

# OFFICE OF STATE FIRE MARSHAL

## NON RETAIL FUEL DISPENSING STATUTES and ADMINISTRATIVE RULES



### OFFICE OF STATE FIRE MARSHAL

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**NONRETAIL FUEL DISPENSING  
OREGON REVISED STATUTES  
OREGON ADMINISTRATIVE RULES  
May 1, 2008**

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# OREGON REVISED STATUTES

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## REGULATION OF GASOLINE DISPENSING

**480.310 Definitions for ORS 480.315 to 480.385.** As used in ORS 480.315 to 480.385:

- (1) "Class 1 flammable liquids" means liquids with a flash point below 25 degrees Fahrenheit, closed cup tester.
- (2) "Nonretail facility" means an unattended facility where Class 1 flammable liquids are dispensed through a card or key activated fuel dispensing device to nonretail customers. [Amended by 1991 c.863 §48]

**480.315 Policy.** The Legislative Assembly declares that, except as provided in ORS 480.345 to 480.385, it is in the public interest to maintain a prohibition on the self-service dispensing of Class 1 flammable liquids at retail. The Legislative Assembly finds and declares that:

- (1) The dispensing of Class 1 flammable liquids by dispensers properly trained in appropriate safety procedures reduces fire hazards directly associated with the dispensing of Class 1 flammable liquids;
- (2) Appropriate safety standards often are unenforceable at retail self-service stations in other states because cashiers are often unable to maintain a clear view of and give undivided attention to the dispensing of Class 1 flammable liquids by customers;
- (3) Higher liability insurance rates charged to retail self-service stations reflect the dangers posed to customers when they leave their vehicles to dispense Class 1 flammable liquids, such as the increased risk of crime and the increased risk of personal injury resulting from slipping on slick surfaces;
- (4) The dangers of crime and slick surfaces described in subsection (3) of this section are enhanced because Oregon's weather is uniquely adverse, causing wet pavement and reduced visibility;
- (5) The dangers described in subsection (3) of this section are heightened when the customer is a senior citizen or is disabled, especially if the customer uses a mobility aid, such as a wheelchair, walker, cane or crutches;
- (6) Attempts by other states to require the providing of aid to senior citizens and the disabled in the self-service dispensing of Class 1 flammable liquids at retail have failed, and therefore, senior citizens and the disabled must pay the higher costs of full service;
- (7) Exposure to toxic fumes represents a health hazard to customers dispensing Class 1 flammable liquids;
- (8) The hazard described in subsection (7) of this section is heightened when the customer is pregnant;
- (9) The exposure to Class 1 flammable liquids through dispensing should, in general, be limited to as few individuals as possible, such as gasoline station owners and their employees or other trained and certified dispensers;
- (10) The typical practice of charging significantly higher prices for full-service fuel dispensing in states where self-service is permitted at retail:

- (a) Discriminates against customers with lower incomes, who are under greater economic pressure to subject themselves to the inconvenience and hazards of self-service;
- (b) Discriminates against customers who are elderly or handicapped who are unable to serve themselves and so must pay the significantly higher prices; and
- (c) Increases self-service dispensing and thereby decreases maintenance checks by attendants, which results in neglect of maintenance, endangering both the customer and other motorists and resulting in unnecessary and costly repairs;
- (11) The increased use of self-service at retail in other states has contributed to diminishing the availability of automotive repair facilities at gasoline stations;
- (12) Self-service dispensing at retail in other states does not provide a sustained reduction in fuel prices charged to customers;
- (13) A general prohibition of self-service dispensing of Class 1 flammable liquids by the general public promotes public welfare by providing increased safety and convenience without causing economic harm to the public in general;
- (14) Self-service dispensing at retail contributes to unemployment, particularly among young people;
- (15) Self-service dispensing at retail presents a health hazard and unreasonable discomfort to the handicapped, to elderly persons, small children and those susceptible to respiratory diseases;
- (16) The federal Americans with Disabilities Act, Public Law 101-336, requires that equal access be provided to disabled persons at retail gasoline stations; and
- (17) Small children left unattended when customers leave to make payment at retail self-service stations creates a dangerous situation. [1991 c.863 §49a; 1999 c.59 §160]

**480.320 Use of coin-operated pumps and dispensing of gasoline by self-service declared hazardous.** The installation and use of coin-operated dispensing devices for Class 1 flammable liquids and the dispensing of Class 1 flammable liquids by self-service, are declared hazardous. [Amended by 1959 c.73 §1]

**480.330 Operation of gasoline dispensing device by public prohibited; aviation fuel exception.** An owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids, except aviation fuels, are dispensed at retail may not permit any person other than the owner, operator or employee to use or manipulate any pump, hose, pipe or other device for dispensing the liquids into the fuel tank of a motor vehicle or other retail container. [Amended by 2001 c.285 §1]

**480.340 Coin-operated or self-service gasoline pumps prohibited; automatic shut-off devices regulated; aviation fuel exception.** An owner, operator or employee of a filling station, service station, garage or other dispensary where Class

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1 flammable liquids, except aviation fuels, are dispensed at retail may not install or use or permit the use of:

(1) A coin-operated or self-service dispensing device for the liquids.

