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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 837
DEPARTMENT OF THE STATE FIRE MARSHAL

FILED

04/05/2024 4:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Changes to class 1 flammable liquid dispensing requirements and violations with passage of HB2426.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/22/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Sara Zavala
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/22/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Sara Zavala

IN-PERSON HEARING DETAILS

ADDRESS: Oregon State Fire Marshal Building, 3991 Fairview Industrial Dr. SE, Salem, OR 97302

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-503-446-4951

CONFERENCE ID: 814305577

NEED FOR THE RULE(S)

The rule changes are required in order to meet new requirements and allowances made with the passage of House Bill 2426 (2023) which permits self-serve dispensing of class 1 flammable liquids and establishes requirements for owners, operators and employees of retail facilities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 2426 is available on OLIS at this link:

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB2426>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department of the State Fire Marshal has not identified any racial equity impacts of these rule amendments.

FISCAL AND ECONOMIC IMPACT:

There is no expected fiscal or economic impact with these rule changes.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The OSFM anticipates there may be increased OSFM staff workload with regulation requirements and enforcement of violations. There may also be an increase in consumer complaints. Small businesses will need to comply with the posting and employee requirements. However, there is only minor economic impact expected due to signage requirements. Monetary penalties could occur if violations are observed and sustained. Minor changes to business operations may be necessary to ensure adherence to the timing and availability of dispensers. OSFM does not foresee significant increases.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Stakeholders representing various business groups participated in the revision of the current rules through an advisory committee meeting.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

837-020-0025, 837-020-0035, 837-020-0040, 837-020-0045, 837-020-0050, 837-020-0085, 837-020-0105, 837-020-0125

AMEND: 837-020-0025

RULE SUMMARY: Defines purpose and scope of regulations; updated to reflect retail operator requirements who offer self-serve.

CHANGES TO RULE:

837-020-0025

Purpose and Scope- Flammable Liquid Dispensing Regulations ¶¶

These rules establish licensing requirements for Nonretail Facility and Conditional Nonretail Facility owners and operators. These rules also establish the requirements that each Nonretail Customer and Conditional Use Customer must meet to dispense Class 1 Flammable Liquids at those facilities. These rules establish where and when self-serve of Class 1 Flammable Liquids may occur in Oregon, the requirements retail operators must meet who offer self-serve of Class 1 Flammable Liquids, and actions taken by the State Fire Marshal in regards to audits; inspections; enforcement; and penalties.

Statutory/Other Authority: ORS 476, 480.380

Statutes/Other Implemented: ORS 480.310 - 480.385

AMEND: 837-020-0035

RULE SUMMARY: Added definitions of dispensing device, non-rural Oregon, retail customer and rural Oregon; removed definitions of Eastern Oregon and high and low population counties.

CHANGES TO RULE:

837-020-0035

Definitions ¶¶

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0130 only, the following definitions apply:¶¶

- (1) "Business Use" means that all Class 1 flammable liquids dispensed into motor vehicles and containers must be used only in the course of business activities.¶¶
- (2) "Class 1 Flammable Liquid" means any liquid with a flash point below 25 degrees Fahrenheit, closed cup tester. Note: Diesel fuel is not a Class 1 flammable liquid.¶¶
- (3) "Container" means all types of portable containers.¶¶
- (4) "Conditional Use Customer" means a person who may dispense Class 1 flammable liquids at a licensed conditional nonretail facility, and meets the requirements of OAR 837-020-0045 through 837-020-0130.¶¶
- (5) "Conditional Nonretail Facility" means a nonretail facility licensed by the State Fire Marshal, where conditional use customers may dispense Class 1 flammable liquids.¶¶
- (6) "Dispensing" means the transfer of a Class 1 flammable liquid from a facility to a motor vehicle or container.¶¶
- (7) "Dispensing Device" for the purpose of determining the number of devices that may be designated for self-serve dispensing, means each individual hose and nozzle or other similar equipment used to dispense Class 1 Flammable Liquids. It does not mean the dispensing cabinet.¶¶
- (8) "Documentation" means a verifiable Federal Employer Identification Number or other record that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. Records may be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the nonretail customer is eligible to be a nonretail customer.¶¶
- (89) "Dual Operations" means a nonretail facility where Class 1 flammable liquids are dispensed at retail and nonretail with either a time separation of the retail and nonretail operations or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.¶¶
- ~~(9) "Eastern Oregon" means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of this state and the western boundary of Hood River county, and from there proceeding southerly along the western boundaries of Hood River, Wasco, Jefferson, Deschutes and Klamath Counties to the southern boundary of this state.¶¶~~
- (10) "Emergency" means any man-made or natural element or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.¶¶
- (11) "Emergency Management Agency" means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and ensure the conduct and coordination of functions for comprehensive emergency program management.¶¶
- (12) "Emergency Service Agency" means an agency defined in ORS 401.025 or an entity authorized by an emergency service agency to provide services during an emergency.¶¶
- (13) "Emergency Service Worker" means an individual who, under the direction of an emergency service agency or emergency management agency, performs emergency services and:¶¶
 - (a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the emergency management agency of a county or city; or¶¶
 - (b) Is a member of the Oregon State Defense Force acting in support of the emergency service system.¶¶
- (14) "Emergency Services" means and includes those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 22520).¶¶
- (15) "Employee" means an individual who works for an operator or an owner.¶¶

