



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 837

DEPARTMENT OF THE STATE FIRE MARSHAL

FILED

07/30/2025 4:59 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Changes to cardlock conditional use and gallonage requirement with passage of HB 3478.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/10/2025 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:
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HEARING(S)

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

DATE: 08/19/2025

TIME: 9:00 AM - 10:00 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: 503-446-4951

CONFERENCE ID: 746216177

NEED FOR THE RULE(S)

The rule changes are required in order to implement changes HB 3478.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

<https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB3478>

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

The rule changes lower requirements for entry to non-retail (Cardlock) agreements with businesses across the state; by their very nature they increase the accessibility of the program by greatly simplifying the requirements and removing almost all the economic barriers to entry for the program.

FISCAL AND ECONOMIC IMPACT:

The nature of HB 3478 increases access to non-retail fueling in Oregon which will likely increase the income of the

companies and organizations that facilitate non-retail fuel access per the sponsoring legislation.

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).

(1) For cardlock facilities, there may be an increase in customer base, which would result in additional work and income.

(2)(a) There are about 50 operators of 300 cardlock facilities in Oregon that need to comply with the rules. (b) OSFM does not anticipate significant changes; there may be an increase in customer base, which would result in additional work and income. (c) OSFM does not anticipate significant changes; there may be an increase in customer base, which would result in additional work and income.

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

Interested parties representing various business groups participated in the revision of the current rules through a rules advisory committee. The critical partners of the non-retail fueling program are made up of about 50 different companies and organizations that provide fuel services via cardlock systems. The RAC group contained representatives from 12 businesses based in Oregon and surrounding areas – many of those 12 being owner operated organizations.

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, 837-020-0055, 837-020-0060, 837-020-0065, 837-020-0070, 837-020-0075, 837-020-0077, 837-020-0080, 837-020-0085, 837-020-0105, 837-020-0115, 837-020-0125, 837-020-0130

AMEND: 837-020-0025

RULE SUMMARY: Removed references to conditional use facilities.

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 regard to audits; inspections; enforcement; and penalties.

Statutory/Other Authority: ORS 476, 480.380

Statutes/Other Implemented: ORS 480.310 - 480.385

RULE SUMMARY: Updated to remove references to conditional use facilities; added definition for license cycle; removed definition of verifiable documentation; renumbered.

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.¶¶~~
- (9) ~~"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.¶¶~~
- (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.¶¶~~
- (15) "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.¶

(6) "Employee" means an individual who works for an operator or an owner.¶

(7) "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) "Individual" means a single human being.¶

(210) "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.¶

(211) "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 license.¶

(12) "License Cycle" means a three-year period established by OSFM during which non-retail facilities are license.¶

(22d and records audits are conducted. The license cycle constitutes a defined, static interval and does not operate as a rolling timeframe.¶

(13) "May" means a regulation of conduct and implies probability or permission.¶

(2314) "May not" means a prohibition of conduct.¶

(2415) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.¶

(2516) "Must" means a mandatory requirement.¶

(2617) "National Fire Protection Association (NFPA)" means NFPA Standards.¶

(2718) "NFPA 10" means the 2013 edition of the National Fire Protection Association (NFPA) 10 Standards Portable Fire Extinguishers Code.¶

(2819) "NFPA 30" means the 2012 edition of the National Fire Protection Association (NFPA) 30 Standards Flammable and Combustible Liquids Code.¶

(290) "NFPA 30A" means the 2015 edition of the "National Fire Protection Association (NFPA) 30A Standards Flammable and Combustible Liquids Code.¶

(3021) "Nonretail Customer" means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise person who meets the customer requirements of ORS 480.345¶

(3122) "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.¶

(323) "Non-Rural Oregon" means those counties not defined as Rural Oregon.¶

(3324) "Operator" means a person that is responsible for, including but not limited to, the safety, maintenance, and functionality of a nonretail facility or a conditional nonretail facility.¶

(3425) "Oregon Fire Code (OFC) or OFC" means the 2022 edition of the Oregon Fire Code, adopted by the Department of the State Fire Marshal.¶

(3526) "Oregon Structural Speciality Code (OSSC) or OSSC" means the 2022 edition of the Oregon Structural Speciality Code.¶

(3627) "Owner" means any person that is the owner of a Nonretail Facility or a conditional Nonretail Facility. An owner may also be an operator.¶

(3728) "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.¶

(3829) "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.¶

(390) "Retail Facility" means a facility that sells Class 1 flammable liquids to the general public in compliance with ORS 480.310 and ORS 480.341. It does not mean a Nonretail Facility where retail sales may occur.¶

(4031) "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.¶

(4132) "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.¶

(42) "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: Removed references to conditional use facilities and customers, references to business use, gallonage requirements and documentation.