(2) A device that permits the dispensing of the liquids when the hand of the operator of the discharge nozzle is removed from the control lever, except one equipped with an automatic nozzle of a type that has been approved by the State Fire Marshal and that has a latch-open device as an integral part of the assembly, capable of shutting off the flow of the liquids reliably when the tank is filled or when the nozzle falls or slips from the filling neck of the tank. A person may not use an automatic nozzle to dispense the liquids unless the owner, operator or employee is in the immediate vicinity of the tank being filled. [Amended by 1959 c.73 §2; 2001 c.285 §2]

**480.345 Conditions for operation of dispensing device by certain nonretail customers.** Notwithstanding ORS 480.330 and 480.340, the owner, operator or employee of a dispensing facility may permit nonretail customers other than the owner, operator or employee to use or manipulate at the dispensing facility a card activated or key activated device for dispensing Class 1 flammable liquids into the fuel tank of a motor vehicle or other container under the following conditions:

(1) The owner or operator shall hold a current nonretail facility license issued by the State Fire Marshal under ORS 480.350;

(2) After April 1, 1992, a nonretail customer shall purchase at least 900 gallons of Class 1 flammable liquids or diesel fuel from any source during a 12-month period or, if the amount of such liquids or fuel purchased is less than 900 gallons annually, file documentation that:

(a) The fuel qualifies as a deductible farming expense on the customer's federal income tax return; or

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

(3) The nonretail customer shall provide a federal employer identification number or equivalent documentation to indicate participation in a business or employment with a government agency or nonprofit or charitable organization;

(4) The nonretail customer, other than the owner or operator, dispensing Class 1 flammable liquids shall be employed by a business, government agency or nonprofit or charitable organization and shall dispense Class 1 flammable liquids only into the fuel tank of a motor vehicle or other container owned or used by the business, government agency or nonprofit or charitable organization;

(5) The nonretail customer, other than the owner, operator or employee, dispensing Class 1 flammable liquids shall have satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(6) The owner or operator shall enter into a written agreement with nonretail customers permitted under this section to dispense fuel at the nonretail facility. Except as otherwise provided in ORS 480.355, the agreement shall at a minimum:

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

(A) The fuel qualifies as a deductible farming expense on the customer's federal income tax return; or

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

(b) Provide a federal employer identification number 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 shall dispense Class 1 flammable liquids only into the fuel tank of a motor vehicle or other container owned or used by the business, government agency or nonprofit or charitable organization;

(d) Certify that the nonretail customer has satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(e) Require the nonretail customer to submit a sworn statement, as defined in ORS 162.055, that the information supplied in the agreement is true and correct. [1991 c.863 §50; 1993 c.469 §7; 2001 c.328 §1]

**Note:** The amendments to 480.345 by section 2, chapter 328, Oregon Laws 2001, become operative 31 days after entry of a final judgment that invalidates the amendments to 480.345 by section 1, chapter 328, Oregon Laws 2001. See section 3, chapter 328, Oregon Laws 2001. 480.345, as amended by section 2, chapter 328, Oregon Laws 2001, is set forth for the user's convenience.

**480.345.** Notwithstanding ORS 480.330 and 480.340, the owner, operator or employee of a dispensing facility may permit nonretail customers other than the owner, operator or employee to use or manipulate at the dispensing facility a card activated or key activated device for dispensing Class 1 flammable liquids into the fuel tank of a motor vehicle or other container under the following conditions:

(1) The owner or operator shall hold a current nonretail facility license issued by the State Fire Marshal under ORS 480.350;

(2) After April 1, 1992, a nonretail customer shall purchase at least 2,400 gallons of Class 1 flammable liquids or diesel fuel from any source during a 12-month period or, if the amount of such liquids or fuel purchased is less than 2,400 gallons annually, file documentation that:

(a) The fuel qualifies as a deductible farming expense on the customer's federal income tax return; or

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

(3) The nonretail customer shall provide a federal employer identification number or equivalent documentation to indicate

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participation in a business or employment with a government agency or nonprofit or charitable organization;