- (16) "Equivalent Documentation" means verifiable documentation that meets or exceeds the requirements of documentation required under ORS 480.345. The final decision as to what is acceptable as equivalent documentation rests with the State Fire Marshal.¶
- (17) "Facility" means a site where Class 1 flammable liquids are dispensed. A facility can be either retail, non-retail or a combination of both.¶
- (18) "General Public" means someone other than a nonretail customer or a conditional use customer.¶
- (19) "~~High Population County~~" means a county that has a population more than 40,000 based on a certificate of population prepared under ORS 190.510 to 190.610.¶
- ~~(20)~~ "Individual" means a single human being.¶
- ~~(21)~~ "License" means the official document issued by the State Fire Marshal that authorizes the operation of a nonretail facility or a conditional nonretail facility when otherwise in compliance with all applicable requirements of OAR 837-020-0040.¶
- (22) "License Application" means the form and accompanying documentation required to be completed and submitted to the State Fire Marshal for approval prior to the issuance of a nonretail facility or a conditional nonretail facility license.¶
- ~~(23)~~ "~~Low Population County~~" means a county that has a population not more than 40,000 based on a certificate of population prepared under ORS 190.510 to 190.610.¶
- ~~(24)~~ "May" means a regulation of conduct and implies probability or permission.¶
- (25) "May not" means a prohibition of conduct.¶
- ~~(26)~~ "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.¶
- ~~(27)~~ "Must" means a mandatory requirement.¶
- ~~(28)~~ "National Fire Protection Association (NFPA)" means NFPA Standards.¶
- ~~(29)~~ "Nonretail Customer" means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345.¶
- ~~(30)~~ "Nonretail Facility" means an unattended or dual operations facility licensed by the State Fire Marshal, where Class 1 flammable liquids are dispensed through a fuel dispensing device to qualified nonretail customers.¶
NOTE: A dual operation facility is also a nonretail facility.¶
- ~~(31)~~ "Non-Rural Oregon" means those counties not defined as Rural Oregon.¶
- (30) "Operator" means a person that operates a nonretail facility or a conditional nonretail facility.¶
- ~~(32)~~ "Oregon Fire Code (OFC)" means the latest edition of the Oregon Fire Code, adopted by the ~~Oregon Office of Department of the State Fire Marshal.~~¶
- ~~(33)~~ "Owner" means any person that is the owner of a ~~Nonretail Facility~~ or a conditional ~~Nonretail Facility~~. An owner may also be an operator.¶
- (34) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.¶
- ~~(34)~~ "Retail Customer" means a person who is not subject to the requirements a Nonretail Customer must meet to dispense Class 1 Flammable Liquids at a Nonretail dispensing facility. ¶
- (35) "Retail Facility" means a facility that sells Class 1 flammable liquids to the general public in compliance with ORS 480.330.10 and ORS 480.341. It does not mean a Nonretail Facility where retail sales may occur. ¶
- (36) "Retail Sales" means the dispensing of Class 1 flammable liquids to the general public. Retail sales may occur at a ~~Retail Facility~~ or a ~~Nonretail Facility~~.¶
- ~~(37)~~ "Rural Oregon" means Baker, Clatsop, Crook, Curry, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties.¶
- ~~(38)~~ "Verifiable Documentation" means documentation that can be verified by the State Fire Marshal as true and accurate.