CHANGES TO RULE:

837-020-0040

General ¶¶

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

(a) ORS 480.310 through 480.385;¶¶

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

(c) OFC;¶¶

(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. ¶¶

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

(a) 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 OFC 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 Nonretail Facilities and Conditional Nonretail Facilities~~ must have the following signs posted. These signs must be conspicuously posted within sight from each Class 1 Flammable Liquid dispenser and readable from a distance of at least ten feet and state:¶¶

(a) The Nonretail Facility ~~or Conditional Nonretail 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 Flammable Liquids without first receiving the training materials required by OAR 837-020-0055; and¶¶

~~(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), (not required at Conditional Nonretail Facilities).~~¶¶

~~(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, Retail and Nonretail Dual Operation Facilities, 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 OSSC.¶¶

(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 Facilities in Rural Oregon counties that are not a Dual Operations Facility 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 Flammable Liquid 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: Removed reference to conditional customers.

CHANGES TO RULE:

837-020-0045

Dispensing of Class 1 Flammable Liquids by the General Public ¶

(1) Owners or operators of facilities located in Non-Rural Oregon counties where Class 1 Flammable Liquids are dispensed at retail may not designate more than one half of 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 must:¶

(a) Post one or more notification signs that are visible from each dispenser or island access point and are clearly readable by the operator of a 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 employee of the facility.¶

(b) Designate at least one person from the facility who is readily available to provide attended service at designated attended service dispensing devices upon request.¶

(3) Except as provided in ORS 480.341 and subsection (7) of this section, a filling station, service station, garage or other dispensary may allow self-service dispensing of Class 1 Flammable Liquids at retail only during hours that the dispensary makes an owner, operator, or employee of the dispensary available for the dispensing of Class 1 Flammable Liquids.¶

(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 use by an owner, operator, or employee of a dispensary.¶

(5) Owners or operators of facilities located in 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.¶

(6) Dispensing that occurs under the provisions of section (5) 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.¶

(7) 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.¶

(8) The customers referenced in section (7) of this rule are Nonretail Customer and authorized to dispense Class 1 Flammable Liquids at Nonretail Facilities in counties where the self-serve of such liquids is regulated. ¶

(9) Owners, operators, and employees of Nonretail Facilities located in Rural Oregon 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 regulated.¶

(10) A motorcyclist operating their motorcycle, as defined in ORS 801.365, may dispense Class 1 Flammable Liquids into their motorcycle, regardless of whether an owner, operator, or employee of the dispensary offers use of self-service fuel Dispensing Devices for use by customers.¶

(11) 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 480.332, 480.345

AMEND: 837-020-0050

RULE SUMMARY: Removed reference to conditional use customer.

CHANGES TO RULE:

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers ¶¶

Notwithstanding ORS 480.310 and 480.340 or OAR 837-020-0045, persons, other than owners, may be authorized to dispense Class 1 Flammable Liquids at Nonretail Facilities 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: 837-020-0055

RULE SUMMARY: Removed references to conditional use facilities and customer; added the work materials to training to align with statute; added that safety training materials contain instructions on reporting issues and be disseminated to all users of non-retail facilities.

CHANGES TO RULE:

837-020-0055

Fire Safety Training ¶

(1) Owners or operators of nonretail facilities ~~and conditional nonretail facilities~~ must provide initial fire safety training ~~to each nonretail customer and~~ materials to each nonconditional user retail customer authorized to dispense Class 1 flammable liquids. The training may be delivered through any suitable method that contains all provisions of 837-020-0055(2). ¶

(a) The training materials must be provided prior to allowing nonretail customers ~~and conditional use customers~~ to dispense Class 1 flammable liquids. ¶

(b) A signed document showing the nonretail customer ~~or the conditional use customer received and reviewed~~ all received the required safety training ~~information~~ materials must be maintained by each operator as part of each customer file. ¶

(2) The fire safety training materials described in section (1) must include:¶

(a) The hazards of all forms of Class 1 flammable liquids to be dispensed by the nonretail ~~customers and conditional use customers~~;¶

(b) The location and operation of emergency fuel shut off devices required under the OFC;¶

(c) The no smoking set-back requirements of the OFC;¶

(d) Procedures for contacting the local fire department and other emergency service organizations;¶

(e) The use of the fire extinguishers required under the OFC; ~~and~~¶

(f) The type of portable containers that may be filled and the safe procedures for filling them; and¶

~~(3g) All instructions on retail customers and conditional use reporting safety issues at a facility to the operator and emergency services. ¶~~

(3) All nonretail customers who wish to dispense Class 1 flammable liquids at nonretail facilities ~~and conditional nonretail facilities must completely read or watch~~ must receive the fire safety training materials described in sections (1) and (2) of this rule and disseminate them to all users under the customer prior to engaging in dispensing operations.¶

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

Statutory/Other Authority: ORS 476, 480.380

Statutes/Other Implemented: ORS 480.345

REPEAL: 837-020-0060

RULE SUMMARY: Removed as statute no longer supports a quantity of purchase requirement.

