

Chapter 453

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DEFINITIONS

453.001 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Assistant director" means the Assistant Director for Health.

(2) "Division" means the Health Division of the Department of Human Resources. [1973 c 829 §15b]

HAZARDOUS SUBSTANCES**(General Provisions)**

453.005 Definitions for ORS 453.005 to 453.135. As used in ORS 453.005 to 453.135 and 453.990 (2) unless the context requires otherwise:

(1) "Combustible" means any substance which has a flash point above 80 degrees Fahrenheit to and including 140 degrees, as determined by the Tagliabue Open Cup Tester.

(2) "Commerce" means any and all commerce within the State of Oregon and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(3) "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.

(4) "Electrical hazard" means an article which because of its design or manufacture may cause personal injury or illness by electric shock when in normal use or when subjected to reasonably foreseeable damage or abuse.

(5) "Extremely flammable" means any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester.

(6) "Flammable" means any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

(7) "Hazardous substance" means:

(a) Any substance which is toxic, corrosive, an irritant, a strong sensitizer, flammable, combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children or any substance which the Assistant Director for Health finds, pursuant to the provisions of ORS

453.005 to 453.135 and 453.990 (2), comes within the definition of this paragraph.

(b) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Assistant Director for Health determines that the substance is sufficiently hazardous to require labeling in accordance with ORS 453.005 to 453.135 and 453.990 (2) in order to protect the public health. However, the term "hazardous substance" does not include any source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(c) Any toy or other article intended for use by children which the Assistant Director for Health determines in accordance with ORS 453.095 presents an electrical, thermal or mechanical hazard.

(d) Any article which is not pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act or regulated under ORS 616.335 to 616.385, but which is a hazardous substance within the meaning of paragraph (a) of this subsection by reason of bearing or containing pesticide.

(8) "Highly toxic" means any substance which falls within any of the following categories:

(a) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or

(b) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(c) Produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.

(9) "Immediate container" does not include package liners.

(10) "Irritant" means any substance not corrosive within the meaning of subsection (3) of this section, but which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly on the article involved or on a tag or other suitable material affixed thereto, and a requirement made by or under authority of ORS 453.005 to 453.135 and 453.990 (2) that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

(12) "Mechanical hazard" means an article which in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its design or manufacture:

- (a) From fracture, fragmentation, or disassembly of the article;
- (b) From propulsion of the article or any part or accessory thereof;
- (c) From points or other protrusions, surfaces, edges, openings, or closures;
- (d) From moving parts;
- (e) From lack or insufficiency of controls to reduce or stop motion;
- (f) As a result of self-adhering characteristics of the article;
- (g) Because the article or any part or accessory thereof may be aspirated or ingested;
- (h) Because of instability; or
- (i) Because of any other aspect of the article's design or manufacture.

(13) "Misbranded hazardous substance" means a hazardous substance that does not meet the labeling requirements of ORS 453.035.

(14) "Poison" means:

- (a) Arsenic and its preparations;
- (b) Corrosive sublimate;
- (c) Cyanides and preparations, including hydrocyanic acid;
- (d) Hydrochloric acid and any preparation containing free or chemically unneutralized

hydrochloric acid (HCL) in a concentration of 10 percent or more;

(e) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more;

(f) Strychnine;

(g) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in a concentration of 10 percent or more.

(h) Solution of ammonia, U.S.P. 28 percent.

(i) Carbohc acid.

(15) "Radioactive substance" means a substance which emits ionizing radiation.

(16) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances and which is designated as such by the Assistant Director for Health.

(17) "Thermal hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, because of its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(18) "Toxic substance" means any substance, other than radioactive substance, which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface. [1971 c 409 §1]

453.010 [Amended by 1969 c 631 §1, repealed by 1971 c 409 §16]

453.015 Application. ORS 453.005 to 453.135 and 453.990 (2) do not apply to:

(1) Articles such as chemical sets which by reason of functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use, and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed these directions and warnings.

(2) Common fireworks regulated under ORS 480.110 to 480.170.

(3) Pesticides subject to the Federal Insecticide, Fungicide and Rodenticide Act or regulated by ORS 616.335 to 616.385.

(4) Substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house.

(5) Foods or drugs otherwise regulated by this state.

(6) Poisons sold to the ultimate consumer for agricultural or industrial uses in amounts of 10 pounds or more.

(7) Any substance for use in a scientific laboratory. [1971 c 409 §3]

453.020 [Amended by 1953 c 64 §2, 1969 c 514 §50, renumbered 689 865]

453.025 Certain practices not affected by ORS 453.005 to 453.135. (1) Nothing in ORS 453.005 to 453.135 and 453.990 (2) is intended to interfere with or prevent the legitimate sale of completely denatured alcohol or methyl alcohol (methanol) by garages and filling stations, when used for antifreeze purposes and poured directly into the radiator of any automobile or motor vehicle by the seller thereof.

(2) Stores and shops other than pharmacies may sell completely denatured alcohol or methyl alcohol (methanol) in quantities of not less than one gallon only in original containers and only when properly labeled by distiller or wholesale distributor and bearing also seller's label. The name and address of seller must be applied by label on the container. The record of such wholesale quantities must be kept by the seller and information including date, means of identification and purported use must also be kept.