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.310 - 480.385

AMEND: 837-020-0040

RULE SUMMARY: Updated with reference to rural counties.

CHANGES TO RULE:

837-020-0040

General ¶

(1) Nonretail fFacility and eConditional nNonretail fFacility operators desiring to engage in nNonretail fFacility or eConditional nNonretail fFacility operations must comply with all applicable state, federal and local laws, rules and regulations including, but not limited to:¶

(a) ORS 480.310 through 480.385;¶

(b) OAR 837-020-0025 through 837-020-0130;¶

(c) Oregon Fire Code (OFC), Current Edition;¶

(d) OAR chapter 837, division 85, Hazardous Substance Inventory reporting under the Oregon Community Right to Know and Protection Act; and¶

(e) NFPA 30 and 30A, Current Edition. ¶

(2) In addition to other applicable provisions of law, each nNonretail fFacility and eConditional nNonretail fFacility must meet the following requirements as per OAR 837-020-0040:¶

(a) Instructions for the operation of nonretail dispensers must be clearly and conspicuously posted;¶

(b) Locations of all fire extinguishers must be clearly and conspicuously posted;¶

(c) All fire extinguishers must be installed and maintained as required by Oregon Fire Code and NFPA 10;¶

(d) All fire extinguishers must be readily accessible and immediately available for use to all persons at all times.¶

(e) Have adequate lighting so the fuel dispensing area is sufficiently illuminated at all times when it is available for use;¶

(f) All applicable provisions of the OFC must be met.¶

(3) All nNonretail fFacilities and eConditional nNonretail fFacilities must have the following signs posted. These signs must be conspicuously posted within sight from each Class 1 fFlammable lLiquid dispenser and readable from a distance of at least ten feet and state:¶

(a) The nNonretail fFacility or eConditional use fNonretail Facility address;¶

(b) The telephone number of the owner or operator of the facility;¶

(c) Do not fill unapproved containers;¶

(d) It is a violation of law, subject to penalty, to dispense Class 1 fFlammable lLiquids without first receiving the training required by OAR 837-020-0055; and¶

(e) It is a violation of law, subject to penalty, to dispense Class 1 fFlammable lLiquids for personal use or into motor vehicles or containers not owned or used by a business, government, non-profit, or charitable organization, per ORS 480.345(4), (not required at eConditional nNonretail fFacilities).¶

(f) Persons dispensing fuel must remain outside the vehicle being fueled, with the fueling nozzle in full view at all times.¶

(4) In addition to the provisions required by OAR 837-020-0040, rRetail and nNonretail dDual eOperation fFacilities, where the retail and nonretail dispenser islands are separated by distance and dispensing operations occur during the same hours, must:¶

(a) Have signs visible from each driveway access point identifying the retail and nonretail dispenser islands. These signs must be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background;¶

(b) Have nonretail dispenser islands separated from retail dispenser islands by a space of at least 50 feet.

Nonretail and retail dispenser islands may be separated by a distance of no less than 20 feet, provided prior approval is given by the State Fire Marshal, and that one of the following barriers is present:¶

(A) An approved solid physical barrier or a solid wall at least four feet high, constructed of fire resistive materials, and which runs the entire length of the pump island; or¶

(B) A fire resistive building, meeting the requirements of the building code.¶

(c) Unless pump islands are separated by at least 50 feet or 20 feet with an approved barrier, retail and nonretail dispensing may not occur during the same hours at a facility.¶

(5) Nonretail fFacilities in ~~low population counties of Eastern Oregon~~ Rural Oregon counties that are not a dDual eOperations fFacility but allow retail dispensing from the nonretail dispensers, are not subject the requirements of OAR 837-020-0040 (4)(a) through (c).¶

(6) Where retail and nonretail dispensing is separated only by time, signs must be visible from each driveway access point and each Class 1 fFlammable lLiquid dispensing pump stating the days and hours when the separate retail and nonretail operations occur. These signs must be readily visible and readable, be at least three feet by

four feet in size, and have a minimum height of six inch letters on a contrasting background.¶

(7) At least 45 days prior to the start of intended operations, the facility owner or operator of each new Nonretail Facility and Conditional Nonretail Facility covered by OAR 837-020-0040 must file the appropriate license application forms and certifications with the State Fire Marshal.¶

