

# OFFICE OF STATE FIRE MARSHAL

## RETAIL FIREWORKS ADMINISTRATIVE RULES



### OFFICE OF STATE FIRE MARSHAL

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**SALES AND STORAGE OF RETAIL  
FIREWORKS IN OREGON  
OREGON ADMINISTRATIVE RULES  
Permanent OAR March 10, 2006**

<b>SALES AND STORAGE OF RETAIL FIREWORKS IN OREGON</b>		<b>Page</b>
837-012-0600	Purpose and Scope .....	1
837-012-0605	Effective Dates .....	1
837-012-0610	Definitions.....	1
837-012-0615	General.....	3
837-012-0620	Retail Permit Applications .....	3
837-012-0625	Retail Permit Fees .....	4
837-012-0630	Issuance of Retail Permits.....	4
837-012-0635	Purchase of Retail Fireworks by Retail Permit Holder .....	5
837-012-0640	Permits-Denial, Suspension and/or Revocation .....	5
837-012-0645	Sales and Storage of Retail Fireworks .....	6
837-012-0650	Outdoor Sales.....	7
837-012-0655	Indoor Sales .....	8
837-012-0660	Records and Postings .....	8
837-012-0665	Advertisement.....	9
837-012-0670	Prohibited Acts and Limitations.....	9
837-012-0675	Civil and Criminal Enforcement Actions.....	9



# OREGON ADMINISTRATIVE RULES

## SALES AND STORAGE OF RETAIL FIREWORKS IN OREGON Permanent OAR March 10, 2006

### 837-012-0600

#### Purpose and Scope

These rules establish permit and other requirements for Persons who Sell or otherwise provide, intend to Sell or otherwise provide, Retail Fireworks to Individual Members of the General Public.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01

### 837-012-0605

#### Effective Dates

OAR 837-012-0600 through 837-012-0675 are effective upon date of filing.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00

### 837-012-0610

#### Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-012-0600 through 837-012-0675, the following definitions apply:

- (1) "Agricultural Fireworks" shall mean Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.
- (2) "BATFE" shall mean the Bureau of Alcohol, Tobacco, Firearms and Explosives.
- (3) "Building" shall have the meaning provided in the Oregon Structural Specialty Code, 2004 Edition. The term does not include a Tent, Canopy, Stand or trailer.
- (4) "Canopy" shall mean a temporary structure, enclosure or shelter; constructed of fabric or pliable materials; supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter.

(5) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other package used to hold or contain Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for purposes of transportation and/or storage. The term does not include:

(a) The wrapping and/or packaging used to hold or contain a single, or small number of, Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(6) "Combination Item" shall mean a device that contains combinations of two or more of the effects described in ORS 480.127(4)(b) to (g). See ORS 480.127(4)(a).

(7) "Cone Fountain" shall mean a cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition. The effect upon ignition is the same as that of a cylindrical fountain. See ORS 480.127(4)(b).

(8) "Cylindrical Fountain" shall mean a cylindrical tube not more than three-fourths inch (19mm) inside diameter and containing not more than 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held. See ORS 480.127(4)(c).

(9) "Employee" shall mean an Individual hired by a Retail Permit holder to Sell Retail Fireworks from a Retail Sales Outlet, or to otherwise engage in Retail Operations.

(10) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(11) "Exit" shall mean an opening or passageway that:

(a) Provides a means of leaving an enclosed space or area and

(b) Is required to be constructed and/or maintained by the Oregon Structural Specialty Code, 2004 Edition. The term may include a check stand Exit.

(12) "Fire Protection District" shall mean any district created under the laws of Oregon or the United States, including rural fire protection districts and any federal, state or private forest patrol areas. See ORS 480.110(2).

(13) "Fireworks" shall have the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks, and Agricultural Fireworks. The term does not include Exempt Fireworks.

## OREGON ADMINISTRATIVE RULES

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(14) "Flitter Sparkler" shall mean a narrow paper tube containing not more than 100 grams of pyrotechnic composition that produces colored sparks upon ignition. The paper at one end of the tube is ignited to make the device function. See ORS 480.127(4)(d).

