

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [ June 30, 2008 ] by the  
Date prior to or same as filing date

Oregon State Police, Office of State Fire Marshal

837

Agency and Division

Administrative Rules Chapter Number

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to become effective [ July 1, 2008 ]. Rulemaking Notice was published in the [ May 1, 2008 ] Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

**Establishes qualification for consistent statewide administration and application of the fire code.**

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 837-039-0120

**AMEND:** 837-039-001, 837-039-0003, 837-039-0010, 837-039-0015, 837-039-0040, 837-039-0050, 837-039-0055,  
837-039-0060, 837-039-0070, 837-039-0080 and 837-039-0110

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 476.030 (1) and 479.165

Other Auth.:

Stats. Implemented: ORS: 476, 476.030(1), 476.030(3), 476.060, 476.070, 476.120 and 479.165

**RULE SUMMARY**

The adopted and amended rules (837-039-001, 837-039-0003, 837-039-0040, 837-039-0080 and 837-039-0120) establish statewide standards for certification and training requirements for fire officials responsible for administration and application of the fire code in Oregon.

The amended rules (837-039-0010, 837-039-0015, 837-039-0050, 837-039-0055, 837-039-0060, 837-039-0070 and 837-039-0110) correct grammatical changes in the rule. These changes do not alter the scope, application or meaning of the rule.

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

# OREGON STATE POLICE, OFFICE OF STATE FIRE MARSHAL

## DIVISION 039

### ADMINISTRATION OF FIRE PREVENTION PROGRAMS

#### 837-039-0001 Scope and Application

(1) This Division improves fire protection services by:

- (a) Eliminating duplication in the administration of state and local fire protection programs;
- (b) Giving the regulated community reasonable notice of how governmental subdivisions ~~will~~ **must** enforce fire regulations and provide fire prevention services; and
- (c) Providing a procedure to assure that fire codes adopted and administered by local governmental subdivisions are consistent with the minimum standards established by the State Fire Marshal.

(2) This Division includes ~~four~~ **six** program elements:

- (a) The **criteria and** application procedures to be used by governmental subdivisions applying for exempt status under ORS 476.030(3);
- (b) The evaluation process to be used by the State Fire Marshal to assure that the adoption and administration of local fire codes equal or exceed those adopted and administered by the Office of State Fire Marshal;
- (c) A description of those programs which ~~will~~ **must** not be delegated to local jurisdictions under the exempt jurisdiction program;

**(d) A description of nonexempt jurisdictions' responsibilities under ORS 476.060 and the enforcement activities including imminent life or property threats, and inspection and enforcement of the state fire code.**

~~(d)~~ **(e)** A description of the appeals process to be used for fire code inconsistency findings, denied applications for exempt status, or for terminations of exempt status.

**(f) The certification and training requirements for plan reviews and conducting fire code enforcement related to a fire official's scope of practice.**

(3) This Division does not provide for the creation of fully exempt jurisdictions in the State of Oregon.

**NOTE:** There has been some confusion in past years as to the scope of the exempt jurisdiction program. Although ORS 476.030(3) authorizes the State Fire Marshal to "fully" exempt qualifying local governmental subdivisions from the State's fire laws, the State has not done so. There are some programs which have statewide impact and are, therefore, more reasonably managed at the state level. See OAR 837-039-0050.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476

#### 837-039-0003 Definitions

(1) "Administration" (or "administrative") means the inspection, enforcement and record-keeping systems used in the management of a fire prevention/investigation program.

(2) "Appeal" means the administrative process which is offered to an aggrieved party by the authority having jurisdiction which:

- (a) Assures the aggrieved party is given the due process of law;
- (b) Is in response to the aggrieved party having received an order from the authority having jurisdiction;
- (c) Is requested by the aggrieved party; and
- (d) Is consistent with the lawful authority of the authority having jurisdiction.

~~(3) "Applicant" means a local governmental subdivision or authority having jurisdiction which has applied to the State Fire Marshal for exempt status or authorization to conduct a fire code enforcement program.~~

~~(4)~~ **(3)** "Assistant" means an Assistant to the State Fire Marshal under ORS 476.060, including, but not limited to, "all fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established."

~~(5)~~ **(4)** "Authority Having Jurisdiction" means a local governmental subdivision recognized by the State Fire Marshal under this Division including, but not limited to:

(a) Municipal fire departments operated under home rule charter;

(b) Rural fire protection districts operating under ORS 478;

(c) Water supply districts operating under ORS 264; or

(d) Public fire protection agencies not described above, and which are subject to the laws of the State of Oregon.