(3) Sellers of denatured alcohol or methyl alcohol (methanol) only are not required to obtain a shopkeepers' license under ORS 689.305.

(4)(a) Subject to the exemption under paragraph (b) of this subsection, retail sales of completely denatured alcohol, methyl alcohol (methanol), heating fuel mixtures and other forms of denatured alcohol except heating fuel mixtures and other forms of denatured alcohol containing less than five percent methanol by weight and containing additives that render them unpalatable for human consumption, in quantities of less than one gallon, shall be confined to pharmacists and registration of the sales must be made in their poison register.

(b) Hotel, restaurant or food catering wholesalers or suppliers of heating fuel mixtures and other forms of denatured alcohol are exempt from paragraph (a) of this subsection when the supplying of these products is restricted for use solely in the preparation of commercially prepared foods in businesses supplying food needs directly to the public for immediate consump-

tion. Products so classified when purchased shall be used only for this specified purpose and shall not be resold, given away or in any way made available to the public.

(5) Distributors and transporters, stores and shops, other than pharmacies, may deliver, or sell carbolic acid (phenol), for commercial use only in quantities of at least one pound but only when the container is properly labeled by the manufacturer or wholesaler and also bears a label containing the name and address of the seller or deliverer. Record of sales or deliveries of quantities of one pound or more of carbolic acid (phenol) shall be kept by the seller and deliverer. The record shall contain information, including the date, name of purchaser or person receiving the delivery and purported use.

(6) A distributor, transporter, store or shop shall not by reason of the delivery or sale of carbolic acid (phenol) in quantities of at least one pound be required to obtain a shopkeepers' license under ORS 689.305. Retail sales of carbolic acid (phenol) in quantities of less than one pound shall be confined to pharmacies and registration of such sales shall be made on their poison register.

(7) Except as specifically provided by law, the provisions of laws governing the sale and distribution of poisons do not apply to the sale or distribution of compounds, preparations or remedies which do not contain more than two grains of opium, or more than one-fourth grain of morphine, or more than one-eighth grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if solid or semisolid preparations, in one avoirdupois ounce; or to liniments, ointments or other preparations which are prepared for external use only, when sold or distributed for use as medicines.

(8)(a) Whenever poisons are dispensed in accordance with a written prescription by a practitioner, and such written prescription is filed and retained by the pharmacist as required by law, all of the requirements of ORS 453.005 to 453.135 and 453.990 (2) are satisfied.

(b) A pharmacist shall affix a poison label to a prescription when the prescribing practitioner so directs.

(9) Nothing in ORS 453.005 to 453.135 and 453.990 (2) applies to the manufacture or wholesale of any poisons. However, each box, vessel or package, other than prescriptions, in which any poison is contained must be labeled as provided in ORS 453.035. [1971 c.409 §4; 1977 c 785 §4; 1979 c 777 §48]

453.030 [Amended by 1969 c.631 §2, renumbered 453 175]

(Regulation; Prohibited Acts)

453.035 Labeling for sale. (1) The Assistant Director for Health shall adopt standards for the labeling of hazardous substances. He may permit or require the use of a recognized generic name or may require the common or usual name or the chemical name, if there is no common or usual name, of the hazardous substance or of each component which the Assistant Director for Health finds contributes substantially to its hazard.

(2) The Assistant Director for Health shall require:

(a) The word "Danger" on substances which are extremely flammable, corrosive or highly toxic;

(b) The word "Warning" or "Caution" on other hazardous substances;

(c) An affirmative statement of the principal hazard or hazards, such as "Flammable," "Combustible," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard;

(d) Precautionary measures describing the action to be followed or avoided, except when modified by rule of the Assistant Director for Health pursuant to subsection (4) of this section;

(e) Instruction, when necessary or appropriate, for first-aid treatment;

(f) The word "Poison" for any hazardous substance which is defined as "highly toxic" in ORS 453.005;

(g) Instructions for handling and storage of packages which require special care in handling or storage;

(h) Adequate directions for the protection of children from the hazard if the article is intended for use by children and is not a banned hazardous substance, or the statement "Keep out of the reach of children," or its practical equivalent, if the article is not intended for use by children; and

(i) The name and place of business of the manufacturer, packer, distributor or seller.

(3) Any statement required by this section must be in the English language, located prominently and in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

(4) If the Assistant Director for Health finds that, because of the size of the package involved

or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under ORS 453.005 to 453.135 and 453.990 (2) is impracticable or is not necessary for the adequate protection of the public health and safety, he may authorize the exemption of such substance from the requirements, to an extent consistent with adequate protection of the public health and safety. [1971 c 409 §5]

453.040 [Amended by 1969 c 631 §3, repealed by 1971 c 409 §16]

453.045 Poison registers; contents. (1) Every person who purchases poison shall be registered in a poison register, kept solely for that purpose, stating the date and hour of the sale, the name and address and the signature of the purchaser, the kind and quantity of the poison sold, a statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a pharmacist.

(2) Official poison registers shall be furnished by the State Board of Pharmacy only to pharmacists and shall be in the form of columns with the following headings:

(a) Date and hour.

(b) Name of purchaser.