(15) "Ground Spinner" shall mean a small device similar to a Wheel in design and effect and containing not more than 60 grams of pyrotechnic composition. When placed on the ground and ignited, a shower of colored sparks is produced by the rapidly spinning device. See ORS 480.127(4)(e). The term does not include "Crazy Jacks", "Jumping Jacks" and similar spinning devices that do not have a means to prevent uncontrolled and unpredictable behavior during discharge, and due to uncontrolled and unpredictable behavior, present a severe hazard of fire and injury. The sale of such devices is therefore prohibited.

(16) "Illegal Fireworks" shall mean any Fireworks other than those described in ORS 480.127(4) including but not limited to, any Firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(17) "Illuminating Torch" shall mean a cylindrical tube containing not more than 100 grams of pyrotechnic composition. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held. See ORS 480.127(4)(f).

(18) "Individual" shall mean a single human being.

(19) "Individual Member of the General Public" shall mean any Person who has not been issued a wholesale permit, a general, limited or special effects public display permit, a Retail Permit or an agricultural permit by the Office of State Fire Marshal.

(20) "Individual Responsible for Sales" shall mean the Individual identified on the Permit Application who is responsible for the operation of the Retail Sales Outlet listed on the Permit Application.

(21) "Indoor Sales" shall mean sales of Retail Fireworks from inside a Building or Tent.

(22) "Local Fire Authority" shall mean the local fire official having jurisdiction over the Retail Site and/or the Retail Fireworks storage location.

(23) "NFPA" shall mean the National Fire Protection Association.

(24) "Novelties and Trick Noisemakers" shall mean those items described in NFPA 1124, Section 1.4, 200(3) Edition. It also means Exempt Fireworks .

(25) "Outdoor Sales" shall mean sales of Retail Fireworks from a Tent, Canopy, Stand or trailer.

(26) "Permit Application" shall mean the application form(s) and accompanying documentation required to

be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a Retail Permit.

(27) "Public Display Fireworks" shall mean Fireworks that are authorized under a general, limited, or special effects public display permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(28) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(29) "Retail Operations" shall mean the sale of Retail Fireworks from a Retail Sales Outlet to Individual Members of the General Public and related activities, including the purchase, possession, storage and transportation of Retail Fireworks.

(30) "Retail Permit" shall mean the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storage and sale of Retail Fireworks, at retail, when otherwise in conformance with all applicable requirements of ORS 480.110 through 480.165, OAR Chapter 837, Division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to fireworks.

(31) "Retail Sales Outlet" shall mean a permanently or temporarily erected structure or enclosure located at the Retail Site and from which Retail Fireworks are sold to Individual Members of the General Public. The term includes Stands, Tents, Canopies, Buildings, and trailers.

(32) "Retail Site" shall mean the physical location or address of the Retail Sales Outlet listed on the Retail Permit where Retail Fireworks are sold.

(33) "Retailer" shall mean any Person who Sells, transfers, or provides by any other means, or intends to Sell, transfer or provide by any other means, Retail Fireworks to Individual Members of the General Public.

(34) "Sales Display" shall mean the placement at a Retail Sales Outlet of Retail Fireworks to allow Individual Members of the General Public to view, handle and/or purchase the Retail Fireworks.

(35) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration.

(36) "Stand" shall mean a booth temporarily erected and used for the sale of Retail Fireworks to Individual Members of the General Public.

# OREGON ADMINISTRATIVE RULES

- (37) "Tent" shall mean a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects and is in compliance with Uniform Fire Code requirements for tents.
- (38) "Volunteer" shall mean a member of a non-profit organization that has applied for and obtained a Retail Permit.
- (39) "Wheel" shall mean a pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain not more than six driver units or tubes not exceeding one-half inch (12.5mm) inside diameter and containing not more than 60 grams of pyrotechnic composition. Upon ignition, the wheel revolves and produces a shower of colored sparks, and sometimes a whistling effect. See ORS 480.127(4)(g).
- (40) "Wholesaler" shall mean any Person who Sells or provides by any other means, or intends to Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.
- Stat. Auth.: ORS 476 & 480  
Stats. Implemented: ORS 480.110 - 480.165  
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