**(5) "Classroom" means an instructional environment the instructor believes is most conducive for the student to learn the material in a specific unit.**

**(6) "Company Inspector" means an individual who has met the job performance requirements to conduct basic fire code enforcement in one- and two-story Business Group B occupancies and Mercantile Group M occupancies with no high-piled or rack storage.**

~~(6)~~ **(7)** "DPSST" means the Department of Public Safety Standards and Training.

**(8) "DPSST's NFPA Fire Inspector I" means an individual who has been certified by DPSST for meeting the requisite knowledge and skills identified in the DPSST NFPA Fire Inspector I task book to conduct basic fire code enforcement and apply codes and standards.**

**(9) "DPSST's NFPA Fire Inspector II" means an individual who has been certified by DPSST for meeting the requisite knowledge and requisite skills identified in the DPSST NFPA Fire Inspector I and II task books to conduct moderately technically challenging fire code enforcement and interpret codes and standards.**

**(10) "DPSST's NFPA Fire Inspector III" means an individual who has been certified by DPSST for meeting the requisite knowledge and requisite skills identified in the DPSST NFPA Fire Inspector I, II, and III task books to conduct advanced technically challenging fire code enforcement and resolve complex code-related issues.**

~~(7)~~ **(11)** "Delegated Appeals Process" means an administrative procedure established by an exempt authority which the State Fire Marshal has found to be the equivalent of a contested case proceeding established under ORS Chapter 183 and the accelerated appeals process established under ORS 479.180.

~~(8)~~ **(12)** "Deputy State Fire Marshal" means an employee of the Office of State Fire Marshal as authorized in ORS 476.040.

~~(9)~~ **(13)** "Enforcement" means the investigation, inspection, citation, and/or prosecution of alleged violations of state and local fire protection laws, rules and regulations.

~~(40)~~ **(14)** "Exempt" means a local governmental subdivision which is partially exempt from statutes, rules and regulations administered by the State Fire Marshal as authorized in ORS 476.030(3) and as defined in the Division.

~~(44)~~ **(15)** "Fire Code" means all Oregon fire protection statutes, the administrative rules of the State Fire Marshal and local government regulations which are adopted in conformance with this Division.

**(16) "Fire Code Official" means the fire chief or other designated authority charged with the administration and enforcement of the fire code, or duly authorized representative.**

**(17) "Fire Official" means any individual authorized to enforce the state or local fire code.**

~~(12)~~ **(18)** "Local Appeals Process" means the administrative procedure adopted and operated by a local government subdivision under local ordinance or resolution.

~~(43)~~ **(19)** "Local Governmental Subdivision" means a city, county or rural fire protection district whose function includes regulation of building use and occupancy and the administration of fire safety laws, ordinances and regulations.

**(20) "NFPA" means National Fire Protection Association.**

~~(44)~~ **(21)** "Nonexempt Jurisdiction" means a local governmental subdivision which has not applied for and been granted exempt status by the State Fire Marshal under this Division.

~~(45)~~ **(22)** "Partially Exempt Jurisdiction" means a local governmental subdivision which has received authorization from the State Fire Marshal under this Division to administer specified fire prevention programs within its legally established political boundary.

(16) **(23)** "Promulgate" means to lawfully develop and adopt an administrative rule, local ordinance, code or regulation authorized by law.

**(24) "Requisite Knowledge" means the fundamental knowledge one must have in order to perform a specific task.**

**(25) "Requisite Skills" means the essential skills one must have in order to perform a specific task.**

(17) **(26)** "Review Board" means an advisory committee consisting of five Exempt Jurisdiction Fire Marshals appointed by the State Fire Marshal for a term of three years.

~~NOTE: the term will have staggered expiration dates to start and then appointments will be for three years after initial expiration.~~

**(27) "Scope of Practice" means an established list of competencies that are required to administer the Oregon fire code in an elected range of complexity.**

(18) **(28)** "Service Area" means the geographic area contained within the municipal city limits, corporate boundaries of the fire district or areas to which the Exempt Jurisdiction provides fire protection and prevention services under contract.