(4) The nonretail customer, other than the owner or operator, dispensing Class 1 flammable liquids shall be employed by a business, government agency or nonprofit or charitable organization and shall dispense Class 1 flammable liquids only into the fuel tank of a motor vehicle or other container owned and used by the business, government agency or nonprofit or charitable organization;

(5) The nonretail customer, other than the owner, operator or employee, dispensing Class 1 flammable liquids shall have satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(6) The owner or operator shall enter into a written agreement with nonretail customers permitted under this section to dispense fuel at the nonretail facility. Except as otherwise provided in ORS 480.355, the agreement shall at a minimum:

(a) Certify that the nonretail customer will purchase at least 2,400 gallons of Class 1 flammable liquids or diesel fuel from any source during a 12-month period or, if the amount of such liquids or fuel purchased is less than 2,400 gallons annually, file documentation that:

(A) The fuel qualifies as a deductible farming expense on the customer's federal income tax return; or

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

(b) Provide a federal employer identification number 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 shall dispense Class 1 flammable liquids only into the fuel tank of a motor vehicle or other container owned and used by the business, government agency or nonprofit or charitable organization;

(d) Certify that the nonretail customer has satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(e) Require the nonretail customer to submit a sworn statement, as defined in ORS 162.055, that the information supplied in the agreement is true and correct.

**480.347 Use of gasoline dispensing device by emergency service worker; conditions.** Notwithstanding ORS 480.330 and 480.340, during an emergency as defined in ORS 401.025, the owner, operator or employee of a dispensing facility may permit nonretail customers, other than the owner, operator or employee, to use or manipulate at the dispensing facility a card activated or key activated device for dispensing Class 1 flammable liquids into the fuel tank of a vehicle or other container if:

(1) The owner or operator holds a current nonretail facility license issued by the State Fire Marshal under ORS 480.350;

(2) The fuel is dispensed to 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;

(3) The nonretail customer, other than the owner or operator, dispensing Class 1 flammable liquids is an emergency service worker as defined in ORS 401.025 or 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 vehicle or other container owned and used by the emergency service agency or the entity authorized by that agency to provide services during an emergency; and

(4) The nonretail customer, other than the owner, operator or employee, dispensing Class 1 flammable liquids satisfies safety training requirements in compliance with rules of the State Fire Marshal. [1999 c.456 §2]

**480.349 Use of gasoline dispensing device by motorcycle operator.** (1) As used in this section, "motorcycle" has the meaning given that term in ORS 801.365.

(2) Notwithstanding ORS 480.330 and 480.340:

(a) Upon the request of an operator of a motorcycle, the owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail shall set the fuel dispensing device and hand the discharge nozzle to the operator of the motorcycle.

(b) An operator of a motorcycle who is handed a discharge nozzle under paragraph (a) of this subsection:

(A) May dispense Class 1 flammable liquids into the operator's motorcycle.

(B) Shall, after dispensing the liquids, return the discharge nozzle to the owner, operator or employee.

(3) The owner, operator or employee who is handed the discharge nozzle shall return the nozzle to the pump or take any other actions necessary to ensure safe completion of the fueling operation. [2001 c.344 §2]

**Note:** 480.349 was added to and made a part of 480.315 to 480.385 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**480.350 License required for operation of nonretail facility; application; fee; term; renewal; disposition of fees.**

(1) Except as provided in ORS 480.355, a nonretail facility shall not operate without a license issued under this section.

(2) The State Fire Marshal shall issue a nonretail facility license to a person if the person submits an application to the State Fire Marshal on a form approved by the State Fire Marshal for each nonretail facility and the application includes:

(a) A statement that the applicant will comply with the requirements of ORS 480.345;

(b) A copy of the form that will be used by the applicant as the agreement required under ORS 480.345 between the applicant and nonretail customers permitted to dispense fuel at the nonretail facility;

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(c) A sworn statement, as defined in ORS 162.055, that information supplied in the application is true and correct; and  
(d) An application fee of \$250.

(3) The applicant for a nonretail facility license shall bear the burden of proof that the requirements of this section and of any rules of the State Fire Marshal adopted to implement this section are satisfied.

(4) In addition to any license or renewal fees, a licensee shall pay an annual fee of \$5 for each nonretail customer that enters into a written agreement with the owner or operator of the nonretail facility under ORS 480.345.

(5) A license issued under this section shall be valid for a period of one year from the date of issuance.

(6) A license may be renewed upon payment to the State Fire Marshal of an annual license renewal fee of \$250.