## 837-012-0615

### General

- (1) Retailers desiring to engage in other types of Fireworks activities, including wholesale sales, public displays or agricultural use, must meet all applicable requirements in ORS 480.110 through 480.165 and OAR Chapter 837, Division 12, including those pertaining to obtaining permits for such activities from local and state authorities.
- (2) Retail Permit holders shall comply with all applicable federal, state and local laws, rules and regulations, pertaining to Fireworks, including:
- (a) ORS 480.110 through 480.165;
  - (b) All applicable requirements of OAR Chapter 837, Division 12;
  - (c) Oregon Fire Code, 2004 Edition; and
  - (d) Oregon Structural Specialty Code, 2004 Edition.
- (3) Retail Permit holders shall notify the Office of State Fire Marshal, verbally or in writing, within 24 hours of the date of change, of:

- (a) The Retail Permit holder's mailing address or telephone number; or
  - (b) The mailing address or 24-hour contact number for the Individual Responsible for Sales.
- (4) Retail Permit holders shall notify the Office of State Fire Marshal and the Local Fire Authority, in writing of a change in the identity of the Individual Responsible for Sales at least 24 hours before the new Individual becomes the Individual Responsible for Sales. Such a change is subject to the prior approval of the Local Fire Authority and the Office of State Fire Marshal.
- (5) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR Chapter 837, Division 12. Exempt Fireworks may be sold and purchased without either the seller or purchaser having to first obtain a permit issued by the Office of State Fire Marshal.
- Stat. Auth.: ORS 476 & 480  
Stats. Implemented: ORS 480.110 - 480.165  
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05

## 837-012-0620

### Retail Permit Applications

- (1) Any Person engaged in, or intending to engage in, the sale or provision by any other means of Retail Fireworks to Individual Members of the General Public shall apply for and obtain a Retail Permit issued by the Office of State Fire Marshal.
- (2) A separate Retail Permit shall be applied for and obtained for each Retail Sales Outlet that may conduct sales of Retail Fireworks in Oregon.
- (3) Only one application for a Retail Permit may be made for each Retail Site except pursuant to OAR 837-012-0630(3).
- (4) The application for a Retail Permit shall be made on a form provided by the Office of State Fire Marshal.
- (5) All information provided by the applicant on the Permit Application shall be true and correct to the applicant's knowledge.
- (6) In addition to completion of the application form, applicants shall submit copies of a sketch of the Retail Site in accordance with subsection (7) of this rule.
- (7) The sketch of the Retail Site, required pursuant to subsection (6) of this rule, shall include without limitation, the following:

# OREGON ADMINISTRATIVE RULES

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- (a) A diagram of the Retail Sales Outlet and its relationship to adjacent areas located at the Retail Site;
- (b) For all Outdoor Sales, the location and distances of all structures, Buildings, highways, streets, trees, and other vegetation within 50 feet of the Retail Sales Outlet;
- (c) For all Indoor Sales, the location of the Sales Display and the location and distances of all highly combustible materials within a 20-foot radius of the Sales Display;
- (A) For Retail Sales Outlets located within structures or Buildings of less than 1,000 square feet, all Exits from the Building or structure;
- (B) For Retail Sales Outlets located in structures or Buildings of greater than 1,000 square feet, all Exits from the Building or structure located within 75 feet of the Sales Display;
- (C) For tents, all exits from the tent.
- (D) A list of the general types of merchandise located within 20 feet of the Sales Display. This requirement does not apply to Tents.
- (d) The location of any open flames, exposed heating elements or other direct sources of ignition, including, but not limited to, coffee makers, food warmers, cookers and broilers located inside the Retail Sales Outlet or, for Indoor Sales, within 20 feet of the Sales Display.
- (8) Any applicant for a Retail Permit, other than an Individual, shall list on the application form the name, address, and phone number of one Individual holding a management position within the permit holder's company or organization. See definition of "Person" in ORS 174.100(4) and "Individual" in OAR 837-012-0610(18).
- (9) As part of the Permit Application process, the applicant shall apply for and obtain, in writing when available;
  - (a) All required local and state building code, fire code and business licensing inspections, approvals, permits and/or licenses; and
  - (b) All required state and local land use and zoning permits, licenses and/or approvals for the Retail Site.
- (10) Applicants shall submit their completed Permit Application to the Local Fire Authority for review and signature approving the Retail Site prior to submission of the Permit Application to the Office of State Fire Marshal.
- (11) The required Local Fire Authority signatures are:
  - (a) For retail sales conducted inside city limits, the Permit Application must be signed by the city Fire Chief or his authorized representative;
  - (b) For retail sales conducted outside city limits, but inside a rural Fire Protection District, the Permit