(c) Residence address.

(d) Kind and quantity.

(e) Purpose of use.

(f) Means of identification.

(g) Signature of purchaser

(h) Signature of pharmacist.

(3) Each official poison register shall be open for inspection by the proper authorities at all times and shall be preserved for at least five years after the date of the last entry therein

[1971 c 409 §14]

453.050 [Amended by 1969 c 631 §4, repealed by 1971 c 409 §16]

453.055 Hazardous, banned hazardous, misbranded hazardous substances; declaration; removal from commerce. (1) The Assistant Director for Health shall declare to be a hazardous substance any substance or mixture of substances which he finds to be within the definition of hazardous substance in ORS 453.005.

(2) If the Assistant Director for Health finds that any hazardous substance is a misbranded hazardous substance, he shall require such reasonable variations or labeling requirements in addition to those required by ORS 453 035 as he

finds necessary for the protection of the public health and safety. However, if the Assistant Director for Health finds that any hazardous substance cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, he may declare the article to be a banned hazardous substance and require its removal from commerce.

(3) If the Assistant Director for Health finds that a toy or other article intended for use by children is a hazardous substance, bears or contains a hazardous substance in a manner as to be susceptible of access by a child to whom the toy or other article is entrusted or presents an electrical, mechanical or thermal hazard, he shall declare a toy or other article to be a banned hazardous substance and require its removal from commerce.

(4) If the Assistant Director for Health finds that any hazardous substance intended, or packaged in a form suitable, for use in a household, notwithstanding cautionary labeling as required under ORS 453.005 to 453.135 and 453.990 (2), involves a degree or nature of the hazard by its presence or use in households that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce, he shall declare the hazardous substance to be a banned hazardous substance and require its removal from commerce.

(5) Any hazardous substance intended, or packaged in a form suitable for use in the household or by children, which fails to bear a label in accordance with ORS 453.035 and the standards of the Assistant Director for Health shall be deemed to be a misbranded hazardous substance.

(6) Any hazardous substance contained in a reused food, drug or cosmetic container is a misbranded hazardous substance. [1971 c 409 §6]

453.060 [Amended by 1969 c 631 §5, repealed by 1971 c 409 §16]

453.065 Detention of suspected substances; petition for label of condemnation; decree, relabeling or destruction of substances; expenses. (1) Whenever the Assistant Director for Health or his designated representative finds or has probable cause to believe that any hazardous household substance is misbranded, or is a banned hazardous substance, he shall affix to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being misbranded or is a banned hazardous substance, and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or

otherwise until permission for removal or disposal is given by such agent or the court.

(2) When an article detained or embargoed under subsection (1) of this section has been found to be misbranded or a banned hazardous substance, the Assistant Director for Health shall petition the circuit court of the county within which the article is detained or embargoed for a label of condemnation of such article. However, if the Assistant Director for Health or his designated representative finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, after entry of the decree, the article shall be destroyed at the expense of the owner or claimant thereof, under supervision of the Assistant Director for Health or his designated representative, and all court costs and fees, and storage and other proper expenses, shall be taxed against the owner or claimant of such article or his agent. However, when the misbranding can be corrected by proper labeling of the article, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled, has been executed, the court may order that such article be delivered to the owner or claimant thereof for such labeling under the supervision of an agent of the Assistant Director for Health. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the Assistant Director for Health that the article is no longer in violation of ORS 453.005 to 453.135 and 453.990 (2), and that the expenses of such supervision have been paid. [1971 c 409 §8]

453.070 [Amended by 1969 c 631 §17, renumbered 453 185]

453.075 Repurchase of banned hazardous substances previously sold; refund of purchase price. (1) Any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance, whether or not it was such at the time of its sale, shall, in accordance with rules of the Assistant Director for Health, be repurchased as provided in this section.

(2) The manufacturer or distributor of any such article shall repurchase it from the person to whom he sold it, and shall:

(a) Refund to that person the purchase price paid for such article or substance; and

(b) If that person has repurchased such article or substance pursuant to this paragraph or paragraph (a) of this subsection, reimburse him for any amounts paid in accordance with this section for the return of such article or substance in connection with its repurchase; and

(c) If the manufacturer requires the return of such article or substance in connection with his repurchase of it, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(3) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund to the purchaser the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

(4) As used in this section:

(a) "Manufacturer" includes an importer for resale.

(b) "Distributor" includes a dealer who sells at wholesale an article or substance with respect to that sale. [1971 c 409 §13]

453.080 [Repealed by 1969 c 631 §17]

453.085 Prohibited acts. It shall be unlawful for any person to perform any of the following acts:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of a hazardous substance.

(3) The doing of any act with respect to a hazardous substance while the substance is in commerce, or while the substance is held for sale or resale after shipment in commerce, which results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(4) The receipt of or delivery into commerce of any misbranded hazardous substance or banned hazardous substance for pay or otherwise.

(5) The giving of a guarantee or undertaking which is false, except as a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, a person residing in the United States from whom he received in good faith the hazardous substance.

(6) The failure to permit entry or inspection as authorized by ORS 453.005 to 453.135 and 453.990 (2) or to permit access to and copying of

any record as authorized by ORS 453.005 to 453.135 and 453.990 (2).