(7) All fees received by the State Fire Marshal pursuant to this section shall be deposited with the State Treasurer and shall be placed in the State Fire Marshal Fund. [1991 c.863 §51; 1995 c.79 §292]

## **480.355 Conditional nonretail facility license; qualifications; application; review of denial.** (1)

Notwithstanding ORS 480.345, upon application from the owner or operator of a nonretail facility, the State Fire Marshal may issue a conditional use license under which the nonretail facility may permit persons who are not qualified as nonretail customers under ORS 480.345 (2) to (4) to dispense Class 1 flammable liquids at a nonretail facility.

(2) In issuing a conditional use license, the State Fire Marshal may waive the nonretail customer requirements of ORS 480.345 (2) to (4), but may not waive safety training requirements contained in ORS 480.345.

(3) The State Fire Marshal may issue a conditional use license under this section if the State Fire Marshal determines that:

- (a) There is no facility where Class 1 flammable liquids are dispensed by attendants at retail within seven miles of the nonretail facility, and other undue hardship conditions exist, as may be determined by the State Fire Marshal by rule; or
- (b) The nonretail facility exists on property used as a private, nonprofit golf club not open to the general public and the private, nonprofit golf club members who are not qualified as nonretail customers use the nonretail facility only for the fueling of vehicles that are used exclusively on the property of the private, nonprofit golf club and are not designed for highway use.

(4) The State Fire Marshal shall consider comments of local residents or local government bodies to determine if undue hardship exists.

(5) The provisions of ORS 480.345 and 480.350 apply to a license application made under this section, except those provisions whose applicability is waived by the State Fire Marshal under this section.

(6) The applicant for a conditional use license shall bear the burden of proof that the requirements of this section and of any rules of the State Fire Marshal adopted pursuant to this section are satisfied.

(7) The State Fire Marshal shall investigate any application made under this section and hold at least one public hearing to determine if the conditional use license should be issued. The State Fire Marshal may waive the requirement for a hearing if the application for a conditional use license is made by a private, nonprofit golf club.

(8) Any person who makes application as provided for in this section, and whose application is denied, shall be entitled to a hearing upon request. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(9) Judicial review of an order made after a hearing under subsection (7) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases. [1991 c.863 §56; 1995 s.s. c.3 §35; 1996 c.11 §2; 1997 c.463 §1; 1999 c.95 §1; 2001 c.104 §220; 2001 c.285 §3]

**480.360 Exemption from gallonage requirements of ORS 480.345.** Any person who was a customer of a facility that is issued a license under ORS 480.350 and was a customer on and since June 30, 1991, and who qualifies as a nonretail customer under the provisions of ORS 480.345, shall be exempt from the gallonage requirements set forth in ORS 480.345 (2). [1991 c.863 §50a]

**480.365 Suspension, revocation, refusal to issue or renew nonretail facility license; procedure.** In accordance with ORS 183.310 to 183.550, the State Fire Marshal may revoke or suspend or may refuse to issue or renew a nonretail facility license if the State Fire Marshal finds that an applicant or a person to whom the license was issued:

- (1) Falsified the application for the license; or
- (2) Failed to comply with any provision of ORS 480.315 to 480.385 or any applicable rule adopted by the State Fire Marshal. [1991 c.863 §52]

**480.370 Subpoenas for investigation; effect of failure to comply.** (1) The State Fire Marshal may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with any provision of ORS 480.315 to 480.385 or any rule adopted by the State Fire Marshal.

(2) If a person fails to comply with any subpoena issued under subsection (1) of this section, a judge of the circuit court of any county, on application of the State Fire Marshal, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the circuit court. [1991 c.863 §54]

**480.375 Safety inspection of facilities by State Fire Marshal; audit; investigation of law violations.** (1) The State Fire Marshal shall conduct an annual safety inspection at all nonretail and dual operations facilities dispensing Class 1 flammable liquids to determine if the facility is operating in compliance with the provisions of ORS 480.315 to 480.385 or of any applicable rule adopted by the State Fire Marshal.

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(2) The State Fire Marshal shall conduct annual audits of at least five percent of all nonretail accounts to determine if nonretail facilities are in compliance with the provisions of ORS 480.315 to 480.385 and any applicable rule adopted by the State Fire Marshal.

(3) The State Fire Marshal shall have the same authority to enter into all buildings and upon all dispensing facilities for the purpose of inspection as is specified in ORS chapter 476 relating to inspection of fire hazards.