- Application must be signed by the district Fire Chief or his authorized representative;
  - (c) For retail sales conducted outside both city limits and a rural Fire Protection District, the Permit Application must be signed by the District Deputy State Fire Marshal.
  - (d) Applicants must also obtain the signature of the Local Fire Authority with jurisdiction over the Retail Fireworks storage location, regardless of whether the storage location is the same as the Retail Site.
  - (12) Proof of identification of the Individual Responsible for Sales shall be provided to the Local Fire Authority at the time the Permit Application is submitted to the Local Fire Authority for review and signature. The proof of identification shall be a current and recognizable photographic identification.
  - (13) Permit Applications shall not be submitted to the Office of State Fire Marshal prior to January 1 of the year for which the permit is sought.
  - (14) ORS 480.127 requires retail fireworks sales applicants to apply in writing to the State Fire Marshal for a permit at least 15 days in advance of the proposed sale. However, due to limited resources in the fireworks program, it is recommended that retail fireworks permit applications be postmarked or submitted to the OSFM by April 15 of the year for which the permit is sought.
- Stat. Auth.: ORS 476 & 480  
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165  
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; Administrative correction 6-14-01; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

## **837-012-0625**

### **Retail Permit Fees**

- (1) Permit fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Permit Application.
- (2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Permit Application until the check has cleared the bank.
- (3) The permit fee for each Permit Application shall be \$50.



# OREGON ADMINISTRATIVE RULES

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(4) Permit fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05

## **837-012-0630**

### **Issuance of Retail Permits**

(1) The Office of State Fire Marshal shall not approve a Permit Application, or issue a Retail Permit, without the prior approval of the Local Fire Authority.

(2) The Office of State Fire Marshal shall assign a unique number to each Retail Permit issued.

(3) Only one Retail Permit shall be issued for each Retail Site with the following exception: More than one Retail Sales Outlet may be erected and operated at the same Retail Site, whether indoors or outdoors, when there is sufficient space to allow each Retail Sales Outlet to conform to the requirements of ORS 480.110 to 480.165 and these rules. For example, Retail Permits may be issued for both Outdoor Sales and Indoor Sales located at the same Retail Site.

(4) The Office of State Fire Marshal shall mail the original Retail Permit to the applicant at the mailing address listed on the Permit Application.

(5) Retail Permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen, or destroyed. Written requests shall be signed and dated by the Retail Permit holder.

(6) The issuance of a Retail Permit does not in any way constitute approval by the Office of State Fire Marshal of any Retail Fireworks purchased, sold or provided pursuant to the Retail Permit.

(7) A Retail Permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of Retail Fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.110 through 480.165, OAR Chapter 837, Division 12 and any other applicable federal, state or local laws, rules or regulations pertaining to Fireworks.

(8) A Retail Permit holder is authorized only to Sell or otherwise provide Retail Fireworks to Individual Members of the General Public.

(9) A Retail Permit does not authorize the:

(a) Purchase, possession or sale of Illegal Fireworks by or to any Person; or

(b) Sale or provision of Retail Fireworks to any Person other than an Individual Member of the General Public.

(10) The Retail Permit and permit number issued by the Office of State Fire Marshal are valid for the sale of Retail Fireworks from June 23 through July 6 of the year in which the permit was issued.

(11) A Retail Permit is valid only for the Retail Sales Outlet and Retail Site listed on the permit.

(12) Only the Retail Permit holder, and any Employees or Volunteers of the Retail Permit holder, may engage in Retail Operations authorized by the Retail Permit.

(13) Retail Permits, and the rights conveyed by the permits, are not transferable.

(14) Retail Permit holders shall contract directly with the Wholesaler listed on the Retail Permit for the purchase of Retail Fireworks.

(15) Retail Permit holders shall not contract, subcontract, lease, sub-lease or convey by any other means to another Person any rights granted under the Retail Permit.

