number and the reason for requesting a review.

(5) Any dispute as to the amount or validity of a hazardous substance fee assessment shall be resolved in accordance with the appeals process procedures outlined in the Administrative Procedures Act (APA), ORS 183.025 to 183.725, unless specifically addressed in these rules.

(6) Hazardous Substance Possession Fee schedules are available from the agency.

(7) If a person can provide evidence that all or part of their propane is derived from the refining of crude oil, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly;

(8) If a person can provide evidence that all or part of their propane is used to power motor vehicles licensed for public highway use, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly.

Stat. Auth.: ORS 453.408, ORS 833 & ORS 1071

Stats. Implemented: ORS 453.402

Hist.: FM 4-1989, f. & cert. ef. 8-31-89; FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92, Renumbered from 837-090-0900; FM 9-1992(Temp), f. & cert. ef. 9-28-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1035

Records

(1) Every person who possesses a hazardous substance shall keep at the registered place of business complete and accurate records for each facility of any hazardous substance purchased by, or brought in or caused to be brought in to the facility, or stored, used, or manufactured at the facility.

(2) The State Fire Marshal or an authorized representative of the State Fire Marshal, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 453.396 to 453.414 and these rules.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.406

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92

837-090-1040

Exemptions

(1) Units of local government are exempted from the assessment of Hazardous Substance Possession Fees for those substances which the unit of local government:

(a) Is specifically required to use by a state or federal law or rule; or

(b) Uses to meet a standard imposed by state or federal law or rule; or

(c) Produces as a by-product of processes employed to meet a standard imposed by state or federal law or rule.

(2) Unit of local government exemption requests shall be made on forms or by methods specified by the Office of State Fire Marshal.

(3) The following substances are exempt from the Hazardous Substance Possession Fee:

(a) Crude oil and petroleum products derived from the refining of crude oil, including plant condensate, gasoline, diesel motor fuel, aviation fuel, lubrication oil, crankcase motor oil, kerosene, benzol, fuel oil, residual fuel, petroleum coke,

asphalt base, liquefied or liquefiable gases such as butane, ethane and propane and other products described during petroleum processing, but not including derivatives, such as petroleum jellies, cleaning solvents or asphalt paving;

(b) Solid waste as defined in ORS 459.005;

(c) Hazardous waste as defined in ORS 466.005;

(d) Any substance or activity which the Constitution or laws of the United States prohibit the state from taxing;

(e) Propane used to power licensed motor vehicles;

(f) Propane when possessed by public schools;

(g) Natural gas unless stored in liquefied form for non-vehicular use in quantities greater than 200 cubic feet.

(4) Persons whose property is exempt from taxation under ORS 307.090 are exempt from that portion of the Hazardous Substance Possession Fee assessed for funding the Orphan Site Account under ORS 453.402(2)(c).

(5) The State Fire Marshal by rule may add persons or substances to or exempt persons or substances from liability for the fee imposed under ORS 453.396 to 453.414 to conform to the reporting requirements established by the State Fire Marshal under the Community Right to Know and Protection Act. See OAR 837-090-1000 to 837-090-1045. Requests for such exemptions shall be made according to the exemption provisions in OAR 837-090-1040.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.402, ORS 453.414

Hist.: FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1045

Local Government Fees

(1) Local government Hazardous Substance Possession Fees based on quantity or the Hazardous Substance Information Survey shall be used solely to supplement and not to duplicate the Office of State Fire Marshal's programs under ORS 453.307 to 453.372.

(2) Local government Hazardous Substance Possession Fees based on quantity or the Hazardous Substance Information Survey, shall be billed and collected only through contract with the Office of State Fire Marshal.

(3) Local governments shall not assess a hazardous Substance Possession Fee for the same substance to persons who are assessed a Hazardous Substance Possession Registration Fee by the Office of State Fire Marshal.

(4) The Office of State Fire Marshal shall not enter into a contract with a local government under OAR 837-090-1000(3) or section (2) of this rule, unless the local government meets the following requirements:

(a) The local government certifies that the revenue from the local Hazardous Substance Possession Fee will be used solely to supplement and not duplicate the Office of State Fire Marshal's programs under ORS 453.307 to 453.372; and

(b) The local Hazardous Substance Possession Fee system is structured to be compatible with the fee schedules adopted by OAR 837-090-1030; and

(c) The local Hazardous Substance Possession Fee assessment program will not raise moneys in excess of that needed to carry out the local government's supplemental Community Right-To-Know programs.

(5) The contract under these rules shall include:

(a) Provisions that assure that the local government pays the portion of the costs that may be attributed to its fee assessment program; and

(b) Conditions that require the local government to bear all costs related to collection of its fee, including but not limited to costs associated with conducting hearings or appeals on the fee;

(c) If appropriate, provisions to allow local government to conduct hearings or appeals on its fees.

(6) Any local government operating a Hazardous Substance Possession Fee assessment program shall comply with these rules on or before July 1, 1992.

(7) Local government programs funded by Hazardous Substance Possession Fees will be reviewed by the Office of State Fire Marshal to ensure against duplication, in accordance with ORS 453.402(7)(b).

(8) Failure of a local government to comply with section (4) of this rule will result in cancellation of the Office of State Fire Marshal's contract and the local government's Hazardous Substance Possession Fee assessment program.

Stat. Auth.: ORS 453.408

Stats. Implemented: ORS 453.402

Hist.: FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02

837-090-1145

Petroleum Load Fee

(1) As provided in ORS 465.101 to 465.131, the petroleum load withdrawal fee is established to carry out the state's oil, hazardous materials and hazardous substance emergency response program as it relates to the maintenance, operation, and use of the public highways, roads, streets, and roadside rest areas. Effective October 1, 2005 the fee shall be \$2.50 per load, effective July 1, 2007 the fee shall be \$4.00 per load and effective July 1, 2009 the fee shall be \$6.00 per load.

(2) Fee collection by the Department of Revenue will begin October 1, 1993.

Stat. Auth.: ORS 465.106

Stats. Implemented: ORS 465.106

Hist.: FM 5-1993, f. & cert. ef. 11-1-93; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 12-2005, f. & cert. ef. 8-15-05
