Chapter 453 — Hazardous Substances; Radiation Sources

2001 EDITION

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GENERAL PROVISIONS

453.001 Definitions for ORS 453.001 to 453.185 and 453.605 to 453.807. As used in ORS 453.001 to 453.185 and 453.605 to 453.807, unless the context requires otherwise:

(1) “Department” means the Department of Human Services.

(2) “Director” means the Director of Human Services. [1973 c.829 §15b; 2001 c.900 §200]

HAZARDOUS SUBSTANCES

(Generally)

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 Director of Human Services 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 director 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 director determines in accordance with ORS 453.055 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 humans 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 (HNO_3) in a concentration of five percent or more;

(f) Strychnine;

(g) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H_2SO_4) in a concentration of 10 percent or more;

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

(i) Carbolic 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 Director of Human Services.

(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 humans through ingestion, inhalation, or absorption through any body surface. [1971 c.409 §1; 1993 c.18 §111]

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 480.165.

(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 consumption. 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 Standards for labeling of hazardous substances. (1) The Director of Human Services shall adopt standards for the labeling of hazardous substances. The director 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 director finds contributes substantially to its hazard.

(2) The director 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 director 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 director 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, the director 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 Director of Human Services shall declare to be a hazardous substance any substance or mixture of substances which the director finds to be within the definition of hazardous substance in ORS 453.005.

(2) If the director finds that any hazardous substance is a misbranded hazardous substance, the director shall require such reasonable variations or labeling requirements in addition to those required by ORS 453.035 as the director finds necessary for the protection of the public health and safety. However, if the director 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, the director may declare the article to be a banned hazardous substance and require its removal from commerce.

(3) If the director 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, the director shall declare a toy or other article to be a banned hazardous substance and require its removal from commerce.

(4) If the director 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, the director 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 director 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 Director of Human Services or a designated representative finds or has probable cause to believe that any hazardous household substance is misbranded, or is a banned hazardous substance, the director or designated representative 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 director 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 director or a designated representative finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, the director or designated representative 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 director or a 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 the owner or claimant 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 or irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, 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 director. 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 director 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; 1991 c.331 §64; 1997 c.631 §474]

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 Director of Human Services, be repurchased as provided in this section.

(2) The manufacturer or distributor of any such article shall repurchase it from the person to whom the manufacturer or distributor 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 the person 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 the 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 the dealer, the dealer shall refund to the purchaser the purchase price paid for it and reimburse the person 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 the person 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 the advantage of the person, or the revealing other than to the Director of Human Services or the authorized representative of the director 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 Director of Human Services or a 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 Director of Human Services pursuant to ORS 183.310 to 183.550.

(2) The director 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 director to be generally applicable to such materials or containers, respectively, and established by the director.

(4) Before designating any substance as a strong sensitizer, the director, 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 Director of Human Services or a 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 director or a designated representative obtains any sample, prior to leaving the premises, the director or designated representative 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 Director of Human Services or a 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 Director of Human Services 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 the person's views before the Director of Human Services or the designated agent of the director, 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]

ART AND CRAFT MATERIALS

(General Provisions)

453.205 Definitions for ORS 453.205 to 453.275. As used in ORS 453.205 to 453.275:

(1) “Art or craft material” means any raw or processed material or manufactured product marketed or being represented by the manufacturer, repackager or principal importer as being suitable for use in any phase of the creation of any work of visual or graphic art of any medium. “Art or craft material” does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stats. 163) or drugs, devices or cosmetics, which are subject to the Federal Food, Drug and Cosmetics Act (52 Stats. 1040).

(2) “Department” means the Department of Human Services.

(3) “Human carcinogen” means any substance listed as a human carcinogen by the International Agency for Research on Cancer.

(4) “Medium” includes, but is not limited to, paintings, drawings, prints, sculpture, ceramics, enamels, jewelry, stained glass, plastic sculpture, photographs and leather and textile goods.

(5) “Potential human carcinogen” means one of the following:

(a) Any substance which does not meet the definition of human carcinogen, but for which there exists sufficient evidence of carcinogenicity in animals, as determined by the International Agency for Research on Cancer.

(b) Any chemical shown to be changed by the human body into a human carcinogen.

(6) “Toxic substance causing chronic illness” means any of the following:

(a) Human carcinogens.

(b) Potential human carcinogens.

(c) Any substance included in the list of hazardous substances prepared by the Department of Consumer and Business Services pursuant to the Hazard Communication Rule, Division 155, notwithstanding exemptions made for substances on the list which are used in particular forms, circumstances or concentrations, if the health hazard presented by the substance is not the subject of label statements required by federal law. [1985 c.539 §1]

453.210 [Repealed by 1971 c.409 §16]

453.215 Legislative findings. The Legislative Assembly:

(1) Finds and declares that there exists a significant danger to the public health and safety from exposure to art or craft material which contains toxic chemicals. This health risk threatens not only professional artists and craftspersons, but art teachers, students at every educational level, hobbyists and children. Toxic substances may be employed during the course and scope of creating art or craft objects of all varieties.