(16) The Retail Permit issued by the Office of State Fire Marshal does not require property owners or others to allow sales of Retail Fireworks on their property. The Office of State Fire Marshal will not intercede on the behalf of Retail Permit holders with property owners who refuse to allow sales of Retail Fireworks on their property, or, in the case of two Permit Applications submitted or two Retail Permits inadvertently issued for the same Retail Site, when there is a question of which applicant or Retail Permit holder has permission from the property owner to conduct sales at the Retail Site.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110-480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; FM 1-1997, f. & cert. ef. 1-28-97; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03

## **837-012-0635**

### **Purchase of Retail Fireworks by Retail Permit Holder**

(1) Retail Permit holders shall purchase or otherwise obtain Retail Fireworks only from Wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal.

(2) A Retail Permit holder shall purchase or otherwise obtain Retail Fireworks only from the Wholesaler listed on the Retail Permit.

(3) If the Wholesaler who supplies the Retail Fireworks to the Retail Permit holder is different from the Wholesaler listed on the Retail Permit, the

# OREGON ADMINISTRATIVE RULES

Retail Permit holder shall notify, in writing, the Office of State Fire Marshal and Local Fire Authority of the change at least 24 hours prior to purchasing the Retail Fireworks from the Wholesaler.

(4) Prior to acceptance of Retail Fireworks from a Wholesaler, the Retail Permit holder shall confirm that the outside of all Cartons, Containers, or Cases of Retail Fireworks, and any accompanying documentation are imprinted and/or affixed with the wholesale permit number pursuant to OAR 837-012-0525 (13).

(5) Prior to acceptance of Retail Fireworks from a Wholesaler, the Retail Permit holder shall confirm that the outside of all Cartons, Containers, or Cases of Retail Fireworks and any accompanying documentation are imprinted and/or affixed with the full name and Retail Permit number of the Retail Permit holder.

(6) Retail Permit holders shall not accept any Cartons, Containers, or Cases of Retail Fireworks or accompanying documentation that does not show the information required pursuant to subsections (4) and (5) of this rule.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

## **837-012-0640**

### **Permits-Denial, Suspension and/or Revocation**

(1) The Office of State Fire Marshal may deny, suspend or revoke a Retail Permit if a Retail Permit holder, or an applicant, fails:

(a) to comply with ORS 480.110 through 480.165 or OAR Chapter 837, Division 12.

(2) The period of denial, suspension or revocation shall not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety, particularly whether the circumstances of the violations presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Retail Permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

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

(4) The Office of State Fire Marshal may deny, suspend, or revoke all Retail Permits issued to a Retail Permit holder for each of the permit holder's or applicant's Retail Sales Outlets pursuant to OAR 837-012-0620(2).

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

## **837-012-0645**

### **Sales and Storage of Retail Fireworks**

(1) A Retail Sales Outlet shall never be left unattended during the business hours of the outlet. Any Retail Sales Outlet in violation of these rules may be subject to closure.

(2) The Retail Permit holder or the Individual Responsible for Sales shall be present at the Retail Sales Outlet at least 50% of the outlet's business hours each day. When not present at the outlet, the Individual Responsible for Sales shall be readily available, day or night, by telephone or other reliable means of communication. The Individual Responsible for sales may be absent from the Retail Sales Outlet for up to 48 consecutive hours twice during the period of time the Retail Permit is valid. The two 48-hour time periods shall not be consecutive. The Individual Responsible for sales, when not at the Retail Site, shall be available through their 24-hour contact number listed on their Permit Application.

(3) Any time the Individual Responsible for Sales is not present at the Retail Sales Outlet during the business hours of the outlet, at least one Individual, 18 years of age or older, shall be present at the outlet. Such Individual shall be an Employee or Volunteer of the Retail Permit holder's volunteer non-profit organization. Such Individual shall be directly responsible for, and in charge of, the Retail Sales Outlet and shall be present in the Retail Sales Outlet at all times.