(19) **(29)** "State Appeals Process" means an administrative contested case proceeding under ORS Chapter 183 and, if applicable, the accelerated appeals process established under ORS 479.180.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476

### **837-039-0010 Applications for Exempt Status**

(1) Local governmental subdivisions seeking exempt status ~~shall~~ **must** submit a written request to the State Fire Marshal that describes in detail the scope of the proposed exemption.

(2) The request ~~shall~~ **must** include a detailed explanation of the fire prevention and investigation programs to be provided by the requesting jurisdiction ~~and how the programs will be provided.~~ Such programs ~~will~~ **must** include but are not limited to:

(a) Fire code enforcement.

(b) Fire cause determination.

(c) Juvenile firesetter intervention.

(d) Fire and life safety education.

**NOTE:** Submitting a business plan demonstrating measurable goals and objectives in each of the categories is the method of explaining the proposed programs preferred by the State Fire Marshal. However, other formats may be used ~~and will be considered where~~ **if** they adequately demonstrate what ~~will~~ **must** be done and how it is accomplished.

(3) The request ~~shall~~ **must** include an explanation of the Delegated Appeals Process to be employed and how it generally conforms to ORS 476.113 and 476.115.

(4) The request ~~shall~~ **must** include an explanation of how the jurisdiction satisfies the qualifications specified in these rules.

(5) The request ~~shall~~ **must** include such documentation and supportive materials as may be necessary to support the exemption request, including a copy of any locally adopted fire code and intergovernmental agreements.

(6) The State Fire Marshal ~~will~~ **must** distribute copies of the request(s) to each of the review board members, requesting an advisory by them within 60 days of receiving the material as to the sufficiency of the application. Such advisories, both individually and collectively, ~~shall~~ **may** not be binding on the State Fire Marshal but ~~shall~~ **may** be considered by the State Fire Marshal in deciding whether to grant the exemption.

(7) The State Fire Marshal ~~will~~ **must** make a determination as **determine whether** to granting the exemption and notify the applicant accordingly within 30 days of receipt of the board's written advisory.

(8) Once granted, exempt status ~~shall~~ **may** remain in effect:

(a) Unless terminated by the State Fire Marshal for cause pursuant to ORS 476.030(3) and OAR 837-039-0055; or

(b) Upon 90 days written termination notice **by the exempt jurisdiction** to the State Fire Marshal ~~at the discretion of the local jurisdiction;~~ or

(c) Unless there is an unsatisfactory biennial review by the State Fire Marshal of the exempt authority's program and administration.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030(3)

### **837-039-0015 Minimum Fire Code Requirements**

(1) Under ORS 476.030 and 476.120, the State Fire Marshal is responsible for promulgating rules and regulations which establish minimum standards for the protection of life and property from the dangers of fire.

(2) To meet this responsibility and to promote uniformity, the State Fire Marshal ~~shall~~ **must** assure that locally adopted fire codes in both exempt and non-exempt jurisdictions are consistent with minimum state fire code standards. Therefore, in adopting a fire code, local governmental subdivisions ~~will~~ **must**:

(a) Adopt by reference the fire code promulgated by the State Fire Marshal; or

(b) Adopt a code that is consistent with state fire protection statutes and, is equal to or more stringent than, the fire code promulgated by the State Fire Marshal.

(3) Nothing in this Division requires a local governmental subdivision to adopt a fire code.

(4) Nothing in this Division ~~shall~~ **may** prevent a local governmental subdivision from adopting a fire code which is more stringent than the State Fire Code, if such local fire code is otherwise lawful.

(5) When an authority having jurisdiction proposes a new local fire code, or proposes to amend an existing fire code, **they must provide** a draft copy of the proposed fire code or amendment ~~shall be provided~~ to the State Fire Marshal for a pre-adoption evaluation at the earliest date possible prior to final adoption and a final copy within 30 days after adoption.

(6) The State Fire Marshal ~~shall~~ **must** ~~cause~~ **evaluate** the fire codes or amendments submitted under section (5) ~~to be evaluated~~ to assure conformity with state fire protection statutes and the minimum standards established by the State Fire Marshal ~~to the extent possible within the time frame requested by the applicant.~~

(7) ~~If~~ **When** the State Fire Marshal determines that a fire code submitted under section (5) of this rule conforms with minimum state standards, the State Fire Marshal ~~shall~~ **must** issue a consistency finding at the earliest date possible.

(8) ~~If~~ **When** the State Fire Marshal determines that a fire code or amendment submitted under section (5) of this rule does not meet minimum state standards, the State Fire Marshal ~~shall~~ **must**:

(a) Notify the authority having jurisdiction of the proposed finding; and

(b) Give the authority having jurisdiction a reasonable time to amend or delete such inconsistencies.