CHANGES TO RULE:

837-020-0060

Quantity of Purchase Criteria ¶¶

(1) Except as provided below, each nonretail customer must purchase not less than 900 gallons of Class 1 flammable liquids or diesel fuel or any combination thereof every 12 months for business, government, nonprofit, special district, or charitable purposes. ¶¶

(a) The 900 gallons of fuel may be purchased from any source. ¶¶

(b) The twelve month period referenced in section (1) of this rule may be the twelve months previous to the date of the annual customer records audit or the previous calendar year. ¶¶

(c) The minimum gallons purchased requirement does not apply until the nonretail customer has been a nonretail customer for 365 consecutive days from the date the customer enters into the signed agreement or from the date of their first fuel purchase. ¶¶

(d) Conditional use customers are not subject to the minimum gallon purchase requirement. ¶¶

(e) For the purpose of applying the 900 gallon minimum purchase requirement when a customer is acquired by one operator from another operator, that customer is not considered to be a new customer of the operator who acquired them. ¶¶

(2) If the nonretail customer does not purchase 900 gallons from the owner or operator they have entered into a written agreement with, the nonretail customer must provide documentation to that owner or operator to demonstrate the minimum gallon requirement has been met. This documentation must be made readily available by the owner or operator for review by the State Fire Marshal. ¶¶

(3) Nonretail customers that do not meet the requirements of ORS 480.345 and section (1) of this rule must have their access to nonretail dispensing of Class 1 flammable liquids revoked by the nonretail facility owner or operator. ¶¶

(4) The nonretail customer's access to Class 1 flammable liquid must remain revoked until such time the nonretail customer can demonstrate they will meet the minimum gallon requirement. ¶¶

(5) Nonretail customers who wish to dispense Class 1 flammable liquids at a nonretail facility are not required to meet the provisions of this section if: ¶¶

(a) The nonretail customer annually provides documentation that the fuel qualifies as a deductible farming expense on the nonretail customer's Schedule F of their federal income tax return; or ¶¶

(b) The fuel was purchased by a governmental agency providing fire, ambulance or police services; or ¶¶

(c) The fuel was purchased by: ¶¶

(A) A people's utility district organized under ORS chapter 261; or ¶¶

(B) A domestic water supply district organized under ORS chapter 264; ¶¶

(C) A mass transit district organized under ORS 264.010 to 267.390; ¶¶

(D) A metropolitan service district organized under ORS chapter 268; ¶¶

(E) A special road district organized under ORS 371.305 to 371.360; ¶¶

(F) A 911 communications district organized under ORS 403.300 to 403.380; ¶¶

(G) A sanitary district organized under ORS 450.005 to 450.245; ¶¶

(H) A sanitary authority, water authority or joint water and sanitary authority organized under ORS 450.600 to 450.989; ¶¶

(I) A rural fire protection district organized under ORS chapter 478; ¶¶

(J) A water improvement district organized under ORS chapter 552; ¶¶

(K) A water control district organized under ORS chapter 553; or ¶¶

(L) A port organized under ORS chapter 777. ¶¶

(d) The nonretail customer was a customer of a nonretail facility on and continuously since June 30, 1991, and meets all other requirements of OAR 837-020-0050. ¶¶

(6) Nonretail customer applicants must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 837-020-0060 within 365 consecutive days from the date they enter into the signed agreement or from the date of their first fuel purchase.

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.345, 480.360

AMEND: 837-020-0065

RULE SUMMARY: Removed references to conditional use facilities and customers.

CHANGES TO RULE:

837-020-0065

Certification and Record Keeping ¶¶

(1) Owners or operators of nonretail facilities ~~and conditional nonretail facilities~~ must maintain electronic or hard copy documentation that is readily accessible to demonstrate all nonretail customers ~~and conditional use customers~~ meet the requirements of OAR 837-020-0050.¶¶

(2) This documentation must be readily available for inspection by the State Fire Marshal or their designee when requested.¶¶

(3) This documentation must be maintained the entire time the nonretail ~~or conditional use~~ customer remains a nonretail ~~or conditional use~~ customer with the operator that has entered into a written agreement with the customer.¶¶

(4) Owners and operators of nonretail facilities ~~and conditional nonretail facilities~~ must sign and return the Notice of Order and Correction to provide documentation to the State Fire Marshal that certifies all violations of OAR 837-020-0025 through 837-020-0130 have been abated.

Statutory/Other Authority: ORS 476, 480.380

Statutes/Other Implemented: ORS 480.345 - 480.375

AMEND: 837-020-0070

RULE SUMMARY: Removed references to conditional use facilities and customers; removed references to gallonage requirements and business use; added to the written agreement a requirement that safety training materials be disseminated to all users of nonretail facilities.