(4) The Individual Responsible for Sales shall be:

# OREGON ADMINISTRATIVE RULES

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- (a) The Retail Permit holder listed on the Retail Permit; or
- (b) An Employee of the Retail Permit holder; or
- (c) If the Retail Permit holder is a volunteer, non-profit organization, an Individual who is a member of the Retail permit holder's volunteer non-profit organization.
- (5) The Individual Responsible for Sales shall be responsible for only the Retail Sales Outlet listed on the Retail Permit.
- (6) The Retail Site may be changed if:
  - (a) The new Retail Site is located in the same fire jurisdiction as the Retail Site listed in the Retail Permit;
  - (b) The Local Fire Authority approves the new Retail Site and indicates that approval in writing; and
  - (c) The Office of State Fire Marshal is notified of the change at least 24 hours prior to the commencement of retail sales.
- (7) Retail Fireworks shall be sold only at a Retail Sales Outlet for which a Retail Permit has been issued.
- (8) Retail Fireworks shall not be sold or otherwise provided from an establishment or business that serves alcoholic beverages, single or multi-family residences, an Internet site, or automobiles.
- (9) All Retail Sales Outlets shall comply with all applicable federal, state and local laws, rules and regulations pertaining to Fireworks including:
  - (a) ORS 480.110 through 480.165;
  - (b) OAR Chapter 837, Division 12;
  - (c) Oregon Structural Specialty Code, 2004 Edition; and
  - (d) Oregon Fire Code, 2004 Edition.
- (10) All Retail Fireworks not sold during the time the Retail Permit is valid, shall be returned to the supplying Wholesaler no later than July 31 of the year in which the permit is valid.
- (11) At all times during the business hours of the Retail Sales Outlet, no Exits shall be locked or blocked and all exits shall be passable.
- (12) No Fireworks shall be discharged within 100 feet of any Retail Sales Outlet.
- (13) The Retail Permit holder, Individual Responsible for Sales, and any Employees or Volunteers of the Retail Permit holder shall ensure that all Retail Fireworks sold or otherwise provided, possessed, transported, stored or offered for sale comply with ORS 480.110 through 480.165 and these rules.
- (14) The type of Retail Sales Outlet (Tent, Stand, Canopy or trailer) to be utilized shall be described on the Permit Application, including its outside dimensions. The dimensions of the Retail Sales Outlet listed on the Permit Application shall not increase, but they may decrease, after the Permit

Application is submitted to the Office of State Fire Marshal.

(15) Retail Permit holders may store their Retail Fireworks from June 1 through July 31 of the year in which their Retail Permit is valid. The Local Fire Authority shall approve the storage and the storage location of the Retail Fireworks and indicate that approval by signing the Permit Application.

(16) Retail Fireworks shall be stored:

(a) In compliance with the Oregon Structural Specialty Code, 2004 Edition; or

(b) In an explosives magazine pursuant to NFPA 495, 2001 Edition.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2005, f. & cert. ef. 2-15-05

## **837-012-0650**

### **Outdoor Sales**

(1) The location of an outdoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks, Individual Members of the General Public, and any surrounding property.

(2) Every outdoor Retail Sales Outlet shall maintain at least one Exit opening, or outward swinging Exit door, for each 1,000 square feet of area covered or each 20 feet of structure length. The Exit opening shall be at least two feet wide and five feet high or as required by the Local Fire Authority.

(3) Trailers shall have their wheels blocked or removed, or the tongue locked. Trailers shall be disconnected from any power source which can potentially move the trailer any distance. Any fuel tanks or other ignition sources, including those for propane, shall be removed and placed a minimum of 20 feet from the trailer. Individual Members of the General Public shall not have access to the interior of the trailer.

(4) Tent and Canopy fabrics and any materials used on the floor of the Tent or Canopy, such as sawdust, shall be treated to be fire retardant.

(5) Tents having three or more enclosing sides shall comply with the requirements for both Indoor Sales and Outdoor Sales.

(6) Fire extinguishers shall be provided at each outdoor Retail Sales Outlet. At a minimum, at least

# OREGON ADMINISTRATIVE RULES

one 2A rated water type extinguisher, or an equivalent water type extinguishing system as approved by the Local Fire Authority shall be placed at each Retail Sales Outlet.

(7) All electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the Oregon Electrical Specialty Code, 2005 Edition and any other applicable state or local requirements.

(8) Outdoor Retail Sales Outlets that operate at night shall erect and maintain sufficient light fixtures to enable customers and those Individuals selling Retail Fireworks to see all areas of the outlet. Standard electrical installations, battery powered lanterns, street or parking lot lighting or nearby Building interior and exterior lighting may be used for this purpose.