(8) Owners and operators of Nonretail Facilities and Conditional Nonretail Facilities must notify the State Fire Marshal in writing:¶

(a) Within fifteen days of a Nonretail or Conditional Nonretail Facility closing or the transaction of a facility being sold having been completed. If the facility is being closed or converted to a retail only facility, the owner or operator must relinquish the nonretail or conditional nonretail license for that facility issued by the State Fire Marshal at the same time as submitting their written notification;¶

(b) Within thirty days of the owner or operator business closing or the transaction of the business being sold or merging with another company having been completed.¶

(9) No later than 90 days prior to commencing retail sales at a Nonretail or Conditional Nonretail Facility under ORS 480.341 (4) the owner or operator of that facility shall notify the State Fire Marshal in writing they plan to dispense Class 1 Flammable Liquids at retail.¶

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

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.310 - 480.385

AMEND: 837-020-0045

RULE SUMMARY: Updated reference to non-rural and rural counties based on new definitions; updated pumping restrictions and requirements for posting and attendant availability; requires identical price for self-serve and attendant dispensing.

CHANGES TO RULE:

837-020-0045

Dispensing of Class 1 Flammable Liquids by the General Public ¶

~~(1) Owners or operators of facilities located in high population Non-Rural Oregon counties where Class 1 flammable liquids are dispensed at retail may not allow any individual other than owners, operators, and their employees, when acting in their employment capacity to use or manipulate any pump, hose, pipe or other device used at the facility to dispense the operable Class 1 Flammable Liquid Dispensing Devices for self-service than are designated for attended service by an owner, operator, or employee of the facility.¶~~

~~(2) A Retail Facility in Non-Rural Oregon counties offering Dispensing Devices for self-serve of Class 1 flammable liquids into a fuel tank of a motor vehicle or container.¶~~

~~(2) Owners or must:¶~~

~~(a) Post one or more notification signs that are visible from each dispenser or island access point and are clearly readable by the operators of facilities located in low population counties that are not Eastern Oregon low population counties where Class 1 flammable liquids are dispensed at retail may allow an individual other than the motor vehicle stating which fueling Dispensing Devices are designated for self-service and which fuel Dispensing Devices are designated for attended service by an owner, operator, or their employees to manipulate a pump, hose, pipe, or other device used at the facility.¶~~

~~(b) Designate at least one person from the facility who dispense Class 1 flammable liquids into a fuel tank of a motor vehicle or approved container between the hours of 6:00 p.m. and 6:00 a.m.¶~~

~~(3) Dispensing that occurs under the provisions of readily available to provide attended service at designated attended service dispensing devices upon request.¶~~

~~(3) Except as provided in ORS 480.341 and subsection (2) of this rule at a site that includes retail space providing goods or services other than goods or services for maintaining, section, a filling station, service station, garage or other dispensary may allow self-service dispensing of Class 1 Flammable Liquids at repairing, or cleaning a motor vehicle, only during hours that the dispensary shall makes an owner, operator, or employee of the dispensary available to for the dispensing of Class 1 flammable liquids during the time after 6:00 p.m. and before 6:00 a.m., if any, that the retail space is open.¶~~

~~(4) The price charged for grades of Class 1 Flammable Liquids must be identical at a self-service fuel Dispensing Device and at any fuel Dispensing Device reserved for business by an owner, operator, or employee of a dispensary.¶~~

~~(4) Owners or operators of facilities located in low population counties of Eastern Rural Oregon where Class 1 flammable liquids are dispensed at retail may allow an individual other than the owner, operator, or their employees to manipulate a pump, hose, pipe, or other device used to dispense Class 1 flammable liquids into a fuel tank of a motor vehicle or approved container, regardless of whether an owner, operator, or employee of the dispensary is present at the dispensary.¶~~

~~(5) Dispensing that occurs under the provisions of section (4) of this rule at a site that includes retail space providing goods or services other than goods or services for maintaining, repairing, or cleaning a motor vehicle shall make an owner, operator or employee available to dispense Class 1 flammable liquids during the time after 6:00 a.m. and before 6:00 p.m.¶~~