(4) Upon receiving a complaint, or upon the State Fire Marshal's own motion, the State Fire Marshal shall investigate whether a violation of any provision of ORS 480.315 to 480.385 or of any applicable rule of the State Fire Marshal has occurred. [1991 c.863 §53]

**480.380 Rules.** In accordance with applicable provisions of ORS 183.310 to 183.550, the State Fire Marshal, in consultation with the Department of Environmental Quality, shall adopt rules:

(1) Necessary for the administration of ORS 480.315 to 480.385;

(2) Establishing standards for the design, construction, location, installation and operation of retail, automated or dual operations equipment for storing, handling and dispensing Class 1 flammable liquids at any dispensing facility; and

(3) Establishing standards for public and environmental safety in the operation of nonretail facilities and establishing safety training requirements for nonretail customers authorized to dispense Class 1 flammable liquids at nonretail facilities. [1991 c.863 §57]

### **480.385 Civil penalty for gasoline dispensing law**

**violations.** (1) The State Fire Marshal may impose a civil penalty not to exceed \$500 for each violation of any provision of ORS 480.315 to 480.385 or of any applicable rule adopted by the State Fire Marshal.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. If no application for a hearing is made, the State Fire Marshal may make a final order imposing the penalty.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) All amounts recovered under this section shall be deposited with the State Treasurer and shall be placed in the State Fire Marshal Fund. [1991 c.863 §55]

**480.390 Nonretail facilities at airports.** (1) As used in this section, "nonretail facility" has the meaning given that term in ORS 480.310.

(2) A person may not construct or install a nonretail facility that dispenses aviation fuels at an airport unless the Director of the Oregon Department of Aviation permits the facility.

(3) The director may not permit the construction or installation of a nonretail facility unless the airport owner permits the facility.

(4) The director shall by rule establish a procedure to give permission for nonretail facilities that dispense aviation fuels at airports. [2001 c.285 §4]

**Note:** 480.390 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 480 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.





# OREGON ADMINISTRATIVE RULES

## Flammable And Combustible Liquids Flammable Liquid Dispensing Regulations

### 837-020-0025

#### Purpose and Scope

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.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

### 837-020-0030

#### Effective Dates

837-020-0025 through 837-020-0125 are effective upon date of filing.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02

### 837-020-0035

#### Definitions

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0125 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 837-020-0125.
- (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) "Documentation" means a *verifiable* Federal Employer Identification Number or *documentation* that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. *Documentation* may be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the business is currently licensed to operate.
- (8) "Dual Operations" means a *nonretail facility* where *Class 1 flammable liquids* are dispensed at retail and nonretail with either a time separation of the retail and nonretail operations

or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.

(9) "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.

(10) "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.

(11) "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*.

(12) "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.

(13) "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).

(14) "Employee" means an *individual* who works for an *operator* or an *owner*.

(15) "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.

(16) "Facility" means a site where *Class 1 flammable liquids* are dispensed. A *facility* can be either *retail*, *non-retail* or a combination or both.

(17) "General Public" means someone other than a *nonretail customer* or a *conditional use customer*.

# OREGON ADMINISTRATIVE RULES

- (18) "Individual" means a single human being.
- (19) "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.
- (20) "License Application" means the form and accompanying *documentation* required to be completed and submitted to the State Fire Marshal for approval prior to the issuance of a *nonretail facility* or a *conditional nonretail facility license*.
- (21) "May" means a regulation of conduct and implies probability or permission.
- (22) "May not" means a prohibition of conduct.
- (23) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.
- (24) "Must" means a mandatory requirement.
- (25) "Nonretail Customer" means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345
- (26) "Nonretail Facility" means a *facility* licensed by the State Fire Marshal, where *Class 1 flammable liquids* are dispensed through a fuel *dispensing* device that limits access to qualified *nonretail customers*. NOTE: A *dual operation* facility is also a *nonretail facility*.
- (27) "Operator" means a *person* that operates a *nonretail facility* or a *conditional nonretail facility*.
- (28) "Oregon Fire Code (OFC)" means the *Oregon Fire Code*, 2007 Edition.
- (29) "Owner" means any *person* that is the *owner* of a *nonretail facility* or a *conditional nonretail facility*. An *owner* may also be an *operator*.
- (30) "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.
- (31) "Retail Facility" means a facility that sells *Class 1 flammable liquids* to the *general public* in compliance with ORS 480.330.
- (32) "Verifiable Documentation" means *documentation* that can be verified by the State Fire Marshal as true and accurate.
- Stat. Auth.: ORS 480.380  
Stats. Implemented: ORS 480.310 - 480.385  
Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08

## 837-020-0040

### General

(1) *Nonretail facility* and *conditional nonretail facility operators* desiring to engage in *nonretail facility* or