CHANGES TO RULE:

837-020-0070

Written Agreements ¶

~~(1) The owner or operator must enter into a written agreement with nonretail customers and conditional use customers permitted under OAR 837-020-0050 to dispense Class 1 flammable liquids at the nonretail facility and conditional nonretail facility. Except as otherwise provided in ORS 480.355, t. The agreement must at a minimum:¶~~

~~(a) 1) Certify that the nonretail customer will purchase at least 900 gallons of Class 1 flammable liquids, including diesel fuel, from any source during a 12-month period, or if the amount of Class 1 flammable, including diesel fuel, purchased is less than 900 gallons annually, file documentation that:¶¶~~

~~(A) The fuel qualifies as a deductible farming expense on the nonretail customer's current Schedule F of their federal income tax return; or¶¶~~

~~(B) The fuel was purchased by a governmental agency providing fire, ambulance or police services;¶¶~~

~~(C) The nonretail customer was a customer of a nonretail facility on and continuously since June 30, 1991, and meets all other requirements of OAR 837-020-0050.¶¶~~

~~(b) Provide a verifiable Federal Employer Identification Number (FEIN) or equivalent documentation to indicate participation in a business or employment with a government agency or nonprofit or charitable organization;¶¶~~

~~(c) Certify that the nonretail customer is employed by a business, government agency or nonprofit or charitable organization and that the nonretail customer will dispense Class 1 flammable liquids only into the fuel tank of a motor vehicle or container owned or used by the business, government agency or nonprofit or charitable organization;¶¶~~

~~(d) That all Class 1 flammable liquids dispensed at nonretail facilities will be for business use only, and that the nonretail customer is subject to a penalty if fueling a motor vehicle or container for personal use; and¶¶~~

~~(e) Certify that the nonretail customer or conditional use customer has satisfied safety training requirements has received safety training materials from the facility operator in compliance with rules of the State Fire Marshal; and¶¶~~

~~(f) 2) Require the nonretail customer or conditional use customer to submit a sworn statement, as defined in ORS 162.055, that the information supplied in the agreement is true and correct.¶¶~~

~~(2) The requirements of subsections (1)(a), (b), (c), and (d) of this rule to not apply to conditional use customer agreements.~~

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.345, 480.355

AMEND: 837-020-0075

RULE SUMMARY: Removed references to conditional use facilities and customers.

CHANGES TO RULE:

837-020-0075

Complaint and Enforcement Procedures ¶¶

(1) Alleged violations at retail facilities, ~~nonretail facilities, and conditional~~ and nonretail facilities are subject to investigation by the State Fire Marshal.¶¶

(2) Upon request of the State Fire Marshal, the owner or operator must be able to demonstrate that all nonretail customers ~~and conditional use customers~~ dispensing Class 1 flammable liquids at their nonretail facilities ~~and conditional nonretail facilities~~ meet the requirements of OAR 837-020-0050.¶¶

(3) Owners or operators of retail facilities, ~~nonretail facilities, and conditional~~ and nonretail facilities who fail to meet the applicable requirements of OAR 837-020-0040 may be subject to the enforcement and closure provisions of ORS 479.170 in addition to the provisions in OAR 837-020-0130.

Statutory/Other Authority: ORS 476, 480.380

Statutes/Other Implemented: ORS 480.365 - 480.375, 480.385

RULE SUMMARY: Removed references to conditional use facilities and customers; removed references to business use and gallonage requirements; updated statue reference; changed annual audit to triennial audit; adjusted timing of customer payments to support triennial cycle.

CHANGES TO RULE:

837-020-0077

Fire Safety Inspections and Records Audits

- (1) The ~~Department of the State Fire Marshal~~ will conduct an annual safety inspection of all nonretail ~~and conditional nonretail~~ facilities licensed by the ~~Department of the State Fire Marshal~~ dispensing Class 1 flammable liquids to determine if the facility is operating in compliance with the provisions of ORS 480.3150 to 480.385 or of any applicable rule adopted by the State Fire Marshal. ¶
- (2) The State Fire Marshal, under ORS 480.375 (4), may conduct safety inspections more frequently for, but not limited to, the following reasons: ¶
- (a) It is believed the facility may be out of compliance with the requirements; ¶
- (b) To verify a violation that was ordered on a Notice and Order of Correction has been abated; ¶
- (c) If the State Fire Marshal receives a complaint about the safety or condition of the facility; ¶
- (d) If it is necessary to protect public safety. ¶
- (3) The State Fire Marshal is not required to provide advance notification of the annual safety inspection or any other safety inspection. ¶
- (4) Advance notice may be provided in certain circumstances as determined by the ~~Department of the State Fire Marshal~~. ¶
- (5) The inspection will verify the facility is in compliance with all applicable statutes, rules, and requirements. ¶
- (6) It is the owner or operator's responsibility to verify the nonretail ~~or conditional nonretail~~ facility is in compliance with all requirements at all times. ¶
- (7) If at the time of the inspection it is found the nonretail ~~or conditional nonretail~~ facility is not in compliance with any of the requirements, the State Fire Marshal will issue a Notice and Order of Correction to the owner or operator of the facility. ¶
- (8) The Notice and Order of Correction will, at a minimum, contain the following information: ¶
- (a) The company name of the facility; ¶
- (b) The address of the facility; ¶
- (c) The specific requirement the owner or operator is not in compliance with; ¶
- (d) The date the violations must be abated by. ¶
- (9) The violations ordered to be abated must be abated by the date established on the Notice and Order of Correction. ¶
- (10) If the violation is not abated by the required date, the State Fire Marshal will impose a civil penalty in accordance with 837-020-0130. ¶
- (11) The owner or operator may request additional time to make the corrections. Such a request must be made in writing. A request submitted by email will be considered as a written request. ¶
- (a) The request must be made prior to the current date abatement is required. ¶
- (b) At the discretion of the State Fire Marshal an extension may be given for just cause which will establish a new date abatement must be accomplished by. Additional extensions may be granted if, in the opinion of the State Fire Marshal the circumstances warrant it. ¶
- (12) If at the time of the inspection it is found the nonretail ~~or conditional nonretail~~ facility is not in compliance with any of the requirements, the State Fire Marshal will impose civil penalties in accordance with 837-020-0130. ¶
- (13) The State Fire Marshal will conduct a triennial audits of at least five percent of all nonretail accounts to determine if owners and operators of nonretail ~~and conditional nonretail~~ facilities are in compliance with the provisions of ORS 480.3150 to 480.385 and any applicable rule adopted by the State Fire Marshal. The State Fire Marshal may audit more than five percent and up to one hundred percent of all nonretail accounts for, but not limited to, the following reasons: ¶
- (a) During ~~an annual~~ a triennial audit or any other audit it is found that 40 percent or more of the customer files inspected do not have all the required documentation; ¶
- (b) To verify a violation noted on a Notice and Order of Correction has been abated; ¶
- (c) To verify all new customers have been provided the required safety training materials by the owner or operator; ¶
- (d) If the State Fire Marshal receives a complaint or has compelling information the owner or operator is not

complying with the requirements.¶

(14) Though the State Fire Marshal may provide as much as four weeks or more advance notice of the ~~atriennuaj~~ audit or any subsequent audit, the owner or operator will be given no less than two weeks advance notice of such audits.¶

(15) If, in the opinion of the State Fire Marshal there is compelling information that an owner or operator of a nonretail ~~or conditional nonretail~~ facility is intentionally not complying with any provision of ORS 480.315 through 480.385 or OAR 837-020-0025 through 837-020-0115, the State Fire Marshal may conduct an audit of the nonretail customer files at any time and with less than two weeks' notice. The State Fire Marshal must be able to show that such an audit is justified, and will coordinate with the owner or operator to mitigate the impact to them and so they may be reasonably prepared.¶

(16) At the time of the audit, and upon request, the owner or operator must have the following information available to the State Fire Marshal:¶

(a) A list of all active accounts that are entered into a written agreement to dispense Class 1 flammable liquids. ¶

(b) A list of the accounts that were closed or are no longer entered into a written agreement to dispense Class 1 flammable liquids since the last audit. This list must include the date the account was closed or no longer entered into a written agreement to dispense Class 1 flammable liquids.¶

(c) A list of new accounts since the last audit that have entered into a written agreement to dispense Class 1 flammable liquids. This list must also include the date the written agreement was entered into.¶

(d) A copy of the safety training material currently being provided to the nonretail ~~and conditional nonretail~~ customers.¶

(e) Documentation that shows each nonretail or conditional nonretail customer who has entered into a written agreement to dispense Class 1 flammable liquids meets the requirements to dispense Class 1 flammable liquids.¶

(f) Required documentation must be provided when requested. If it is not, it will be considered that requirement was not met and the owner or operator is out of compliance with the requirements.¶

(17) The audit will consist of inspecting a minimum of five percent of the ~~combined nonretail and conditional~~ nonretail customer files as a sampling to indicate the degree in which the owner or operator is in compliance with all applicable statutes, rules and requirements.¶

(18) At the discretion of the State Fire Marshal, more than five percent and up to one hundred percent of the customer accounts may be inspected.¶

(19) During the audit the State Fire Marshal will determine the number of accounts that are or were entered into a written agreement with the owner or operator to dispense Class 1 flammable liquids at any time during the current license ~~yearcycle~~ up to the date of the ~~annual~~ audit. This will include any customer accounts that are acquired from another owner or operator regardless if those customers have entered into a new written agreement with the acquiring owner or operator. ¶

(a) The owner or operator and the State Fire Marshal will agree to this number and it will be documented on a form established by the State Fire Marshal. This will be the ~~minimum~~ number of accounts the operator will be required to pay for ~~at the time they renew at least one of their facility license after the audit.~~ ¶

(b) The owner or operator ~~may will~~ also pay for any new accounts who entered into a written agreement after the ~~atriennuaj~~ audit at the time they renew at least one of their facility licenses. ¶