(9) Outdoor Retail Sales Outlets shall be located:

(a) At least 50 feet from any dispensary of flammable liquids or gases;

(b) At least 15 feet, or as otherwise specified by the Local Fire Authority, from any street or public right-of-way;

(c) At least 10 feet from any combustible structures;

(d) At least 10 feet from any entrances to, or Exits and openings from, any surrounding Buildings or structures; and

(e) At least 20 feet from exposed heating elements or any other such sources of ignition including fuel-powered electrical generators.

(10) A Stand including any vertical extensions shall not be more than one story in height unless it has sufficient size, weight or tie-downs to prevent toppling in the wind.

(11) "No Smoking" signs shall be posted on the outside of all enclosing sides of an outdoor Retail Sales Outlet. The signs shall be visible to all Individuals located at the Retail Sales Outlet. Sign lettering shall be red and at least 2-1/2 inches high on a white background.

(12) Smoking, open flames, and other such ignition sources or the use of Fireworks are prohibited within 100 feet of the Retail Sales Outlet.

(13) All fuel used to power electrical generators shall be stored in containers listed and approved by Underwriter's Laboratories.

(14) Heaters having exposed electrical elements or open flames shall not be used at any Outdoor Retail Sales Outlet.

(15) Outdoor Retail Sales Outlets, and parking for customers of the Retail Sales Outlet, shall not impede or endanger the normal flow of traffic on public streets or highways, or parking lots.

(16) The Retail Permit holder, Individual Responsible for Sales and/or any Employees or Volunteers of the Retail Permit holder shall be responsible for

maintaining the grounds within 20 feet of the Retail Sales Outlet in a clean and orderly manner.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

## 837-012-0655

### Indoor Sales

(1) The location of an indoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks, Individual Members of the General Public, and any surrounding property.

(2) A specific area inside the Building shall be designated and maintained as the Sales Display area.

(3) The location of the Sales Display area shall not hinder or block any Exit, including, if applicable, a required checkstand Exit.

(4) The Individual Responsible for Sales shall regularly monitor and oversee Retail Operations at the Retail Sales Outlet to ensure the Sales Display and/or storage area(s) are orderly and maintained in accordance with these rules.

(5) Retail Fireworks, in excess of those needed for the Sales Display, may be stored inside the Retail Sales Outlet only if they are separated from all Sales Display areas, Exits, flammable and highly combustible materials and public access areas to the Building, in accordance with Local Fire Authority requirements and these rules. This subsection does not apply to Tents or canopies.

(6) Fire extinguishers shall be placed throughout the indoor Retail Sales Outlet in the quantities and locations required by NFPA 10, 1998 Edition and any applicable local ordinances and rules. At a minimum, at least one 2A rated water type fire extinguisher, or an equivalent water type fire extinguishing system, as approved by the Local Fire Authority shall be placed at the outlet.

(7) Smoking at an indoor Retail Sales Outlet by the Retail Permit holder, Individual Responsible for Sales or an Employee or Volunteer of the Retail Permit Holder may be the basis for suspension and/or revocation of the Retail Permit.

(8) All trash, rubbish, empty boxes and discarded Retail Fireworks wrapping or packaging shall be

# OREGON ADMINISTRATIVE RULES

removed daily or more often as needed, to maintain the Sales Display and storage areas in a neat and clean manner.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

## 837-012-0660

### Records and Postings

- (1) The Retail Permit shall be posted at the Retail Sales Outlet and shall be readily visible to all individuals approaching or entering the outlet.
- (2) A copy of the Retail Permit may be posted instead of the original if the original is maintained at the Outlet and is immediately available for inspection by the Local Fire Authority and/or the Office of State Fire Marshal, upon request.
- (3) A record of each shipment of Retail Fireworks received by the Retail Permit Holder shall be maintained. The record shall include the Wholesaler's name, address and wholesale permit number, the Retail Permit holder's name and permit number, and a complete list of the names and quantities of each type of Retail Firework received.
- (4) All records described under subsection (3) of this rule shall be maintained by either the Retail Permit holder or the Wholesaler who supplied the Retail Fireworks. The records shall be maintained for three years from the date of the Retail Permit holder's receipt of the shipment.
- (5) Upon request, the records described in subsection (3) of this rule, shall be readily available for review and inspection by the Local Fire Authority and/or representatives of the Office of State Fire Marshal. All records shall be clear, legible, and accurate.
- (6) Retail Permit holders shall maintain at all times a list of Employees or Volunteers, including their names, addresses, ages, and phone numbers. Upon request, a legible copy of the list shall be provided immediately to the Office of State Fire Marshal and/or the Local Fire Authority.
- (7) All Persons possessing, for 30 days or more, more than ten pounds of Retail Fireworks shall annually complete and submit the Hazardous Substance Survey pursuant to ORS 453.307 to 435.372 and OAR Chapter 837, Division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01