*conditional 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 837-020-0125;
  - (c) *Oregon Fire Code*, 2006 Edition;
  - (d) OAR Chapter 837, Division 85 – Hazardous Materials Reporting; 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) Proper drainage grades or curbs *must* be situated to prevent any spills from flowing towards any building or other pump islands;
  - (b) Locations for the *emergency* fuel shut off devices *must* be clearly and conspicuously posted;
  - (c) Instructions for the operation of nonretail dispensers *must* be clearly and conspicuously posted;
  - (d) Locations of all fire extinguishers *must* be clearly and conspicuously posted;
  - (e) Fire extinguishers *must* be accessible;
  - (f) Be adequately lighted at all times when available for use;
  - (g) A fire alarm transmitting device or a telephone not requiring a coin or credit card to operate *must* be provided, and be accessible, at each *nonretail facility* and *conditional nonretail facility* during all hours of operation. This equipment *must* be maintained in good working order in the event *emergency* assistance is needed; and
  - (h) All applicable provisions of the OFC *must* be met.
- (3) All *nonretail facilities* and *conditional nonretail facilities* *must* have the following warning signs posted. These signs *must* be readily visible and readable from each *Class 1 flammable liquid* dispensing pump from a distance of ten feet and state:
- (a) Smoking is prohibited;
  - (b) Vehicle engines *must* be shut off while fueling;
  - (c) The *nonretail facility* or *conditional use facility* address;
  - (d) The telephone number of the *owner* or *operator*;
  - (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) It is a violation of law, subject to penalty, to dispense *Class 1 flammable liquids* without first receiving the training required by OAR 837-020-0055; and
  - (h) 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*).
  - (i) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.
  - (j) To prevent static charge, do not reenter your vehicle while gasoline is pumping.
  - (k) If a fire starts, do not remove nozzle, use emergency fuel shut off.

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(4) In addition to the provisions required by OAR 837-020-0040, nonretail *dual operation* facilities separated by distance *must*:

(a) Have signs visible from each driveway access point identifying the retail and nonretail pump islands. 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) Where retail and nonretail *dispensing of Class 1 flammable liquids* occurs during the same hours, nonretail pump islands *must* be separated from retail pump islands by a space of at least 50 feet. Nonretail and retail pump islands *may* be separated by a distance of no less than 20 feet, provided prior approval is given by the State Fire Marshal, and that one of the following barriers is present:

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

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

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

(d) 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 that 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.

(5) 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.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0045

### Operation of Class 1 Flammable Liquid Dispensing Device by General Public Prohibited

*Owners* or *operators* of facilities where *Class 1 flammable liquids* are dispensed at retail *may not* allow any *individual* other than *owners*, *operators*, and their *employees*, when acting in their employment capacity to use or manipulate any pump, hose, pipe or other device used at the *facility* to dispense *Class 1 flammable liquids* into a fuel tank of a *motor vehicle* or *container*.

#### EXCEPTIONS:

(1) *Individuals* other than *owners*, *operators* and *employees* of the *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 837-020-0125.

(2) Motorcycle assisted fueling at *retail facilities*. A motorcyclist operating their motorcycle *may* handle the nozzle for *dispensing* fuel, but *may not* activate or deactivate any fuel dispensing device. *Individuals* who violate this fueling procedure *may* be subject to citation under OAR 837-020-0125.

(3) Aviation fuel dispensed at airports permitted by the Oregon Department of Aviation.

Stat. Auth.: ORS 476 & ORS 480.380

Stats. Implemented: ORS 480.330 & ORS 480.345

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0050

### Conditions for Operation of Dispensing Device by Nonretail Customers

(1) Notwithstanding ORS 480.330 and 480.340 or OAR 837-020-0045, *persons*, other than *owners*, *may* be authorized to dispense *Class 1 flammable liquids* at *nonretail facilities* only under the following conditions:

(a) The *nonretail customer* and *conditional use customer* satisfies all requirements of OAR 837-020-0045 through OAR 837-020-0095.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0055

### Fire Safety Training

(1) *Owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* *must* provide an initial fire safety training course to each *nonretail customer* and each *conditional use 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) and *must* be provided prior to allowing *nonretail customers* and *conditional use customers* to dispense *Class 1 flammable liquids*. A signed document indicating receipt of safety training *must* be maintained by each *operator* as part of each customer file.

(2) The fire safety training 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;

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- (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.
- (3) All *nonretail customers* and *conditional use customers* who wish to dispense *Class 1 flammable liquids* at *nonretail facilities* and *conditional nonretail facilities* must successfully complete the fire safety training described in sections (1) and (2) of this rule prior to engaging in *dispensing* operations.
- Publications: The publication(s) referred to or incorporated by reference in this rule are available for review at the Office of State Fire Marshal.
- Stat. Auth.: ORS 476 & 480.380  
Stats. Implemented: ORS 480.345  
Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0060