(20) During the audit the State Fire Marshal will reconcile the number of accounts that were entered into a written agreement during the previous license ~~yearcycle~~ to verify all accounts were reported and paid for.¶

(21) Owners or operators who are located outside of Oregon but have at least one nonretail facility ~~or conditional~~ facility located in Oregon licensed by the State Fire Marshal are also subject to the requirements established in ORS 480.310 to 480.385 and OAR 837-020-0025 to 837-020-0130.¶

(22) During the ~~atriennuaj~~ audit or any other audit, the State Fire Marshal may require reports or data from the owner or operator that show transactions or activity that occurred at specific nonretail ~~or conditional~~ facilities for the purpose of verifying all accounts that have entered into a written agreement to dispense Class 1 flammable liquids are identified. These reports may also be used to verify the retail and nonretail sales at dual operations that are separated by time, or other purposes related to the audit.¶

(23) ~~As part of the audit, the State Fire Marshal will select a minimum of twenty percent of the customer records that were inspected to verify they are an active business or other entity authorized to be a nonretail customer.~~ ¶

(24) It is the owner or operator's responsibility to verify all of their nonretail ~~and conditional nonretail~~ customers meet all of the requirements at all times.¶

(25) If at the time of the audit it is found the owner or operator is not in compliance with any of the requirements, the State Fire Marshal will issue a Notice and Order of Correction to the owner or operator.¶

(26) The Notice and Order of Correction will contain, at a minimum, the following information:¶

(a) The company name of the facility;¶

(b) The specific requirement the owner or operator or customer is not in compliance with;¶

(c) The latest date the violation must be abated by.¶

- (d) The violations must be abated by the date established on the Notice and Order of Correction.¶¶
- (e) If the violation is not abated by the required date, the State Fire Marshal will impose a civil penalty in accordance with 837-020-0130.¶¶
- (f) The owner or operator may request additional time from the State Fire Marshal to make the corrections.¶¶
- (g) A request for additional time must be made in writing. A request submitted by email will be considered as a written request.¶¶
- (h) The request must be made prior to the current date abatement is required.¶¶
- (i) At the discretion of the State Fire Marshal an extension may be given for just cause which will establish a new date abatement must be accomplished by. Additional extensions may be granted if, in the opinion of the State Fire Marshal the circumstances warrant it.¶¶
- ~~(276)~~ If at the time of the inspection it is found the nonretail ~~or conditional nonretail~~ facility is not in compliance with any of the requirements, the State Fire Marshal will impose civil penalties in accordance with 837-020-0130.¶¶
- ~~(287)~~ When an owner's or operator's business ceases operations the State Fire Marshal will conduct a closing audit to identify the number of accounts that were entered into a written agreement during the current license ~~year~~ cycle. The owner or operator is subject to and required to pay the ~~annual~~ account fee for each of those accounts. ¶¶
- ~~(298)~~ Examples of a business ceasing to exist include but are not limited to:¶¶
- (a) Selling¶¶
 - (b) Closing¶¶
 - (c) Merging

Statutory/Other Authority: ORS 480.375, ORS 480.380

Statutes/Other Implemented: ORS 480.375, ORS 480.380

AMEND: 837-020-0080

RULE SUMMARY: Added the word "materials" to match statutory verbiage change related to training; removed references to conditional use facilities and customers

CHANGES TO RULE:

837-020-0080

Nonretail Fuel Dispensing During a Governor Declared Emergency ¶¶

- (1) During an emergency as defined in ORS 401.025, a nonretail facility may permit individuals who are not otherwise qualified under ORS 480.345 to dispense Class 1 flammable liquids if all conditions specified in this section are satisfied.¶¶
- (2) The owner or operator of the nonretail facility holds a valid nonretail facility license issued by the State Fire Marshal;¶¶
- (3) The owner or operator has paid an application fee for each nonretail facility and customer fees required in ORS 480.350.¶¶
- (4) The owner or operator has provided a blank copy of the form required by ORS 480.345 and OAR 837-020-0070 that will be used as the written agreement between the owner or operator and nonretail customer that outlines the safety training materials and emergency procedures to be used at the nonretail facility.¶¶
- (5) The nonretail customer and the owner or operator of the nonretail facility have entered into a written agreement that meets the requirements of OAR 837-020-0070.¶¶
- ~~(6) The Class 1 flammable liquid is dispensed only into a motor vehicle or container of an emergency service agency as defined in ORS 401.025 or to an entity authorized by an emergency service agency to provide services during an emergency.¶¶~~
- ~~(7)(a) The nonretail customer, other than the owner or operator, is an emergency service worker as defined in ORS 401.025 and dispenses Class 1 flammable liquids only into the fuel tank of a motor vehicle or container owned or used by the emergency service agency; or¶¶~~
- ~~(b) An owner or employee of the entity authorized by the emergency service agency to provide services during an emergency and dispenses Class 1 flammable liquids only into the fuel tank of a motor vehicle or other container owned or used by the entity authorized by that agency to provide services during an emergency.¶¶~~
- ~~(8) The nonretail customer, other than the owner or operator or employee, dispensing Class 1 flammable liquids satisfies safety training requirements of OAR 837-020-0055.¶¶~~
- ~~(9) The owner or operator is responsible to bear the burden of production and proof that the requirements of OAR 837-020-0040, and any other rules of the State Fire Marshal have been satisfied.~~

Statutory/Other Authority: ORS 480.347

Statutes/Other Implemented: ORS 480

RULE SUMMARY: Removed references to conditional use facilities and customers; added terminology to support new triennial cycle for audits.

