

OFFICE OF STATE FIRE MARSHAL
FIREWORKS CITATIONS AND CIVIL
PENALTY ASSESSMENTS



OFFICE OF STATE FIRE MARSHAL
OREGON STATE POLICE
LICENSE AND PERMITS SECTION
4760 Portland Road NE
Salem OR 97305-1760
(503) 934-8274
TDD Line: (503) 390-4661
Fax: (503) 373-1825

**FIREWORKS CITATIONS AND CIVIL PENALTY ASSESSMENTS
OREGON ADMINISTRATIVE RULES**

CIVIL PENALTY FIREWORKS IN OREGON		Page
837-12-1000	Authority and Application	1
837-12-1010	Purpose and Scope	1
837-12-1020	Effective Dates	1
837-12-1030	Definitions.....	1
837-12-1040	General	1
837-12-1050	Violation Types, Instances, and Penalty Assessments	2
837-12-1060	Issuance of Civil Penalty Citation and Forwarding to the Office of State Fire Marshal	2
837-12-1070	Hearings	2
837-12-1080	Informal Conference	2
837-12-1090	Formal Hearing	3
837-12-1100	Penalty Adjustments	3
837-12-1110	Judicial Review	3
837-12-1120	Payment of Civil Penalty	3
837-12-1130	Type I Violations	3
837-12-1140	Type II Violations	3
837-12-1150	Type III Violations.....	4
837-12-1160	Type IV Violations.....	4
480.990	Penalties	4

OREGON ADMINISTRATIVE RULES

FIREWORKS CITATIONS AND CIVIL PENALTY ASSESSMENTS Adopted Permanent 1/01

Authority and Application

837-12-1000 (1) These rules are promulgated under the State Fire Marshal's authority contained in ORS 476.030 and 480.165.

(2) These rules apply to any Person who violates any provision of ORS 480.110 through 480.165 and the rules adopted thereto including, but not limited to, those for public fireworks displays, agricultural use of fireworks, wholesale and retail sales of fireworks, special effect fireworks, and/or manufacturing of fireworks.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Purpose and Scope

837-12-1010 (1) These rules establish the basis and process by which Citations and penalties will be determined and issued for Violations of ORS 480.110 through 480.165 and OAR Chapter 837, Division 12.

(2) These rules provide for fire authorities, as defined in ORS 476.060, to issue Citations and proposed penalties.

(3) Each Violation(s) is classified and penalty (ies) assessed according to Violation Type and Instance.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Effective Dates

837-12-1020 OAR 837-12-1000 through 837-12-1110 are effective upon date of filing.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Definitions

837-12-1030 (1) "Citation" means a document issued by the Office of State Fire Marshal or a fire authority pursuant to ORS 480.165 to issue a civil penalty for a Violation of ORS 480.110 through 480.165 and OAR Chapter 837, Division 12. A Citation may include, but is not limited to, a description of the Violation(s) and a notice of civil penalty assessment.

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

(3) "Fireworks" shall mean those items described in ORS 480.110(1).

(4) "Formal Hearing" is a hearing before a hearing officer where the laws, rules, and evidence are presented, considered, and a proposed opinion and order issued.

(5) "Hazard" means a condition which could result in fire loss injury or damage to a Person or property.

(6) "Hearings Request" means the written request for a Formal Hearing to contest a civil penalty.

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

(8) "Informal Hearing" is a conference to discuss if there is a basis for informal disposition of a civil penalty by stipulation, agreed settlement, or other means.

(9) "Instance" means the number of times a Person has been sited. These are identified as 1st, 2nd, and 3rd Instances.

(10) "Local Fire Authority" shall mean the local fire official having jurisdiction.

(11) "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.

(12) "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, storing 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 federal, state and local laws, rules and regulations.

(13) "State Fire Marshal" means the State Fire Marshal or his/her administrative designee.

(14) "Type" means the classification of Violation, i.e., least, minimal, moderate, or severe. These are identified as Type I, II, III or IV.

(15) "Violation" Types shall mean:

(a) "Least Violation" means a Type I Violation which poses very little Hazard or threat;

(b) "Minimal Violation" means a Type II Violation which poses a minor Hazard or threat;

(c) "Moderate Violation" means a Type III Violation which poses a significant Hazard or threat;

(d) "Severe Violation" means a Type IV Violation which poses a substantial Hazard or threat.