(9) ~~Whenever~~ the State Fire Marshal issues a proposed inconsistency finding under section (8) of this rule, and the authority having jurisdiction disagrees with the proposed finding, the aggrieved party may within 20 days of receiving the inconsistency finding appeal and request a contested case hearing under ORS Chapter 183 and OAR 837-039-0055. Thereafter, the State Fire Marshal ~~shall~~ **must** process the appeal within a reasonable time.

(10) ~~If~~ **When** an appeal is not filed within 20 days of notification, and the authority having jurisdiction has failed to delete or amend the inconsistent fire code provision identified by the State Fire Marshal, a final inconsistency finding ~~shall~~ **must** be issued.

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

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030(3) & 476.120

### **837-039-0040 Exemption Criteria**

(1) In order to qualify for partially exempt status, applicants ~~shall~~ **must** provide evidence that they effectively administer and enforce the fire code sections specified in their application.

(2) To the extent of the proposed exemption, an ability to effectively administer a fire code is demonstrated by meeting or exceeding the qualifications described in this section.

(3) The applicants ~~shall~~ **must** employ a number of fire prevention personnel they deem adequate to:

- (a) Inspect regulated buildings on a frequency they deem necessary to provide a reasonable level of fire and life safety in the applicant's service area.
- (b) Annually inspect;
- (A) Hospitals (~~I-1.1~~) (**I-2**) and for licensing or certification by the Health Division except for ~~I-1.1~~ and I-2 Nursing Homes; and
- (B) Licensed Day Cares (~~E-3~~) (**I-4**) and for licensing by the Employment Department; and
- (C) Mental Hospitals (~~I-3~~) (**I-2**), Jails (I-3), Prisons (I-3) and Reformatories (I-3) in the applicant's service area.
- (c) Inspect licensed Boarding/Residential Schools (~~E-1 and E-2~~) (**E**), Group Homes and Residential Board/Care Facilities (SR) bi-annually or at the request of the Licensing Agency for a license renewal; and
- (d) Initially inspect ~~Surgical Centers (I-1.2 and I-1.3)~~ **Ambulatory Health Care Facilities (I-2) and Clinic-outpatient (B)** and then every three years. A self inspection program may be initiated in the two intervening years. The process for the self inspection shall **must** be explained in the Exempt Jurisdiction's business plan; and
- (e) Inspect licensed Sheltered Workshops (various occupancies) every three years.
- (f) Make necessary reinspections at appropriate intervals to assure compliance with correction orders issued in response to noted deficiencies in the applicant's service area; and
- (g) Make necessary special inspections as warranted for unusual conditions, including but not limited to; response to complaints of special hazards and special events requiring supervision in the applicant's service area.
- (h) Provide consultation upon request of the licensing agency for Adult Foster Care Homes, pursuant to ORS 476.030(6) in the applicant's service area.
- (4) Applicants shall employ fire prevention **Fire code administration** personnel **must** who **meet the competency requirements for their elected scope of practice as outlined in section 837-039-0120**. are reasonably qualified. Such qualifications shall be substantiated by:
- (a) Being DPSST certified as a Fire Prevention Officer; or
- (b) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to DPSST certification; or
- (c) Having documented professional competency, as determined by the exempt jurisdiction, equivalent to either subsection (a) or (b) of this section; or
- (d) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to the requirements of NFPA 1031, Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector I, II or III; or
- (e) Being certified to a nationally recognized standard and approved by the State Fire Marshal; or
- (f) Certification of the fire prevention administration by the Commission on Fire Accreditation International (CFAI).
- (5) Applicants shall **must** provide evidence that they assure coordination ~~between~~ **among** all authorities responsible for structural fire safety and fire protection within the applicant's service area.
- (6) Applicants shall **must**:
- (a) Provide the services specified in this rule to all service areas.
- (b) Have the ability to provide an administrative appeals process upon the request of any party who may receive a fire code compliance order issued by the applicant. Such delegated appeal process shall **must** generally conform to a contested case proceedings described under ORS Chapter 183 unless otherwise provided for by state law; or
- (c) Establish or maintain a fire code appeals board generally performing the functions outlined in ORS 476.115. If such Appeals Board meets the criteria established in subsection (6)(c) of this rule, the Board may hear local and delegated appeals and rule on fire code or other issues such as alleged unnecessary hardship, inconsistent regulations, requests for alternate materials or methods, etc.
- (7) ~~Where~~ **When** a fire code delegated appeals process or board has been established under section (6) of this rule, applicants shall **must**:
- (a) Coordinate ~~the~~ interpretation of state fire laws with the State Fire Marshal to assure uniformity;