(7) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification.

(8) The use by any person to his own advantage, or the revealing other than to the Assistant Director for Health or his authorized representative or to a court of any information acquired under authority of ORS 453.005 to 453.135 and 453.990 (2) concerning any method or process which is a trade secret entitled to protection.

(9) The sale or delivery of any poison to a minor under 18 years of age without the written order of a person 21 years of age or over, which written order shall be retained in the records of the seller and the poison register of the seller shall show by the name of the purchaser the fact that the sale or delivery was to a minor on order of an adult and show the adult's name and address.

(10) The sale or delivery of completely denatured alcohol, methyl alcohol (methanol), canned heat or other solidified forms of denatured alcohol, or any preparation containing those substances, to be used for beverage purposes.

(11) The sale or delivery of any poison without making or causing to be made an entry in a poison register of the seller in the manner required by law.

(12) The sale or delivery to any person of any poison without having learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose.

(13) The giving of a fictitious name or making any false representations to the seller or dealer when buying any of the poisons.

(14) The sale or delivery to any person by anyone other than a pharmacist of a poison.

(15) The removal or disposal of any detained or embargoed article without permission of the Assistant Director for Health or his designated representative. [1971 c 409 §2]

453.090 [Amended by 1953 c 351 §2, 1969 c 631 §7, repealed by 1971 c 409 §16]

(Administration)

453.095 Rules; determination of combustibility, flammability; designating strong sensitizers. (1) The authority to adopt rules for the administration and enforcement of ORS 453.005 to 453.135 and 453.990 (2) is vested in the Assistant Director for Health pursuant to ORS 183.310 to 183.550.

(2) The Assistant Director for Health shall cause the rules adopted under ORS 453.005 to 453.135 and 453.990 (2) to be no less strict than rules established pursuant to the Federal Hazardous Substances Act.

(3) The combustibility, and extreme flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the Assistant Director for Health to be generally applicable to such materials or containers, respectively, and established by the Assistant Director for Health.

(4) Before designating any substance as a strong sensitizer, the Assistant Director for Health, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity. [1971 c 409 §10]

453.100 [Amended by 1969 c 631 §8, repealed by 1971 c 409 §16]

(Enforcement)

453.105 Authority to enter premises; inspections; taking samples; payment. (1) For the purposes of enforcement of ORS 453.005 to 453.135 and 453.990 (2), the Assistant Director for Health or his designated representative upon presenting appropriate credentials to the owner, operator or agent in charge, may:

(a) Enter, at reasonable times, any factory, warehouse or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in commerce.

(b) Inspect, at reasonable times, and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein.

(c) Obtain samples of such materials or packages thereof, or of such labeling.

(2) If the Assistant Director for Health or his designated representative obtains any sample, prior to leaving the premises, he shall pay or offer to pay the owner, operator, or agent in

charge for such sample and give a receipt describing the sample obtained. [1971 c 409 §11]

453.110 [Amended by 1953 c 351 §2, 1965 c 90 §1; 1967 c 381 §1, 1969 c 631 §9, repealed by 1971 c 409 §16]

453.115 Access to records of persons carrying, receiving or storing in commerce; use as evidence limited; exemption for carriers. (1) For the purpose of enforcing the provisions of ORS 453.005 to 453.135 and 453.990 (2), carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon request, permit the Assistant Director for Health or his designated representative at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof. Such request must be accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates.

(2) Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

(3) Carriers shall not be subject to the other provisions of ORS 453.005 to 453.135 and 453.990 (2) by reason of their receipt, carriage, holding or delivery of hazardous substances in the usual course of business as carriers. [1971 c 409 §12]

453.120 [Amended by 1969 c 631 §10, repealed by 1971 c 409 §16]

453.125 Enjoining violations. In addition to the remedies provided in ORS 453.005 to 453.135 and 453.990 (2), the Assistant Director for Health may apply to the circuit court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of ORS 453.085. [1971 c 409 §7]

453.130 [Amended by 1969 c 631 §11, repealed by 1971 c 409 §16]

453.135 Notice required prior to institution of criminal proceedings. Before any violation of ORS 453.005 to 453.135 and 453.990 (2) is reported to any district attorney or police official for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Assistant Director for Health or his designated agent, either orally or in writing, in person, or by attorney, with regard to such

contemplated proceeding [1971 c 409 §9]

453.140 [Amended by 1969 c 631 §12, repealed by 1971 c 409 §16]

453.150 [Amended by 1969 c 631 §13, repealed by 1971 c 409 §16]

453.160 [Repealed by 1971 c 409 §16]

453.170 [Amended by 1969 c 631 §14, repealed by 1971 c 409 §16]

(Miscellaneous)

453.175 Necessity for poison label; content. Except as otherwise specifically provided by law, no person shall sell or dispense at retail any poison without affixing to the box, bottle, vessel or package containing the poison, a clear and legible label, either printed or written, bearing the name of the poison in English with the name and the place of business of the pharmacist, owner or manager by whom it is sold. [Formerly 453.030, 1977 c 582 §50]