~~(6) Individuals other than owners, operators, and employees of a nonretail facility may be authorized to dispense Class 1 flammable liquids at nonretail facilities if such individuals meet the requirements of ORS 480.310 through 480.385 and OAR 837-020-0025 through 837-020-0130.¶~~

~~(7) The customers referenced in section (6) of this rule are considered to be a nonretail customer and authorized to dispense Class 1 flammable liquids at nonretail facilities in counties where the self-serve of such liquids is entirely or partially prohibited.¶~~

~~(8) Owners, operators, and employees of nonretail facilities located in Eastern Rural Oregon low population counties may allow the dispensing of Class 1 flammable liquids by the general public as a retail customer. These individuals are exempt from the requirements nonretail and conditional customers are subject to and are not authorized to dispense such liquids in counties where the self-serve of such liquids is prohibited.¶~~

~~(9) A motorcyclist operating their motorcycle may handle the discharge nozzle for dispensing fuel after the attendant has set the dispensing device and handed the discharge nozzle, as defined in ORS 801.365, may~~

~~dispense Class 1 Flammable Liquids into their motorcycle operator. When the motorcycle operator is finished, regardless of whether an owner, operator, or employee of the dispensing into the fuel tank of the motorcycle, the attendant must return the discharge nozzle back to its storage position and deactivate the dispensary offers use of self-service fuel Dispensing Devices for use by customers.~~¶

(101) Aviation fuel may be dispensed by a member of the general public for the purpose of fueling an aircraft at airports permitted by the Oregon Department of Aviation.

Statutory/Other Authority: ORS 476, 480.380

Statutes/Other Implemented: ORS 480.330, 480.345

AMEND: 837-020-0050

RULE SUMMARY: Update ORS reference.

CHANGES TO RULE:

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers ¶

Notwithstanding ORS 480.3310 and 480.340 or OAR 837-020-0045, persons, other than owners, may be authorized to dispense Class 1 ~~F~~ammable ~~L~~iquids at ~~n~~Nonretail ~~f~~acilities where such dispensing by the general public is prohibited, only after the nonretail customer and conditional use customer satisfies all requirements of 837-020-0045 through 837-020-0070.

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.345

AMEND: 837-020-0085

RULE SUMMARY: Update deficiency to violation.

CHANGES TO RULE:

837-020-0085

Nonretail and Conditional Nonretail Facility License Requirements ¶

- (1) Nonretail and eConditional nNonretail fFacilities must obtain a valid license issued by the State Fire Marshal, prior to operating a nNonretail fFacility or a eConditional nNonretail fFacility.¶
- (2) A separate license is required for each nNonretail fFacility and eConditional nNonretail fFacility.¶
- (3) All initial facility licenses are valid for one year from the date of issue.¶
- (4) In accordance with ORS 183.705, a renewal date of a facility license may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.¶
- (5) The State Fire Marshal will issue a license to the owner or operator if the owner or operator has:¶
- (a) Complied with the requirements established by OAR 837-020-0040;¶
- (b) Submitted a correctly completed application to the State Fire Marshal on forms supplied by the State Fire Marshal;¶
- (c) Certified that the owner or operator will comply with all provisions of ORS 480.345, the OFC, and this division;¶
- (d) Provided a blank copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;¶
- (e) Paid the required application fee for each facility site and, if applicable, all annual account fees required in ORS 480.350;¶
- (f) No outstanding Notice and Order of Correction ~~deficiency~~violations;¶
- (g) Has no outstanding civil penalties that are owed;¶
- (h) Has no outstanding annual account fees.¶
- (6) Any and all certification required by this section must be made in accordance with ORS 162.075.¶
- (7) The owner or operator bears the burden of production and proof that the requirements of this Division, and all applicable rules of the State Fire Marshal have been satisfied.¶
- (8) The State Fire Marshal may conduct an on-site inspection to determine compliance with OAR 837-020-0040 and other applicable fire and life safety laws prior to issuing a nonretail facility or conditional nonretail facility license to the owner or operator under section (4) of this rule.¶
- (9) In addition to the requirements set forth in this section, owners or operators who wish to operate a dual operations facility, the owner or operator must provide to the State Fire Marshal, on State Fire Marshal forms, the specific hours and days when the owner or operator proposes to conduct only retail dispensing and the specific hours and days when the owner or operator proposes to conduct only nonretail dispensing.¶
- (10) In addition to the requirements set forth in this section, owners or operators who wish to operate a conditional nonretail facility must comply with the following:¶
- (a) A conditional nonretail facility may permit persons who are not otherwise qualified under OAR 837-020-0050 to dispense Class 1 fFlammable lLiquids if all conditions specified in this section are satisfied;¶
- (b) After investigation and public hearing, and after considering the comments of local residents and government officials, the State Fire Marshal may issue a conditional nonretail license to an owner or operator for local non-commercial use if the State Fire Marshal finds:¶
- (A) There is no facility where Class 1 fFlammable lLiquids are dispensed by attendants at retail, including dual operation facilities, within seven miles of the owner or operator's nonretail facility, and other undue hardship conditions exist. Such undue hardship conditions are determined on a case by case basis and may include, but are not limited to, road conditions, and volume and type of traffic in the affected area;¶
- (B) The owner or operator has certified that the owner or operator will comply with the applicable provisions of ORS 480.345(1), (5), (6)(d), and (6)(e), and this division;¶
- (C) The method of access to a eConditional nNonretail fFacility only allows access to that specific eConditional nNonretail fFacility and no other nNonretail fFacility or eConditional nNonretail fFacility.¶
- (11) Within a given geographical area, applications for conditional nonretail licenses issued under this section are considered in order of priority of receipt. The date the State Fire Marshal actually receives the application determines its priority.¶
- (12) A conditional nonretail license may not be renewed if the requirements of this section are not met at the time of application for renewal. There is no guarantee of continued operations under this section.¶
- [Publications: Publications referenced are available from the agency.]
- Statutory/Other Authority: ORS 480.380, 480.355