## 837-012-0665

### Advertisements

- (1) No person shall publish or cause to be published:
    - (a) Any advertisement, for distribution to the general public, concerning the sale of pyrotechnics which have been declared unlawful by ORS 480.110 to 480.165, or these rules, for residents to purchase, use, store, transport, sell, discharge, or possess;
    - (b) Any advertisement for the sale of items described in ORS 480.127 in any county, municipality or fire protection district that by law or ordinance has declared the sale, use, or possession of such items to be prohibited.
  - (2) Section (1) of this rule does not apply to advertisements placed in media when the primary distribution of that media is into areas which allow the pyrotechnics even though some secondary distributions of that media may occur into areas which prohibit these items.
- Stat. Auth.: ORS 476 & ORS 480
- Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165
- Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00

## 837-012-0670

### Prohibited Acts and Limitations

- (1) Retail Permit holders shall not create, maintain or allow the existence of a fire hazard at any location under their control where Retail Fireworks are stored, transported, sold, or used.
- (2) No Retail Permit holder shall Sell or provide by any other means including donation:
  - (a) Retail Fireworks to any Individual Member of the General Public under 16 years of age;
  - (b) Illegal Fireworks to any Individual Member of the General Public;
  - (c) Any Retail Fireworks that have been altered;

## OREGON ADMINISTRATIVE RULES

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(d) Any Retail Fireworks not supplied and/or distributed to the Retail Permit holder by a Wholesaler who possesses a valid and current wholesale permit issued by the Office of State Fire Marshal pursuant to OAR 837-012-0635(1) through 3).

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR Chapter 837, Division 12, or who has had any Fireworks permit or operator certificate suspended, denied or revoked, shall participate in any manner in the storage, distribution, transportation or sale of Retail Fireworks for a period not to exceed three years.

(4) Retail Permit holders shall not Sell, provide, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any Retail Firework that has not been approved, certified or listed for transport by the United States Department of Transportation and/or the United State Consumer Product Safety Commission, or does not have a United States Bureau of Explosives Temporary Transfer Permit.

(5) No Retail Sales Outlet shall be erected prior to the issuance of a Retail Permit for that Retail Sales Outlet location.

(6) No Person shall Sell, transfer or otherwise provide Retail Fireworks to Individual Members of the General Public without first obtaining a Retail Permit.

(7) A Retail Permit holder shall not employ or have direct business ties with any Person whose Wholesale or Retail Fireworks Permit or operator certificate is revoked or suspended.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

### 837-012-0675

#### Civil and Criminal Enforcement Actions

(1) The Office of State Fire Marshal, Local Fire Authority or law enforcement officials may confiscate, remove or have removed any Retail Fireworks offered for sale, sold, provided, transported, purchased or otherwise obtained, stored, used, discharged or possessed in violation of ORS 480.110 through 480.165 or these rules.

(2) The Retail Permit holder, or Person responsible for the violation(s), shall be responsible for payment of the agency's costs in confiscating or removing any Retail Fireworks pursuant to subsection (1) of this rule.

(3) Upon finding a violation, the Office of State Fire Marshal may order that any confiscated Retail Fireworks be:

(a) Returned to the Wholesaler who supplied the Retail Fireworks; or

(b) Disposed of in any manner approved by the Office of State Fire Marshal, including destruction of the Retail Fireworks.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, ORS 480.120, ORS 480.127, ORS 480.130, ORS 480.150, ORS 480.152, ORS 480.154, ORS 480.156, ORS 480.158, ORS 480.160 & ORS 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01