(16) "Wholesale Permit" shall mean the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of Fireworks, retail fireworks, public display fireworks, or agricultural fireworks when otherwise in compliance with all applicable requirements of ORS 480.110 through 480.165, OAR Chapter 837, Division 12, and any other federal, state and local laws, rules and regulations.

(17) "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 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

General

837-12-1040 (1) These rules establish civil penalty criteria for Types I, II, III and IV Violations and the Instances for each Type of Violation.

(2) These rules apply to Persons who violate the requirements of ORS 480.110 through 480.165 or OAR Chapter 837, Division 12.

(3) Fire authorities may apply these rules per ORS 476.060.

(4) A Citation describing the Violation(s) and assessed penalty(ies) shall be issued to Persons in non-compliance with ORS 480.110 through 480.165 or OAR Chapter 837, Division 12.

(5) Each separate Instance of non-compliance with ORS 480.110 through 480.165 or OAR Chapter 837, Division 12 shall be considered a separate Violation.

OREGON ADMINISTRATIVE RULES

(6) Each day that a Violation continues shall be considered a separate Violation.

(7) The distribution, sale, use, manufacture, or possession of any amount of illegal Fireworks is prohibited and subject to Citation and penalty.

(8) In addition to the issuance of Citations and penalties under these rules, the State Fire Marshal and fire authority acting in accordance with ORS 476.060 and 480.154(2) and OAR 837-12-560(1)(a) and 837-12-675(1)(a):

(a) May confiscate any amount of illegal Fireworks; and

(b) May confiscate other Fireworks possessed by Persons violating ORS 480.110 through 480.165 and OAR Chapter 837, Division 12.

(9) In addition to the issuance of Citations, penalties, and the confiscation of Fireworks, the State Fire Marshal may also revoke, suspend, or deny any Fireworks permit provided for under ORS 480.110 through 480.165 to any Person who fails to pay a penalty(ies) assessed under these rules.

(10) The penalty for each Violation shall range from \$0 to \$500 a day depending upon the Type and Instance of the Violation.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Violation Types, Instances, and Penalty Assessments

837-12-1050 (1) Penalties shall be assessed according to Violation Type and Instance in Table 2 and OAR 837-12-1130 through 837-12-1160, except as provided in OAR 837-12-1100.

(2) The Types of Violations are:

(a) Least - Type I;

(b) Minimal - Type II;

(c) Moderate - Type III;

(d) Severe - Type IV.

(3) The Violation Instance is determined based on the number of times a Person has committed a Violation.

TABLE 2

Penalties*

VIOLATION TYPE	VIOLATION INSTANCE		
	1	2	3
I. Least	Warning	\$25	\$75
II. Minimal	\$25	\$75	\$150
III. Moderate	\$75	\$150	\$250
IV. Severe	\$125	\$250	\$500

*Table 2 is a *guideline* for penalty assessments. Also refer to OAR 837-12-1130 through 837-12-1160.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Issuance of Civil Penalty Citation and Forwarding to the Office of State Fire Marshal

837-12-1060 (1) Local Fire Authority, pursuant to ORS 476.060, shall have the authority to issue civil penalty Citations for Violation of ORS 480.110 through 480.165 and/or OAR Chapter 837, Division 12.

(2) A Citation may impose a penalty or provide a warning (OAR 837-12-1050, Table 2).

(3) The Citation shall be forwarded to the Office of State Fire Marshal within ten days of issuance. Where possible, each Citation shall be accompanied by a copy of the issuing authority's written report, inspection sheets, Fire District Property Report (or evidence receipt - Form #920-021-06) or any other forms that are completed during the process of issuing Citations.

(4) The Office of State Fire Marshal shall issue a notice of civil penalty based upon the information contained in the Citation and any accompanying documentation.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Hearings

837-12-1070 (1) Any Person may request a hearing regarding the assessment of a civil penalty.

(2) Hearings Requests shall be filed at the Salem Office of State Fire Marshal within 20 days from the date of service of the notice of civil penalty.

(3) Any Person who requests a hearing shall be entitled to a hearing.