Statutes/Other Implemented: ORS 480.350, 480.355

AMEND: 837-020-0105

RULE SUMMARY: Update ORS reference.

CHANGES TO RULE:

837-020-0105

License Denials, Revocations and Suspensions; ~~Civil Penalties~~ and Appeals ¶

(1) The State Fire Marshal may deny, revoke, or suspend a ~~an~~Nonretail ~~Facility~~ or ~~a~~Conditional ~~an~~Nonretail ~~Facility~~ license if the owner or operator:¶

(a) Fails to comply with OAR 837-020-0040, or any other rule, pertaining to nonretail fuel dispensing, adopted by the State Fire Marshal; or¶

(b) Falsifies any information in the application for the license.¶

(2) The option of denial, revocation or suspension may be based on the following:¶

(a) The number of similar or related violations alleged to have been committed in the current license year;¶

(b) Whether the violation or violations were willful or intentional;¶

(c) The prior history of violations committed by the owner or operator; or¶

(d) Other circumstances determined by the State Fire Marshal to be applicable to the particular violation or violations.¶

(3) Suspension or revocation of a license may include suspension or revocation of the current license and the right to apply for a subsequent license.¶

(4) Where the State Fire Marshal has alleged a self-service violation at a ~~an~~Retail ~~Facility~~, ~~an~~Nonretail ~~Facility~~, or ~~a~~Conditional ~~an~~Nonretail ~~Facility~~, the burden of proof to show the purchase was in compliance with the requirements of ORS 480.331 through 480.385 and OAR chapter 837, division 20 shifts from the state to the owner or operator once the state establishes and provides the owner or operator with the following information:¶

(a) The date and time of the alleged violation;¶

(b) The facility location, including the pump number where the alleged violation occurred;¶

(c) The vehicle description and license number; and¶

(d) A description of the individual dispensing the Class 1 ~~Flammable~~ ~~Liquids~~.¶

(5) Any owner or operator who applies for a license required by OAR 837-020-0085, and whose application is denied, is entitled to file an appeal. Appeals are conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.¶

(6) Before suspending, revoking or terminating a license issued under OAR 837-020-0085, the State Fire Marshal will give prior notice to the licensee and offer a hearing. If requested, such hearings are conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.¶

(7) Where the State Fire Marshal proposes to assess a civil penalty under ORS 480.385 and OAR 837-020-0125, appropriate notice of appeal rights will be given under ORS 480.385.¶

(8) Judicial review of a final order made after a hearing requested under section (1) or (2) of this rule will be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.¶

(9) Nothing in this Section may prevent the State Fire Marshal from closing a nonretail facility or a conditional nonretail facility under ORS 479.170, provided that the accelerated appeals process explained in ORS 479.180 is observed.¶

(10) Where a nonretail customer or a conditional use customer account list has been submitted to the State Fire Marshal during enforcement or appeal proceedings, the State Fire Marshal will treat the list as confidential to the extent allowed by law.