453.185 False representation by purchaser prohibited. It is unlawful for any person to give a fictitious name or make any false representations to the seller or dealer when buying any of the poisons or any caustic or corrosive substances specified in ORS 453.005 (14) or in the rules of the State Board of Pharmacy. [Formerly 453.070, 1977 c 582 §51]

453.210 [Repealed by 1971 c 409 §16]

453.220 [Repealed by 1971 c 409 §16]

453.230 [Repealed by 1971 c 409 §16]

453.240 [Repealed by 1971 c 409 §16]

453.305 [1971 c 609 §2, 1975 c 606 §21, renumbered 469 300]

453.310 [Amended by 1969 c 514 §51, renumbered 689 855]

453.315 [1971 c 609 §1, 1975 c 606 §22, renumbered 469 310]

453.320 [Amended by 1969 c 514 §52, renumbered 689 860]

453.325 [1971 c 609 §3, 1975 c 606 §23, renumbered 469 320]

453.335 [1971 c 609 §7a, 1975 c 606 §25, renumbered 469 330]

453.345 [1971 c 609 §8, 1973 c 80 §57, 1975 c 606 §26, renumbered 469 350]

453.355 [1971 c 609 §9, 1975 c 606 §27, renumbered 469 360]

453.365 [1971 c 609 §10, 1975 c 552 §38, 1975 c 606 §28, renumbered 469 370]

453.375 [1971 c 609 §22, 1975 c 606 §29, renumbered 469 380]

453.385 [1971 c 609 §11, 1975 c 606 §30, renumbered 469 390]

453.395 [1971 c 609 §12, 1975 c 606 §31, renumbered 469 400]

453.405 [1971 c 609 §21, 1973 c 687 §2, 1975 c 606 §32, renumbered 469 420]

453.415 [1971 c 609 §13, 1975 c 606 §33, renumbered 469 430]

453.425 [1971 c 609 §23, renumbered 469 440]

453.435 [1971 c 609 §5, 1975 c 606 §34, renumbered 469 450]

453.445 [1971 c 609 §19, 1975 c 606 §35, renumbered 469 460]

453.455 [1971 c 609 §6, 1975 c 606 §36, renumbered 469 470]

453.465 [1971 c 609 §16, repealed by 1975 c 606 §60]

453.475 [1971 c 609 §17, 1975 c 606 §37, renumbered 469 480]

453.485 [1971 c 609 §21a, repealed by 1975 c 606 §60]

453.495 [1971 c 609 §6a, renumbered 469 490]

453.505 [1971 c 609 §14, 1975 c 606 §38, renumbered 469 500]

453.515 [1971 c 609 §7, 1975 c 606 §39, renumbered 469 510]

453.525 [1971 c 609 §18, 1975 c 606 §40, renumbered 469 520]

453.535 [1971 c 609 §15, 1975 c 606 §41, renumbered 469 530]

453.545 [1971 c 609 §25, 1975 c 606 §42, renumbered 469 540]

453.555 [1971 c 609 §26, 1975 c 606 §43, renumbered 469 550]

453.565 [1971 c 609 §20, 1975 c 606 §44, renumbered 469 560]

453.575 [1971 c 609 §24, renumbered 469 570]

453.590 [1973 c 246 §1, 1975 c 606 §45, renumbered 453 765]

453.595 [1973 c 246 §3, renumbered 453 770]

RADIATION SOURCES

453.605 Definitions for ORS 453.605 to 453.745. In ORS 453.605 to 453.745, unless the context requires otherwise:

(1) "Division" means the Health Division of the Department of Human Resources.

(2) "Assistant director" means the Assistant Director for Health.

(3) "By-product material" means radioactive material, other than special nuclear material, that is yielded or made radioactive by exposure

to the radiation incident to the process of producing or utilizing special nuclear material.

(4) "Electronic product" means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation, such as, but not limited to microwave ovens, laser systems or diathermy machines.

(5) "Federal Government" means the United States or any agency or instrumentality of the United States.

(6) "General license" means a license, effective under rules of the division without the filing of an application, to acquire, own, possess, use or transfer a device or equipment that produces radiation, or a quantity of, or a device or equipment that utilizes, by-product material, source material, special nuclear material or other radioactive material that occurs naturally or is produced artificially.

(7) "Person" means any of the following other than the United States Atomic Energy Commission or any successor thereto:

(a) Individual, group, association, firm, partnership, corporation, trust, estate, agency or public or private institution;

(b) Political subdivision or agency of this state,

(c) State other than this state or any political subdivision or agency of a state other than this state; or

(d) The legal successor, representative, agent or agency of a person listed in paragraphs (a) to (c) of this subsection.

(8) "Radiation" means:

(a) Ionizing radiation including gamma rays, X-rays, alpha and beta particles, protons, neutrons and other atomic or nuclear particles or rays

(b) Any electromagnetic radiation which can be generated during the operations of electronic products and which the division has determined to present a biological hazard to the occupational or public health and safety but does not mean electromagnetic radiation which can be generated during the operation of an electronic product which is licensed by the Federal Communications Commission.

(c) Any sonic, ultrasonic or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and which the division has determined to present a biological hazard to the occupational or public health and safety.