(4) The hearing process may include:

(a) An informal conference to discuss if there is a basis for informal disposition of a civil penalty by stipulation, agreed settlement, or other means;

(b) A Formal Hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion and order issued.

(5) The Formal Hearing shall be conducted as a contested case hearing according to the provision of the Administrative Procedures Act (APA) ORS 183.413 to 183.470.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Informal Conference

837-12-1080 (1) The Office of State Fire Marshal will provide an opportunity for a Person to informally discuss a civil penalty that has been assessed against them.

(2) An informal conference may be requested prior to a request for a Formal Hearing; however, a Formal Hearing shall be requested within 20 days of the date of service of the notice of civil penalty.

(3) The request for an informal conference may be in any form; and

(a) Shall be addressed to the Office of State Fire Marshal; and

(b) Shall clearly state the subject to be discussed.

(4) An informal conference concerning civil penalties *shall not* extend the 20 days allowed for filing a Formal Hearing request.

(5) If the parties agree, an informal conference may be held by telephone.

(6) As the result of an informal conference, the State Fire Marshal may, for good cause, amend, withdraw, or reduce a civil penalty. Such action is done in accordance with the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

OREGON ADMINISTRATIVE RULES

Formal Hearing

837-12-1090 (1) A Person may request a Formal Hearing at any time before or after an informal conference, as long as the 20 day period for requesting a hearing has not lapsed.

(2) The Office of State Fire Marshal will arrange for a hearings officer to conduct the Formal Hearing.

(3) The Office of State Fire Marshal will set a date, time, and location for the Formal Hearing.

(4) The Office of State Fire Marshal will notify, by letter, the Person requesting the hearing (or their designated representative) of the date, time, location, and the hearings officer conducting the Formal Hearing.

(5) The hearings officer will hear the case and render a proposed opinion and order, including recommended findings of fact and conclusions of law, according to the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

(6) The Formal Hearing shall be conducted as follows:

(a) The hearings officer will act as an impartial third party;

(b) It is not necessary for the Person that requested the hearing to be represented by legal counsel;

(c) The Office of State Fire Marshal may or may not elect to be represented by legal counsel;

(d) Testimony shall be taken under oath;

(e) All evidence of a Type commonly relied upon by a reasonably prudent Person in the conduct of their serious affairs is admissible;

(f) Hearsay evidence is admissible if it meets statutory standards for being reliable and trustworthy.

(7) The proposed opinion and order shall be reviewed by the State Fire Marshal and, if accepted, finalized and issued as a final order.

NOTE: Final orders shall be forwarded to the authority issuing the Citation within ten days of signing of the Final Order.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Penalty Adjustments

837-12-1100 (1) The assessment or adjustment of penalties for amounts other than those set by OAR 837-12-1050 shall be done only by the State Fire Marshal through a hearings process either formally or informally.

(2) The assessment of penalties not in conformance with OAR 837-12-1050 may be made only after considering:

(a) The gravity and magnitude of the Violation;

(b) The Person's previous record;

(c) Such other considerations as the State Fire Marshal may consider appropriate.

(3) During a Formal Hearing or informal conference, the Office of State Fire Marshal may modify or adjust the Citation, cited Violations, or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Judicial Review

837-12-1110 Judicial review of an agency order made after a hearing shall be provided according to ORS 183.480 or 183.497.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Payment of Civil Penalty

837-12-1120 (1) The penalty shall be paid to the Office of State Fire Marshal within ten days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) Penalties not paid within ten days after the order becomes final may be recorded with the county clerk in any county in Oregon.

(3) Upon recording of the penalty, the county clerk shall record the name of the Person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Type I Violations

837-12-1130 (1) Type I Violations are subject to penalties ranging from \$0 to \$75 a day depending upon Instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type I Violations include but are not limited to:

(a) Failure to post "No Smoking" signs at the retail Fireworks sales stand;

(b) Failure to provide required fire extinguishing equipment at the retail Fireworks sales stand;

(c) Failure to maintain a clean, orderly area within 20 feet of the retail sales area;

(d) Failure to keep a copy of the retail sales permit at the retail sales stand while the stand is open;

(e) Possession of illegal Fireworks worth less than \$50.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Type II Violations

837-12-1140 (1) Type II Violations are subject to penalties ranging from a warning to \$150 a day depending upon Instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type II Violations include but are not limited to:

(a) Failure to have a Person 18 years of age or over inside the retail sales stand during business hours;

(b) Omission of the required Wholesale Permit number, address and name of the Wholesaler on any Fireworks shipped within or into the State of Oregon;

(c) Omission of the name of the retail sales permit holder and retail sales permit number on Fireworks cartons, containers, cases, and associated paperwork purchased by the permit holder and shipped within or into the State of Oregon;

(d) Possession of more than \$50 but less than \$100 worth of illegal Fireworks;

(e) Discharge of less than \$50 worth of illegal Fireworks;

OREGON ADMINISTRATIVE RULES

(f) Smoking or the ignition of Fireworks within 50 feet of any Fireworks stand.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Type III Violations

837-12-1150 (1) Type III Violations are subject to penalties ranging from \$75 to \$250 a day depending upon Instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type III Violations include but are not limited to:

(a) Possession of \$100 or more of illegal 1.4g Fireworks;

(b) Sale of any amount of 1.4g Fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(c) Sales of allowed Fireworks to children less than 16 years of age;

(d) The purchase of Fireworks by an Oregon Retail Permit holder from an unlicensed Wholesaler;

(e) Purchase of any amount of 1.4g Fireworks without the necessary permits issued by the Office of State Fire Marshal or, where required, the local authority having jurisdiction;

(f) Manufacturing or altering any Fireworks;

(g) Storage of any amount of 1.3g Fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(h) Use of Fireworks in a manner that presents a danger to life or property.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93

Type IV Violations

837-12-1160 (1) Type IV Violations are subject to penalties ranging from \$125 to \$500 a day depending upon Instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type IV Violations include but are not limited to:

(a) Possession of \$50 or more of 1.3g Fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(b) Conducting a public Fireworks display without the necessary permits and/or pyrotechnician certification issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction

(c) Purchase of any amount of 1.3g Fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(d) Conducting the sale of any amount of 1.3g Fireworks without the necessary permits issued by the Office of State Fire Marshal and/or, where required, the local authority having jurisdiction;

(e) Conducting a public display using illegal or unauthorized Fireworks;

(f) Intentional or indiscriminate use of Fireworks which injure someone or cause more than \$250 in property damage;

(g) Wholesale sales of Fireworks without an Oregon Wholesale Permit;

(h) Storage of Fireworks by a Wholesaler in an unapproved location.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93

PENALTIES

480.990 Penalties. (1) Violation of any provision of ORS 480.010 to 480.040 is punishable, upon conviction, by a fine of not more than \$250.

(2) Violation of any provision of ORS 480.050, 480.060 or 480.290 is a Class C misdemeanor.

(3) Violation of ORS 480.070 is a Class A misdemeanor.

(4) Violation of ORS 480.085 is punishable, upon conviction, by a fine of not more than \$250.

(5) Violation of any provision of ORS 480.110 to 480.165 is a Class B misdemeanor. Violations thereof may be prosecuted in state or municipal courts when violations occur within the municipality served thereby. Justice and district courts shall have concurrent jurisdiction with circuit courts in all proceedings arising within ORS 480.110 to 480.160.

(6) Violation of any provision of ORS 480.210 to 480.215 and 480.235 to 480.265 or of any rule or regulation adopted under ORS 480.280 (1) is a Class B misdemeanor.

(7) Violation of any provision of ORS 480.420 to 480.460 is punishable, upon conviction, by a fine of not more than \$250.

(8) Violation of any provision of ORS 480.510 to 480.665, or any rule promulgated pursuant thereto, is a Class A misdemeanor. Whenever the Board of Boiler Rules has reason to believe that any person is liable to punishment under this subsection, it may certify the facts to the Attorney General, who may cause an appropriate proceeding to be brought. [Subsection (4) of 1963 Replacement Part enacted as 1961 c.722 § 3; subsection (10) enacted as 1961 c.485 §24; subsection (4) enacted as 1963 c.384 §3; 1965 c.602 §24; subsection (3) enacted as 1967 c.417 §22; subsection (7) enacted as 1971 c.518 § 25; 1983 c.676 §22; 1985 c.165 §3; 1987 c.158 §111; 1991 c.863 §59]