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.355, 480.365 - 480.375, 480.385

AMEND: 837-020-0125

RULE SUMMARY: Update deficiency to violation; added retail to facilities; updated language for consistency; added additional violations.

CHANGES TO RULE:

837-020-0125

Violations General and Violation Classes ¶

(1) If at any time the State Fire Marshal finds that the owner or operator of a retail, nonretail, or conditional use facility is found to be out of compliance with any requirement established by ORS 480.310 through 480.385, or OAR 837-020-0025 through 837-020-0130, it may impose a civil penalty of up to \$500 for each violation as authorized by ORS 480.385. All penalties are imposed in accordance with the following penalty matrix established by the State Fire Marshal. ¶

(2) The violation classification established in OAR 837-020-0130 will be used to determine the penalty amount that will be assessed. ¶

(3) Penalties will be suspended based on the instance of a violation. ¶

(4) The violation instance is determined by the number of times a person, individual, owner, or operator is found to have committed the same violation of any single requirement established in ORS 480.310 through 480.385, and OAR 837-020-0025 through 837-020-0130. ¶

(5) Class I violation. Owners or operators of nonretail or conditional use facilities are considered to have committed a Class I Violation if: ¶

(a) The owner or operator does not have documentation on file at the time of the audit showing a nonretail customer is eligible to be a nonretail customer. The required documentation includes: ¶

(A) Proof of business or eligibility; ¶

(B) Proof of meeting the 900 gallon requirement; ¶

(C) A signed agreement that meets the requirements. ¶

(b) Facility license applications are not received by the State Fire Marshal by the due date; ¶

(c) Any of the following signs required to be present at a facility are missing, not legible, not located as required, not of the required minimum size, or in a condition so that it does not meet the intent of the requirement: ¶

(A) Instructions for the operation of nonretail dispensers; ¶

(B) Facility address; ¶

(C) Telephone number of the owner or operator; ¶

(D) It is a violation of law to dispense Class 1 Flammable Liquids without first receiving the training required by OAR 837-020-0055; ¶

(E) It is a violation of law, subject to penalty, to dispense Class 1 Flammable Liquids for personal use or into motor vehicles or containers not owned or used by a business, government, non-profit, or charitable organization, per ORS 480.345(4); ¶

(F) Identifying retail and nonretail dispensers or islands where dual operations separated by distance are being operated; ¶

(G) Identifying the days and hours of retail and nonretail operations where those are separated by time. ¶

(d) The owner or operator does not certify the ~~deficiency~~ violations listed on a Notice and Order of correction have been abated by the date abatement is required for any Class I violations; ¶

(e) The documentation required by OAR 837-020-0077(16) is not available or provided when requested. ¶

(6) Class II violations. Owners or operators of ~~Nonretail or~~ conditional use ~~or~~ Retail Facilities are considered to have committed a Class II violation if: ¶

(a) The owner or operator does not have documentation on file at the time of the audit showing a nonretail customer has received and read or watched the required safety training; ¶

(b) Any of the following signs required to be present at a facility are missing, not legible, not located as required, or in a condition so that it does not meet the intent of the requirement: ¶

(A) Clearly identifying the location of the emergency fuel shut off device; ¶

(B) Location of the fire extinguishers; ¶

(C) Smoking is prohibited; ¶

(D) Vehicle engines must be shut off while fueling; ¶

(E) Do not fill unapproved containers; ¶

(F) Portable containers must be removed from inside the trunk, passenger compartment, or truck bed of a vehicle and placed on the ground before filling; ¶

(G) Discharge your static electricity before fueling by touching a metal surface away from the nozzle; ¶

(H) To prevent static charge, do not re-enter your vehicle while ~~gasoline is pumping~~ a Class 1 Flammable Liquid is

being dispensed;¶

(I) If a fire starts, do not remove nozzle. Use emergency fuel shut off;¶

(J) Persons dispensing fuel must remain outside the vehicle being fueled, with the fueling nozzle in full view at all times;¶