- (b) Submit a list of hearing officers or board members, including their term of appointment, to the State Fire Marshal. An updated list ~~shall thereafter~~ **must** be submitted annually or upon any change; and
- (c) Submit a written summary of the results of any fire code appeal to the State Fire Marshal within 30 days of issuance of a final order.
- (8) To the extent of the proposed exemption, applicants ~~shall~~ **must** employ an adequate number of fire investigation personnel to investigate the origin, cause, and circumstances of each fire occurring in the applicant's service area. Applicants ~~shall~~ **must** substantiate that their investigators are reasonably qualified through:
- (a) Being DPSST certified as a **NFPA Fire Investigation Investigator Officer**; or
- (b) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to DPSST certification; or
- (c) Having documented professional competency, as determined by the exempt jurisdiction, equivalent to either subsection (a) or (b) of this section; or
- (d) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to the requirements of NFPA 1033, Professional Qualifications for Fire Investigator; or
- (e) Certification of the fire prevention administration by the Commission on Fire Accreditation International (CFAI).
- (9) To the extent of the proposed exemption, applicants ~~shall~~ **must** employ an adequate number of trained personnel, as determined by the applicant to provide effective fire prevention education for all schools, institutions, and similar occupancies in the applicant's service area.
- (10) To the extent of the proposed exemption, applicants ~~shall~~ **must** maintain records of their fire code administration and delegated appeal activities or other related functions as follows:
- (a) Fire prevention inspection records ~~shall~~ **must** be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.
- (b) Records of fire code appeals ~~shall~~ **must** be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.
- (c) Fire investigation records which document a loss of life ~~shall~~ **must** be maintained for a period of 75 years. Other investigation records ~~shall~~ **must** be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.
- (d) Records of public fire education efforts ~~shall~~ **must** be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.
- (e) Records not otherwise described in this section ~~shall~~ **must** be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.
- (11) In the event an exempt jurisdiction ceases for any reason to be exempt, all records described in this section ~~shall~~ **must** be maintained by the jurisdiction as per the Records Retention Schedule of the Secretary of State Archives Division.
- (12) Applicants ~~shall~~ **must** forward to the State Fire Marshal a written annual report which:
- (a) Clearly describes the fire prevention and investigation activities of the applicant;
- (b) Is on a calendar year basis; and
- (c) ~~Will be~~ **is** forwarded to the State Fire Marshal no later than July 1st of the following year.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030(3)

### **837-039-0050 Programs Eligible for Delegation**

- (1) As indicated by statutory reference and title, the administration of the following functional areas ~~shall~~ **must** be retained in all cases by the State Fire Marshal:
- (a) ORS 453.307 through 453.414, Community Information on Hazardous Substances;
- (b) ORS 476.055, State Fire Marshal Fund;
- (c) ORS 476.060, Local officers and Constables as Assistants to the State Fire Marshal;
- (d) ORS 476.090, Record of Fires;
- (e) ORS 476.420, Standardization of Existing Fire Protection Equipment; Exemption;

- (f) ORS 476.440, Sale of Nonstandard Equipment Prohibited;
- (g) ORS 476.510 through 476.610, Protection of Life and Property from Fire in Case of Emergency (Emergency Conflagration Act);
- (h) ORS 476.855, Discretionary Powers of the State Fire Marshal;
- (i) ORS 476.900 through 476.925, Forest Fire Protection Equipment Acquisition;
- (j) Except as otherwise provided in OAR 837, division 040, ORS 480.010 through 480.095, Explosives Generally;
- (k) Except as otherwise provided in OAR chapter 837, division 040, ORS 480.200 through 480.280, Manufacture, Sale, Possession and Transfer of Explosives;
- (l) Except as otherwise provided in OAR 837, division 012, ORS 480.130, Permits Required for Sale or Public Display of Fireworks; fee.
- (m) Except as otherwise provided in OAR 837, division 012, ORS 480.150, Permits for Fireworks Sales or Displays; Rules; Security.
- (n) Except as otherwise provided in OAR 837, division 012, ORS 480.156, Sales of Fireworks to Out-of-State Residents;
- (o) ORS 480.350, Nonretail Facility License;
- (p) ORS 480.355, Conditional Nonretail Facility License;
- (q) ORS 480.375(2), Audits of Nonretail Facilities;
- (r) ORS 480.432 through 480.440 LPG Licensing Program; and
- (s) Those other statutory functions reserved exclusively to the State Fire Marshal.