(9) "Source material" means:

(a) Uranium, thorium or any other material which the division declares to be essential to the production of special nuclear material by an order made after the United States Atomic Energy Commission or any successor thereto has determined the material to be source material; or

(b) Ore that contains such a concentration of one or more materials mentioned in paragraph (a) of this subsection that the division declares the ore to be essential to the production of special nuclear material by an order made after the United States Atomic Energy Commission or any successor thereto has determined such ore to be source material.

(10) "Special nuclear material" means any of the following that is not source material:

(a) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, or any other material which the division declares to be capable of releasing substantial quantities of atomic energy by an order made after the United States Atomic Energy Commission or any successor thereto has determined the material to be special nuclear material.

(b) Material artificially enriched by any material mentioned in paragraph (a) of this subsection.

(11) "Specific license" means a license, issued after application, to receive, acquire, own, possess, use, manufacture, produce or transfer a device or equipment that produces radiation, or a quantity of, or a device or equipment that utilizes, by-product material, source material or special nuclear material or other radioactive material that occurs naturally or is produced artificially.

(12) "X-ray machine" means a device or equipment that produces radiation when in operation but does not utilize by-product material, source material, special nuclear material or other radioactive material that occurs naturally or is produced artificially. [1961 c 664 §3, 1973 c 90 §1]

453.610 [1957 c 399 §2, repealed by 1961 c 664 §16]

453.615 Statement of policy. It is the policy of the State of Oregon in furtherance of its responsibility to protect the public health and safety:

(1) To institute and maintain a regulatory program for radiation sources so as to provide for:

(a) Compatibility with the standards and regulatory programs of the Federal Government;

(b) An integrated effective system of regulation within the state; and

(c) A system consonant in so far as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of radiation sources for peaceful purposes consistent with the health and safety of the public. [1961 c 664 §1]

453.620 [1957 c 399 §1, repealed by 1961 c 664 §16]

453.625 Purpose of ORS 453.605 to 453.745. It is the purpose of ORS 453.605 to 453.745 to effectuate the policies set forth in ORS 453.615 by providing for:

(1) A program of effective regulation of radiation sources for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the Federal Government and this state and to facilitate intergovernmental cooperation with respect to use and regulation of radiation sources to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product materials, source materials and special nuclear materials; and

(4) A program to permit maximum utilization of radiation sources consistent with the health and safety of the public. [1961 c 664 §2]

453.630 [1957 c 399 §§3, 4, repealed by 1961 c 664 §16]

453.635 Health Division as State Radiation Control Agency; duties; applicability of ORS 453.605 to 453.745. (1) The Health Division is the State Radiation Control Agency, but ORS 453.605 to 453.745 do not apply to a radiation source while it is being transported on a railroad car or in a motor vehicle subject to and in conformity with rules adopted by the Public Utility Commissioner of Oregon nor do they apply to any matter other than transportation of radiation sources within the authority of the Energy Facility Siting Council under ORS chapter 469. To protect occupational and public health and safety against radiation hazards the division shall:

(a) Develop programs to evaluate hazards associated with the use of radiation sources; and

(b) With due regard for compatibility with the regulatory programs of the Federal Government, promulgate standards and make reasonable regulations relating to registration, licensing, use, handling, transport, storage, disposal,

other than disposal regulated by ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930, and control of radiation sources, including but not limited to by-product materials, source materials and special nuclear materials.

(2) To protect occupational and public health and safety against radiation hazards the division or its authorized representative may.

(a) Advise, consult and cooperate with other agencies of this state, the Federal Government, other states, interstate agencies, political subdivisions of this state or other states and with groups concerned with control of radiation sources;

(b) Encourage, participate in or conduct studies, investigations, training, research or demonstrations relating to control of radiation sources;

(c) Accept and administer loans, grants or other funds or gifts, conditional or otherwise, from the Federal Government or from any other source, public or private;

(d) Collect and disseminate information relating to control of radiation sources; and

(e) Subject to any applicable provision of the State Personnel Relations Law, appoint officers and employes and prescribe their duties and fix their compensation. [1961 c 664 §4, 1971 c 699 §17, 1977 c 796 §6]

453.640 [1957 c 399 §5, repealed by 1961 c 664 §16]

453.645 Radiation Advisory Committee; composition; compensation and expenses. The assistant director shall appoint a Radiation Advisory Committee to advise the division on matters relating to radiological health and radiation protection. The committee shall consist of eight persons who because of their training and experience are qualified to advise the division on such matters and they shall serve at the pleasure of the assistant director. The members of the Radiation Advisory Committee are entitled to compensation and expenses as provided in ORS 292.495. [1961 c 664 §4a, 1969 c 314 §47, 1973 c 90 §2]

453.650 [1957 c 399 §6, repealed by 1961 c 664 §16]

453.655 License or registration required for radiation source. When under ORS 453.605 to 453.745 a license or registration or both, as the case may be, is required for that purpose, no person shall receive, acquire, own, possess, use, manufacture, produce or transfer any radiation source without the license or registration or both, as the case may be. [1961 c 664 §6]

453.665 Licenses; application; modifications; exemptions. (1) Subject to subsection (2) of this section, the division shall provide for the issuance, allowance, modification, amendment, revision, suspension and revocation of general and specific licenses that relate to by-product materials, source materials or special nuclear materials and to devices or equipment that utilize any of those materials. The division shall not require a specific license for the use of an X-ray machine within the limits of his license by a licensed dentist, chiropracist or veterinarian or by a person licensed to practice medicine, surgery, osteopathy, chiropractic, naturopathy or any other system or method of healing. Otherwise the division may require registration or a general or specific license or both registration and a general or specific license with respect to any radiation source.