(K) Other signs required by Oregon Fire Code.¶

(c) Fire extinguishers are not installed, accessible or maintained as required;¶

(d) Facility does not have adequate lighting at all times when the facility is available for use;¶

(e) Proper drainage grades and curbs are not situated to prevent any spills from flowing towards any building or other pump islands;¶

(f) If a fire alarm transmitting device or a telephone not requiring a form of payment to operate is not provided and accessible at the facility during all hours of operation or if such device is not maintained in good working order, or if such device does not operate;¶

(g) Retail and nonretail dispensing that occurs during the same hours of operation and separated by distance, is not separated by the required minimum distance or barrier;¶

(h) Other provisions required by Oregon Fire Code;¶

(i) Required facility equipment is not present, not working, or not maintained to be in good working order or good condition;¶

(j) The owner or operator does not certify the ~~deficiency~~violations listed on a Notice and Order of correction have been abated by the date abatement is required for any Class II violations.¶

(k) A retail facility in a Non-Rural county, does not post signs that identify which dispensers are designated for attended service and self-service.¶

(j) Signs that identify which dispensers are designated for attended service and self-service are not clearly readable by the operator of a motor vehicle or are not visible from each dispenser or island access point.¶

(l) A retail facility in a Non-Rural county designates more than one half of the operable Class 1 Flammable Liquid dispensers for self-serve or regularly allows self-serve of Class 1 Flammable Liquids to occur at more than half of the operable Class 1 Flammable Liquid dispensers.¶

(7) Class III violation. Owners or operators of nonretail facilities, conditional use facilities, or retail facilities, or nonretail customers are considered to have committed a Class III violation if:¶

(a) The owner or operator of a retail, nonretail, or conditional use facility allows unauthorized dispensing of Class 1 flammable liquids;¶

(b) The owner or operator of a nonretail or conditional use facility operates such a facility without the required license issued by the state fire marshal;¶

(c) The owner or operator of a nonretail or conditional use facility knowingly falsifies any of the information required to be included on the facility license application;¶

(d) The owner or operator of a nonretail or conditional use facility did not provide the required safety training to a nonretail or conditional use customer prior to giving them access to dispense Class one flammable liquids;¶

(e) The nonretail customer does not completely review the required safety training information as required under ORS 480.345 (5);¶

(f) The owner or operator of a nonretail or conditional use facility does not certify the deficiencies listed on a Notice and Order of correction have been abated by the date abatement is required for any Class III violations.¶

(g) A Retail station in a Non-Rural county does not designate at least one person from the facility who is readily available to provide attended service at designated attended service dispensing devices upon request or when a person is designated to provide assistance upon request, denies providing such assistance.¶

(h) A retail facility in a Rural Oregon county that has retail space providing goods or services, other than goods or services for maintaining, repairing or cleaning a motor vehicle, does not make an owner, operator, or employee available for dispensing Class 1 Flammable Liquids after 6:00 AM and before 6:00 PM.¶

(i) A retail facility in a Non-Rural county is regularly allowing self-serve to occur without designating which Class 1 Flammable Liquid dispenser devices are for self-serve and are for attended service or has made the designations but is not regularly adhering to it.¶

(j) A retail facility in a Non-Rural county charges a different price for self-serve and attended service of Class 1 Flammable Liquids.¶

(8) Class IV violation. Owners ~~or~~, operators, or employees of a Nonretail or eConditional use facilities are considered to have committed a Class IV violation if:¶

(a) The owner or operator refuses to abate a violation ordered on a Notice and Order of Correction;¶

(b) The owner or operator falsely certifies they abated the ~~deficiency~~violations listed on a Notice and Order of Correction when the ~~deficiencies were not abated~~violations were not abated.¶

(c) A retail facility in a Non-Rural county allows self-serve dispensing of Class 1 Flammable liquids during hours that an owner, operator, or employee is not available for the dispensing of Class 1 Flammable liquids.¶

(d) A retail facility does not have the required signage notifying persons with a disability that refueling assistance

may be requested and how to request it.¶

(e) A retail facility has charged a person with a disability an additional fee or a higher per gallon price for providing refueling assistance of Class 1 Flammable Liquids pursuant to ORS 480.344.¶

(f) A retail facility fails to provide attended service as required pursuant to ORS 480.344.

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.380, 480.385