### Quantity of Purchase Criteria

- (1) Except as provided below, each *nonretail customer* must file *documentation* with the *owner* or *operator* to show the *nonretail customer* purchases at least 900 gallons of *Class 1 flammable liquids* fuel every 12 months for business, government, nonprofit, or charitable purposes.
- (2) The 900 gallons *may* have been purchased from any source. The *nonretail customer* must provide *documentation* to the *owner* or *operator* to demonstrate this requirement has been met if the *nonretail customer* does not purchase 900 gallons from the *owner* or *operator* they have entered into an agreement with. This *documentation* must be readily available for review by the State Fire Marshal.
- (3) Diesel fuel used for the purpose of fueling a motor vehicle *may* be counted toward the 900 gallon minimum fuel purchase requirement.
- (4) *Nonretail customers* that do not meet the requirements of ORS 480.345 and this section *must* have their access to nonretail fuel *dispensing* revoked by the *nonretail facility owner* or *operator*.
- (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 *nonretail customer* was a customer of a *nonretail facility* on and 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 12 months of the date of their first

fuel purchase or when their account was established. Customers failing to meet this requirement *must* be terminated as a *nonretail customer*. Note: this section does not apply to *conditional use customers*.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & 480.360

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0065

### Certification and Record Keeping

- (1) Each *owner* or *operator* of a *nonretail facility* or a *conditional nonretail facility* must provide the safety training required by OAR 837-020-0055 to all their *nonretail customers* and their *conditional use customers*.
  - (2) *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.
  - (3) *Owners* or operators of *nonretail facilities* and *conditional nonretail facilities* must maintain *documentation* to demonstrate that, at a minimum, weekly site visits of each *nonretail facility* and *conditional nonretail facility* have been performed. Such *documentation* must be noted on forms approved by the State Fire Marshal, and *must* be readily accessible to demonstrate this requirement has been met.
  - (4) *Owner* or operators of *nonretail facilities* and *conditional nonretail facilities* must provide *documentation* to the State Fire Marshal to certify violations of OAR 837-020-0025 through 837-020-0125 have been corrected.
  - (5) The *documentation* of corrections *must* be received by the specified time referenced in the Notice and Order of Correction provided by the State Fire Marshal.
  - (6) Failure to provide *documentation* in accordance with OAR 837-020-0025 through 837-020-0125 constitutes a violation which *may* result in civil penalty assessment to the *owner* or *operator*, and *may* result in the revocation of their *license*.
- Stat. Auth.: ORS 476 & 480.380  
Stats. Implemented: ORS 480.345 - 480.375  
Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0070

### Nonretail and Conditional Use Customer 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 fuel at the *nonretail facility* and *conditional nonretail facility*. Except as otherwise provided in ORS 480.355, the agreement *must* at a minimum:

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(a) 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 *nonretail facility* on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(b) Provide a verifiable federal employer identification number 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 in compliance with rules of the State Fire Marshal; and

(f) 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. Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0075

### Complaint and Enforcement Procedures

(1) Alleged violations at *retail facilities*, *nonretail facilities*, and *conditional 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 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 837-020-0125. Stat. Auth.: ORS 476 & ORS 480.380

Stats. Implemented: ORS 480.365 - ORS 480.375 & ORS 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 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 of \$250 as required by ORS 480.350 for each *nonretail facility* and an annual fee of \$5 for each *nonretail customer* that enters into a written agreement with the *owner* or *operator*.

(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 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.

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Stat. Auth.: ORS 480.347

Stats Implemented: ORS 480

Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 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* be valid for one year from the date of issue.

(4) In accordance with ORS 183.705, a renewal date of a *facility license* may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates,

(5) The State Fire Marshal will issue a *license* to the *owner* or *operator* if the *owner* or *operator* has:

(a) Complied with the requirements established by OAR 837-020-0040;

(b) Submitted the 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) Provided a blank copy of the safety training that is provided to their *nonretail customers* and *conditional use customers*, to ensure the safety training meets all requirements of OAR 837-020-0055.

(f) Paid an application fee of \$250 for each *facility site* and \$5 for each *nonretail customer* and *conditional use customer* as required by OAR 837-020-0115.

(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.

Stat. Auth.: ORS 480.380 & 480.355

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0105

### License Denials, Revocations and Suspensions; Civil Penalties 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;

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- (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 nonretail facility*, the burden of proof to show the purchase was in compliance with the requirements of ORS 480.330 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.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.355, 480.365 - 480.375 & 480.385

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

### 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 start of the operation.
- (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 \$250 per facility. *Licenses* are valid for one year 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 year dates.
- (6) *License* fees may 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.
- (7) Payment may be made by personal check, business check, cashier's check or money order made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal may 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* must pay to the State Fire Marshal an annual account fee of \$5 for each *nonretail customer* and *conditional use customer* who has access to dispense *Class 1 flammable liquids* at any time during the applicable *license* year.
- (9) *License* renewal applications, accompanying *documentation*, and payment must be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the *license* expiration for a *license* renewal valid for the following *license*. 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 Office of 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 Office of 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.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92,

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cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08

## 837-020-0120

### Hearings and Contested Cases

A *person* may request a Formal Hearing regarding the suspension, revocation, or denial of a *license* by the State Fire Marshal.