(2)(a) Each application for a specific license shall be in writing and shall state such information as the division by regulation determines both to be necessary to decide the applicant's technical, insurance, financial or other qualifications and to be reasonable and necessary to protect occupational and public health and safety. At any time after the filing of the application for and before the expiration of a specific license the division may require further written statements, and may cause such inspections to be made as the division considers necessary, to determine whether the license should be granted, denied, modified, amended, revised, suspended or revoked. An application for a specific license or any statement relating to that application or to any license pursuant thereto shall be signed by the applicant or licensee. The division may require any such application or statement to be made under oath or affirmation.

(b) Each license shall be in such form and contain such terms and conditions as the division considers necessary to protect the occupational and public health and safety.

(c) No general or specific license or right to possess or use a radiation source under a general or specific license may be assigned in any manner without the approval of the division.

(d) The terms and conditions of any general or specific license may be modified, amended or revised by regulation or order.

(e) Subject to any requirement for registration, the division may by regulation recognize a license from any other state or from the Federal Government as compliance with a license requirement of this section or of ORS 453.635.

(f) When the division finds that a radiation source, a use of a radiation source, a user of a

radiation source or a class of such sources, uses or users will not constitute a significant risk to the health and safety of the public, the division may exempt the source, use, user or class, as the case may be, from any requirement for registration or a license. [1961 c 664 §5]

453.670 X-ray machine registration fee; annual license fees; use of fees. (1) The division shall charge an annual registration fee for an X-ray machine registration granted pursuant to ORS 453.665 which shall not exceed \$15 for a dental X-ray machine and those machines used specifically for nonmedical scientific teaching purposes and shall not exceed \$40 for all other classes.

(2) The division shall charge an annual license fee for a specific license granted pursuant to ORS 453.665 which shall not exceed \$3,000 as determined by rule of the division and approved by the Executive Department.

(3) The fees prescribed by the division pursuant to this section are due and payable on or before July 1 of each year.

(4) All moneys received by the division under this section shall be paid into the State Treasury, deposited in the General Fund to the credit of the Health Division Account, and used exclusively by the division for the purposes of ORS 453.605 to 453.745. [1969 c 304 §2, 1973 c 182 §10, 1979 c 696 §9]

453.675 Assumption by state of Federal Government's responsibility regarding radiation sources; effect of federal licenses. (1) When in his opinion such agreements will promote public health and safety and assist in the peaceful uses of radiation sources, the Governor on behalf of this state shall enter into agreements with the Federal Government providing for discontinuance of certain of the Federal Government's responsibilities with respect to radiation sources and the assumption thereof by this state.

(2) When a person immediately before the effective date of an agreement under subsection (1) of this section has a license from the Federal Government to do anything which relates to by-product material, source material or special nuclear material and which on the effective date of the agreement is subject to the control of this state, he shall be considered to have a like license under ORS 453.605 to 453.745 until the expiration date specified in the license from the Federal Government or until the end of the 90th day after the person receives notice from the division that the license will be considered expired, whichever is earlier. [1961 c 664 §7]

453.685 Entry on property for inspection purposes; issuance of warrant; liability for entry. (1) The assistant director may enter at any reasonable time upon any private or public property, with the permission of the owner or custodian, to determine whether there is compliance with ORS 453.605 to 453.745 and rules lawfully issued pursuant thereto. When such permission is not obtained or given, if the assistant director has grounds to believe that a violation of ORS 453.605 to 453.745 or rules lawfully issued pursuant thereto exists, the assistant director may apply to the proper judicial officer for a warrant to enter upon the property for purposes of inspection, search or seizure consonant with the scope of ORS 453.605 to 453.745; except that in a case where the assistant director has grounds to believe that a violation of ORS 453.605 to 453.745 or rules pursuant thereto exists which presents a clear and present danger to the health, safety or security of the state or its citizens, the assistant director may make such entry of property as is reasonable to abate the danger involved and for that purpose.

(2) Upon application to the proper judicial officer for a warrant to enter property under this section, the judicial officer shall forthwith summarily determine whether or not grounds to issue such warrant exists, and if he finds such exists, he shall immediately issue a warrant authorizing entry by the assistant director upon the described property for the purposes of ORS 453.605 to 453.745. The assistant director shall not be liable for injury or damage resulting from his action taken or authorized in good faith and without malice under the apparent authority of this section, even though such action is later judicially determined to be unlawful. [1961 c 664 §8, 1973 c 90 §3]

453.695 Records concerning radiation source; notice of exposure to radiation source. (1) When the division by regulation so requires, any person who possesses or uses a radiation source shall cause to be made, in the manner prescribed by the division, records relating to the receipt, storage, transfer and disposition of the source and to such other matters as the division prescribes.

(2) Any person who possesses or uses a radiation source shall cause to be made, in the manner prescribed by the division, records showing the radiation exposure of any individual who is affected by such possession or use and for whom the division by regulation requires personnel monitoring.