(2) Although the administration of the functional areas listed in section (1) of this rule are reserved to the State Fire Marshal, nothing in this division prevents an authority having jurisdiction from enforcement of state statutes or the **State Fire Code** if such provisions are not covered in the **Local Fire Code** or are more stringent than the **Local Fire Code**.

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

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030(3)

### **837-039-0055 Review and Appeals**

- (1) The State Fire Marshal **may** review all approvals issued under this division every two years and may terminate any approval for cause.
- (2) If **When** a termination is proposed under section (1) of this rule, the State Fire Marshal **shall must** give the affected jurisdiction written notice at least 30 days before a proposed termination becomes effective.
- (3) An affected jurisdiction may appeal in writing any refusal of the State Fire Marshal to grant an approval or a proposed termination.
- (4) Upon receipt of an appeal under section (3) of this rule, the State Fire Marshal **shall must** initiate an administrative appeals process. The process **shall must** conform to the contested case provisions of ORS Chapter 183.
- (5) The results of the appeals process conducted under section (4) of this rule **shall must** be final and thereafter not appealable.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030(3)

### **837-039-0060 Nonexempt Jurisdictions**

- (1) Local government subdivisions who have not applied for and been granted exempt status by the State Fire Marshal operate fire code administration programs in conformance with this division.
- (2) Under ORS 476.060, public fire marshals and fire chiefs are designated as Assistants to the State Fire Marshal and enforce the fire code in conformance with this division.
- (3) There are two areas of nonexempt enforcement activities:
  - (a) Responses to imminent life or property threats; and
  - (b) Inspection and enforcement of the state fire code.



**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.060 & ORS 476.070

### **837-039-0070 Nonexempt Response to Imminent Life or Property Threats**

(1) Whenever an Assistant to the State Fire Marshal in a nonexempt jurisdiction encounters a situation which presents an imminent threat to life or property, the Assistant to the State Fire Marshal ~~shall~~ **must**:

(a) Take such measures as are reasonably necessary to stabilize the situation including, but not limited to closing the building or premises for use or occupancy under ORS 479.170 until such dangerous conditions are remedied; and

(b) Notify the Office of State Fire Marshal.

(2) Any enforcement action taken under this section by an Assistant to the State Fire Marshal ~~shall~~ **must** be considered an act of the State Fire Marshal.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.060 & ORS 476.070

### **837-039-0080 Inspections or Other Activities by Nonexempt Jurisdictions**

(1) ~~If **When**~~ an Assistant to the State Fire Marshal in a nonexempt jurisdiction ~~desires to administer~~ a fire prevention program, the Assistant ~~may~~ **must** do so in conformance with this section.

(2) The Assistant to the State Fire Marshal ~~will~~ **must** have a written plan of their fire prevention program which includes and describes the following:

(a) Types of inspection activities;

(b) Frequency of inspections;

(c) Type of enforcement actions that may be taken; and

(d) Record keeping system.

(3) ~~The State Fire Marshal may advise Assistants~~ **Assistant** to the State Fire Marshal ~~shall~~ **must ensure personnel that are responsible for** with fire prevention inspection and enforcement programs if the requirements of the state fire codes are not being enforced in a uniform manner. **fire code administration meet the competency recognition requirements for their scope of practice as outlined in section 837-039-0120.**

(4) Records ~~will~~ **must** be maintained of all fire code inspections and reinspections, investigations, appeal activities and any other related functions.

(5) ~~If **When**~~ any lawful order of the Assistant to the State Fire Marshal is appealed, the State Fire Marshal ~~shall~~ **must** provide a contested case appeals process under OAR 837-039-0055, unless otherwise provided by law, as follows:

(a) The Assistant to the State Fire Marshal who took the enforcement action which was appealed ~~shall~~ **must** be available and prepared to participate in the appeals process;

(b) The State Fire Marshal ~~shall~~ **must** pursue and present the state through the appeals process; and

(c) The State Fire Marshal ~~shall~~ **must** determine what, if any, orders are to be issued and/or penalties are to be assessed.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.070

### **837-039-0110 Certification and Training Requirements for Plan Review**

(1) These rules establish standards for certification of fire officials who review plans for input to a building official for new construction, alterations, and specifications from a Fire Code approved by the State Fire Marshal.