- (1) A Request for Hearing *must* be timely filed.
- (2) A Request for Hearing is timely filed when the request is postmarked or received by the State Fire Marshal within 20 days from the date of service of the notice of suspension, revocation, or denial, unless a 60-day deadline applies pursuant to ORS 183.435.
- (3) If a Request for Hearing is not timely filed under section (c) of this rule, the *person* waives the right to a contested case under ORS chapter 183.
- (4) A *person* may write to or call the State Fire Marshal to informally discuss the notice of suspension, revocation, or denial; however, an informal communication does not extend the deadline established in 837-020-0105 subsection (3).
- (5) A contested case *may* include:
  - (a) An Informal Conference,
  - (b) A Formal Hearing, or both.
- (6) A contested case will be conducted pursuant to the provisions of ORS chapter 183 and the rules adopted thereto.
- (7) The State Fire Marshal *may* provide an opportunity for an Informal Conference.
  - (a) A request for an Informal Conference *must* be in writing; and *must*:
    - (A) Be addressed to the State Fire Marshal; and
    - (B) Clearly state the issue or issues to be discussed; and
    - (C) If the State Fire Marshal and the party or parties agree, an Informal Conference *may* be held by telephone.
- (8) After an Informal Conference, the State Fire Marshal *may* amend, withdraw, or reduce the suspension, revocation, or denial. Such action will be taken in accordance with ORS chapter 183 and the rules adopted thereto.
- (9) A *person* may file a written Request for Hearing before or after an Informal Conference, at any time before the deadline established in section (3) of the Contested Cases section of OAR 837-020-0120.
- (10) The State Fire Marshal is responsible to arrange for a hearings officer to conduct the Formal Hearing.
- (11) The State Fire Marshal will set a date, time, and location for the Formal Hearing.

Stat. Auth.: ORS 476.030 & 480.310 - 480.385

Stats. Implemented: ORS 480.310 - 480.385

Hist.: OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

## 837-020-0125

### Penalties

- (1) The State Fire Marshal *may* impose a civil penalty of up to \$500 for each violation of ORS 480.310 through 480.385, and

OAR 837-020-0040. All penalties are imposed in accordance with the following penalty matrix established by the State Fire Marshal. Penalties *may* be based on history, violation types, number of instances of violations identified, and severity of violations.

Violation Types, Instances, and Penalty Assessments

(1) The Types of Violations are:

- (a) Least - Type I;
- (b) Minimal – Type II
- (c) Moderate – Type III
- (d) Severe – Type IV

(2) The violation instance is determined based on the number of times a *person, individual, owner, or operator* has committed a violation. A violation occurs each time a *person, individual, owner, or operator* breaks a rule established by OAR 837-020-0040.

PENALTY MATRIX:

VIOLATION TYPE	PENALTY INSTANCE		
	1	2	3
I. LEAST	\$25	\$50	\$75
II. MINIMAL	\$50	\$75	\$150
III. MODERATE	\$150	\$200	\$250
IV. SEVERE	\$300	\$400	\$500

TYPE I: LEAST

*Eligibility Documentation* (excluding safety training)

Signs –

Retail/Nonretail locations

Phone # of *operator*

It is a violation of law...

Days and hours of operation of time separation *facility* not present or correct

Other \_\_\_\_\_

TYPE II: MINIMAL

*License applications* not received by deadline

AST labels for above ground tanks not present

*Dispensing* instructions not present

Other \_\_\_\_\_

TYPE III: MODERATE

Unlawful *dispensing* at *nonretail facilities*

Certification of correction of deficiencies not provided in accordance with Notice and Order

Weekly Site Inspections not done on a regular basis.

Signs –

No Smoking...

*Emergency Fuel Shut Off Device* location

Fire Extinguisher location

Do Not Fill Unapproved *Containers*

In Case of Fire...

Portable *container*

Discharge static electricity

Other \_\_\_\_\_

TYPE IV: SEVERE

Falsified *license application*



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Required *facility* equipment not present or not in good working order

Safety training not provided prior to allowing customer to dispense fuel

Unlawful *dispensing* at *retail facilities*

Operating a *nonretail facility* or *conditional nonretail facility* without a *license*

Other \_\_\_\_\_

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.380 & 480.385

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07