(3)(a) Each person who possesses or uses a radiation source and who has reason to believe

that any individual has received from that source radiation exposure in excess of the maximum permissible exposure established for an individual by regulations of the division shall give that individual notice of the possible exposure with a copy of any record of the exposure.

(b) Any person who possesses or uses a radiation source and who, in connection with that possession or use, employs an individual for whom the division by regulation requires personnel monitoring, in addition to any requirement of paragraph (a) of this subsection shall, if the individual so requests or if regulations of the division so require, give the individual a copy of the individual's personnel monitoring exposure record annually and at the end of the employment.

(4) Upon the request of the division or its authorized representative, the custodian of any record required by this section shall give a copy of that record to the division or its authorized representative. [1961 c 664 §10]

453.705 Impounding radiation source upon violation. When a radiation source is in the possession, custody or control of any person who is not equipped to observe or who fails to observe any applicable provision of or regulation pursuant to ORS 453.605 to 453.745, upon the issuance of an emergency order under ORS 453.755 the division or its authorized representative may cause that source to be impounded. [1961 c 664 §11, 1975 c 241 §1]

453.715 Injunction against violation. When the division in writing notifies the Attorney General that, in the judgment of the division, a person has engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provision of or regulation pursuant to ORS 453.605 to 453.745, if the division so requests, the Attorney General shall apply to the circuit court for the county of that person's residence for an order enjoining such act or practice, or for an order directing compliance; and upon a showing by the division that that person has engaged or is about to engage in any such act or practice, the court may grant a permanent or temporary injunction or restraining order or other order. [1961 c 664 §12]

453.725 [1961 c 664 §13, repealed by 1971 c 734 §21]

453.735 ORS 453.605 to 453.745 and rules supersede contrary laws or regulations. Each provision of ORS 453.605 to 453.745 or rules pursuant thereto supersedes any inconsistent provision of any ordinance, resolution, regulation, rule or order of any county, city, other political subdivision or public corporation

of this state. [1961 c 664 §14, 1973 c 90 §4]

453.745 Intergovernmental cooperation to control radiation sources. (1) Subject to the approval of the Governor, to protect the public health and safety and to assist in the peaceful uses of radiation sources the division may cooperate with the Federal Government, other states or interstate agencies to perform functions, including inspection, that relate to control of radiation sources.

(2) The division may institute programs to qualify personnel to carry out the provisions of ORS 453.605 to 453.745 and may make those personnel available for participation with the Federal Government, other states or interstate agencies in any program in furtherance of the purposes of ORS 453.605 to 453.745. [1961 c 664 §9]

453.750 Elimination of radiation source danger; compelling compliance. (1) Whenever it appears to the Assistant Director for Health that a radiation source is presenting an imminent and substantial endangerment to the health or safety of persons, the assistant director may, without the necessity of prior administrative procedures or hearing, enter an order requiring the person or persons responsible for the radiation source to immediately take such action as is necessary to eliminate the endangerment. The assistant director shall, if requested, provide a prompt hearing after such order, in accordance with ORS 183.310 to 183.550, after which the order shall be continued, modified or revoked.

(2) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the radiation source is located shall compel compliance with the order in the same manner as with an order of that court. [1975 c 241 §3]

453.755 When hearing required; procedure; rules. (1) Where the division proposes to refuse to issue or renew a license, to modify, amend, revise, revoke or suspend a license or to determine compliance with or grant exemption from a regulation of the division, opportunity for

hearing shall be accorded as provided in ORS 183.310 to 183.550.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS 183.310 to 183.550. [1971 c 734 §66, 1975 c 241 §2]

453.765 [Formerly 453 590, 1979 c 726 §1; renumbered 469 533]

453.770 [Formerly 453 595; 1979 c 726 §2, renumbered 469 536]

453.810 [1969 c 444 §1, repealed by 1979 c 290 §7]

453.820 [1969 c 444 §2, repealed by 1979 c 290 §7]

453.830 [1969 c 444 §3, 1979 c 750 §1, repealed by 1979 c.290 §7]

453.840 [1969 c.444 §4, repealed by 1979 c 290 §7]

453.850 [1969 c 444 §5, repealed by 1979 c.290 §7]

PENALTIES

453.990 Criminal penalties. (1) Any violation of ORS 453.175 or 453.185 or any rules of the State Board of Pharmacy thereunder is a Class C misdemeanor.

(2) Violation of any of the provisions of ORS 453.005 to 453.135 is a Class B misdemeanor. A second and subsequent violation of any of the provisions of ORS 453.005 to 453.135 is a Class A misdemeanor.

(3) Violation of any provision of ORS 453.605 to 453.745 is a Class A misdemeanor. [Subsection (10) enacted as 1961 c 664 §15, 1969 c 631 §15, subsection (6) enacted as 1971 c 409 §15, 1977 c 582 §52]

453.992 Jurisdiction. Circuit courts and district courts have concurrent original jurisdiction to try cases arising out of violations of ORS 453.175 and 453.185. [Amended by 1969 c 631 §16, 1977 c.582 §53]

453.994 [1971 c 609 §27, renumbered 469 992]