(2) All fire officials who review plans for new construction, alterations, and specifications ~~shall~~ **must** obtain an ICC Fire Inspector II and ICC Fire Plans Examiner certification or equivalent certification approved by the State Fire Marshal.

(3) Fire Officials who review plans only for fire department access and fire protection water supplies shall **must** successfully complete the State Fire Marshal's Fire and Life Safety Awareness courses on fire department access, water supply, and fire flow.

(4) All fire chiefs and every assistant to the state fire marshal meeting the definition under ORS 476.060 shall **must** complete the state fire marshal's Fire and Life Safety Awareness course module 1, Scope of Authority and Assembly Group A Occupancies.

~~(5) Fire Officials who review plans for new construction, alterations, and specifications; or who review plans only for fire department access and fire protection water supplies; or fire chiefs and assistants to the state fire marshal meeting the definition under ORS 476.060, shall have eighteen months from the effective date of these rules to comply with the certification and training provisions of OAR 837-039-0110.~~

~~(6)~~ (5) The State Fire Marshal shall **must** maintain a roster of ICC Fire Inspector II and ICC Fire Plans Examiner certified fire officials. A current list of ICC Fire Inspector II and ICC Fire Plans Examiners certified fire officials will be **are** provided to each building jurisdiction annually. Certifications must be maintained to continue participation in the plan review process.

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

Stat. Auth.: ORS 479.165

Stats. Implemented: ORS 479.165

### **837-039-0120 Certification and Training Requirements for Conducting Fire Code Enforcement**

**(1) These rules establish statewide standards for certification and training requirements of fire officials responsible for administration of a Fire Code approved by the State Fire Marshal.**

**(a) Every person who performs fire code enforcement must possess an Oregon Fire and Life Safety Competency Recognition certificate for the scope of work being performed.**

**(A) Company Inspector certificate for fire officials performing fire code enforcement at this scope of practice. Fire officials have until January 1, 2009 to comply with the Oregon Fire and Life Safety Competency certificate provisions;**

**(B) Fire and Life Safety Specialist I certificate for fire officials whose scope of practice is equivalent to DPSST's NFPA Fire Inspector I. Fire officials have until July 1, 2010 to comply with the Oregon Fire and Life Safety Competency certificate provisions;**

**(C) Fire and Life Safety Specialist II certificate for fire officials whose scope of practice is equivalent to DPSST's NFPA Fire Inspector II. Fire officials have until January 1, 2011 to comply with the Oregon Fire and Life Safety Competency certificate provisions;**

**(D) Fire Marshal certificate for fire officials whose scope of practice is equivalent to DPSST's, NFPA Fire Inspector III. Fire officials have until July 1, 2011 to comply with the Oregon Fire and Life Safety Competency certificate provisions.**

**(b) Every person who is transitioning between recognition levels or newly hired must receive the necessary on-the-job training experience and related technical instruction under the direct supervision of an appropriately recognized fire official.**

**(A) When the fire code official determines that a newly promoted or hired fire official responsible for fire code enforcement are fully qualified to perform the duties of a Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal, the newly hired fire official may work independently without direct supervision.**

**(B) The newly promoted or hired fire official responsible for fire code enforcement must meet the requirements of OAR 837-039-0120 (1)(a) within 12 months from date of hire.**

**(2) All persons who seek to perform the scope of practice of a Company Inspector must successfully complete the State Fire Marshal's course Company Inspection.**

**(3) All persons who seek to perform the scope of practice of a Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal must apply for the Oregon Fire and Life Safety Competency Recognition certificate as follows:**

**(a) Submit a Fire and Life Safety Competency Recognition application to the Office of State Fire Marshal. Include proof of certifications held and training completed.**

**(4) Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, and Fire Marshal certificates expire three years from the issue date, unless renewed.**

**(a) The issue date is printed on all certificates.**

**(5) Fire officials who fail to renew their Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal certificates must not perform work within the respective scope of practice.**

**(a) A fire official who fails to renew a competency recognition certificate may reapply for certification. Include with application proof of certifications held and trainings completed.**

**Stat. Auth.: ORS 476.030 (1)**

**Stats. Implemented: ORS 476.030**