CHANGES TO RULE:

837-020-0085

~~Nonretail and Conditional~~ Nonretail Facility License Requirements ¶¶

- (1) ~~Nonretail and Conditional~~ Nonretail Facilities must obtain a valid license issued by the State Fire Marshal, prior to operating a Nonretail Facility or a Conditional Nonretail Facility.¶¶
- (2) A separate license is required for each Nonretail Facility and Conditional Nonretail Facility.¶¶
- (3) All initial facility licenses are valid for ~~on~~ three years 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~~ cycle 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 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 Flammable Liquids if all conditions specified in this section are satisfied;¶¶~~
- ~~(b) After investigation and public hearing, and after considering the comments of local residents and government officials, the State Fire Marshal may issue a conditional nonretail license to an owner or operator for local non-commercial use if the State Fire Marshal finds:¶¶~~
- ~~(A) There is no facility where Class 1 Flammable Liquids are dispensed by attendants at retail, including dual operation facilities, within seven miles of the owner or operator's nonretail facility, and other undue hardship conditions exist. Such undue hardship conditions are determined on a case by case basis and may include, but are not limited to, road conditions, and volume and type of traffic in the affected area;¶¶~~
- ~~(B) The owner or operator has certified that the owner or operator will comply with the applicable provisions of ORS 480.345(1), (5), (6)(d), and (6)(e), and this division;¶¶~~
- ~~(C) The method of access to a Conditional Nonretail Facility only allows access to that specific Conditional Nonretail Facility and no other Nonretail Facility or Conditional Nonretail Facility.¶¶~~
- (11) Within a given geographical area, applications for conditional nonretail licenses issued under this section are considered in order of priority of receipt. The date the State Fire Marshal actually receives the application determines its priority.¶¶
- (12) A conditional nonretail license may not be renewed if the requirements of this section are not met at the time of application for renewal. There is no guarantee of continued operations under this section.¶¶
- [Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 480.380,~~480.355~~
Statutes/Other Implemented: ORS 480.350,~~480.355~~

AMEND: 837-020-0105

RULE SUMMARY: Removed references to conditional use facilities and customers; corrected grammar.

CHANGES TO RULE:

837-020-0105

License Denials, Revocations, Suspensions; and Appeals ¶¶

- (1) The State Fire Marshal may deny, revoke, or suspend a Nonretail Facility ~~or Conditional Nonretail Facility~~ license if the owner or operator:¶¶
- (a) Fails to comply with OAR 837-020-0040, or any other rule, pertaining to nonretail fuel dispensing, adopted by the State Fire Marshal; or¶¶
- (b) Falsifies any information in the application for the license.¶¶
- (2) The option of denial, revocation or suspension may be based on the following:¶¶
- (a) The number of similar or related violations alleged to have been committed in the current license ~~year~~cycle;¶¶
- (b) Whether the violation or violations were willful or intentional;¶¶
- (c) The prior history of violations committed by the owner or operator; or¶¶
- (d) Other circumstances determined by the State Fire Marshal to be applicable to the particular violation or violations.¶¶
- (3) Suspension or revocation of a license may include suspension or revocation of the current license and the right to apply for a subsequent license.¶¶
- (4) Where the State Fire Marshal has alleged a self-service violation at a Retail Facility, ~~Nonretail Facility, or Conditional or~~ Nonretail Facility, the burden of proof to show the purchase was in compliance with the requirements of ORS 480.310 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: 837-020-0115

RULE SUMMARY: Removed references to conditional use facilities and customers; updated verbiage for modern payment systems; added terminology to support the triennial cycle for audits.

CHANGES TO RULE:

837-020-0115

Application, License Renewals, and ~~Annual~~ Fees ¶

- (1) Any owner or operator engaged in, or intending to engage in, the operation of a nonretail facility ~~or a conditional nonretail facility~~ must apply for and obtain a license issued by the State Fire Marshal. The application, fees, and supporting documents for new facilities must be submitted and received by the State Fire Marshal 45 days prior to the date nonretail ~~or conditional nonretail~~ dispensing commences. ¶
- (2) A separate license must be applied for and obtained for each nonretail facility ~~or conditional nonretail facility~~. ¶
- (3) The license must be obtained prior to start of the nonretail facility ~~or conditional nonretail facility~~ operation, or the owner or operator may be assessed a civil penalty and be subject to closure of the nonretail ~~or conditional nonretail~~ facility. ¶
- (4) The application fee for each nonretail facility ~~and conditional nonretail facility~~ license is established by ORS 480.350. Licenses are valid for ~~on three years~~ from the date of issue. ¶
- (5) In accordance with ORS 183.705, the license renewal date of a facility may be adjusted or prorated to correspond with existing State Fire Marshal licensing ~~yearcycle~~ dates. ¶
- (6) License fees ~~may~~ must be either paid at, or mailed to, the State Fire Marshal. ~~The license application may be either delivered to or mailed to the State Fire Marshal paid to the State Fire Marshal and must accompany the appropriate application.~~ ¶
- (7) Payment may be made by personal check, business check, cashier's check ~~or money order~~, money order, online or other approved Oregon State Fire Marshal methods, made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal ~~has the option to~~ will not take any action on the license application until the check has cleared the bank. ¶
- (8) In addition to the application and renewal fees assessed by this section, owners or operators of nonretail facilities ~~and conditional nonretail facilities~~ shall pay to the State Fire Marshal an ~~annual~~ account fee established by ORS 480.350 for each nonretail customer ~~and conditional use customer~~ who is entered into a written agreement with the owner or operator of the nonretail ~~or conditional nonretail~~ facility for any period of time during the current license ~~yearcycle~~ to dispense Class 1 flammable liquids. ¶
- (9) License renewal applications, accompanying documentation, and payment must be postmarked by a United States Postmark, or received at the ~~Department of the~~ State Fire Marshal, no later than 30 days prior to the license expiration for a license renewal that will be valid for the following license ~~yearcycle~~. If the 30 days prior to the license expiration date falls on a day when a postmark cannot be obtained, the applications must be postmarked or received by the ~~Department of the~~ State Fire Marshal on the preceding business day. ¶
- (10) License application renewals postmarked or received after the deadline set forth under subsection (8) of this rule may be subject to a civil penalty. ¶
- (11) License and customer fees received by the ~~Department of the~~ State Fire Marshal are deposited with the State Treasurer, placed in the State Fire Marshal Fund, and used to fund the non-retail fuel dispensing program.

Statutory/Other Authority: ORS 480.380

Statutes/Other Implemented: ORS 480.350, ~~480.355~~

AMEND: 837-020-0125

RULE SUMMARY: Removed references to conditional use facilities and customers; removed business references, gallonage requirements and documentation.

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, ~~or 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 signess or eligibility;~~ ¶

(B) ~~Proof of agreement that meetings the 900-gallon requirement;~~ s. ¶

(C) ~~A signed agreement that meets the requirements~~ Verification that training materials have been received by the customer. ¶

(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 materials 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 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, ~~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 materials; ¶

(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 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 OFC.¶
- (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 OFC;¶
- (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 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.¶
- (l) 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.¶
- (m) 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, or 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 materials to a nonretail ~~or conditional-use~~ customer prior to giving them access to dispense Class one flammable liquids;¶
 - (e) The nonretail customer ~~does~~ has not completely reviewed the required safety training ~~information~~ materials and disseminated them to all non-retail users as required under ORS 480.345 (52);¶
 - (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, operators, or employees of Nonretail ~~or Conditional-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 violations listed on a Notice and Order of Correction when the 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

AMEND: 837-020-0130

RULE SUMMARY: Changed the penalty schedule to be different for inspections and audits.

CHANGES TO RULE:

837-020-0130

Penalty Schedule and Suspensions

(1) Based on the class of violation the owner or operator is found to have committed, the following penalty schedule is used to determine the amount of penalty to be assessed. ¶

(a) Class I - \$100;¶

(b) Class II - \$200;¶

(c) Class III - \$400;¶

(d) Class IV - \$500.¶

(2) Penalties assessed for Class I, II, and III violations from facility inspections will be suspended in the following manner:¶

(a) The first instance of a violation within a three-year period, the penalty will be suspended 100%;¶

(b) The second instance within a three-year period, the penalty will be suspended 50%;¶

(c) The third instance of a violation within a three-year period, no percentage of the penalty will be suspended. The full amount of the penalty will be assessed;¶

(d) A three year period can include any year in the current license ~~year~~cycle the violation occurred in and the two previous ~~license~~-years. ¶

(3) Penalties assessed for Class I, II, and III violations from records audits will be suspended in the following manner:¶

(a) The first instance of a violation within six-year period, the penalty will be suspended 100%;¶

(b) The second instance within a six-year period, the penalty will be suspended 50%;¶

(c) The third instance of a violation within a six-year period, no percentage of the penalty will be suspended. The full amount of the penalty will be assessed;¶

(d) A six year period can include any year in the current license cycle the violation occurred in and the two previous cycles. ¶

(4) The penalty assessed for Class IV violations will not be suspended at any time.

Statutory/Other Authority: 480.380, 480.380

Statutes/Other Implemented: 480.380, 480.385