(2) Finds and declares that present labeling of ingredients and hazards of art or craft material is insufficient to adequately protect the consumers of this state from chronic adverse health effects. Because many persons do not know what toxic chemical substances they work with, proper precautionary actions cannot be taken. Disclosure of toxic ingredients, their possible adverse effects on health, and instructions for safe handling, will substantially minimize unnecessary exposure to excessive risk.

(3) Finds and declares that it is consistent to impose upon those who manufacture, repackage and distribute art or craft material a duty to convey to consumers information about the potential health hazards of the products they manufacture.

(4) Finds and declares that school children are not sufficiently protected by present health laws insofar as materials which may be seriously harmful are not so labeled and therefore children are not properly warned as to the dangers inherent in the use of these materials.

(5) Intends by ORS 453.205 to 453.275 to insure that consumers be provided information concerning the nature of the toxic substances with which they are working and the known and suspected health hazards of these substances and to insure the uniformity of labeling standards, so that materials with similar hazards also have essentially similar labels and to insure that elementary school children are protected by prohibiting the sale of those toxic substances to schools and school districts for use in kindergarten and grades 1 through 6. [1985 c.539 §2]

453.220 [Repealed by 1971 c.409 §16]

(Regulation; Prohibited Acts)

453.225 When presumption of toxic ingredient arises. For the purposes of ORS 453.205 to 453.275, an art or craft material shall be presumed to contain an ingredient which is a toxic substance causing chronic illness if the ingredient, whether an intentional ingredient or an impurity, is one percent or more by weight of the mixture or product, or if the Department of Human Services determines that the toxic or carcinogenic properties of the art or craft material are such that labeling is necessary for the adequate protection of the public health and safety. [1985 c.539 §3]

453.230 [Repealed by 1971 c.409 §16]

453.235 Distribution of material containing toxic substances prohibited if printed warning not attached. No person shall distribute any art or craft material containing toxic substances causing chronic illness on which the person:

(1) Has failed to affix a conspicuous label containing the signal word "WARNING," to alert users of potential adverse health effects.

(2) Has failed to affix a conspicuous label warning of the health related dangers of the art or craft material.

(a) If the product contains a human carcinogen, the warning shall contain the statement: "CANCER HAZARD! Overexposure may create cancer risk."

(b) If the product contains a potential human carcinogen and does not contain a human carcinogen, the warning shall contain the statement: "POSSIBLE CANCER HAZARD! Overexposure might create cancer risk."

(c) If the product contains a toxic substance causing chronic illness, the warning shall contain, but not be limited to, the following statement or statements where applicable:

(A) "May cause sterility or damage to reproductive organs."

(B) "May cause birth defects or harm to developing fetus."

(C) "May be excreted in human milk causing harm to nursing infant."

(D) "May cause central nervous system depression or injury."

(E) "May cause numbness or weakness in the extremities."

(F) "Overexposure may cause damage to (specify organ)."

(G) "Heating above (specify degrees) may cause hazardous decomposition products."

(d) If a product contains more than one chronically toxic substance, or if a single substance can cause more than one chronic health effect, the required statements may be combined into one warning statement.

(3) Has failed to affix on the label a list of ingredients which are toxic substances causing chronic illness.

(4) Has failed to affix on the label a statement or statements of safe use and storage instructions, conforming to the following list. The label shall contain, but not be limited to, as many of the following risk statements as are applicable:

(a) "Keep out of reach of children."

(b) "When using, do not eat, drink or smoke."

(c) "Wash hands after use and before eating, drinking or smoking."

(d) "Keep container tightly closed."

(e) "Store in well ventilated area."

(f) "Avoid contact with skin."

(g) "Wear protective clothing (specify type)."

(h) "Wear National Institute of Occupational Safety and Health (NIOSH) certified masks for dusts, mists or fumes."

(i) "Wear NIOSH certified respirator with appropriate cartridge for (specify type)."

(j) "Wear NIOSH certified supplied air respirator."

(k) "Use window exhaust fan to remove vapors and assure adequate ventilation (specify explosion proof if necessary)."

(L) "Use local exhaust hood (specify type)."

(m) "Do not heat above (specify degrees) without adequate ventilation."

(n) "Do not use or mix with (specify material)."

(5) Has failed to affix on the label a statement on where to obtain more information, such as "call your local poison control center for more health information."

(6) Has failed to affix on the label the name and address of the manufacturer.

(7)(a) If the information listed in subsection (4)(a) to (n) of this section cannot fit on the package label, a package insert shall be required to convey all the necessary information to the consumer. In this event, the label shall contain a statement to refer to the package insert, such as "CAUTION: See package insert before use." The language on this insert shall be nontechnical and nonpromotional in tone and content.

(b) For purposes of this subsection, “package insert” means a display of written, printed or graphic matter upon a leaflet or suitable material accompanying the art supply.

(8) The requirements set forth in subsections (1) to (7) of this section shall not be considered to be complied with unless the required words, statements or other information appear on the outside container or wrapper, or on a package insert which is easily legible through the outside container or wrapper and is painted in a color in contrast with the product or the package containing the product.

(9) The department may exempt a material from full compliance with ORS 453.205 to 453.275. In considering this exemption, the Health Division shall take into consideration the potential for reasonably foreseeable misuse of a material by a child.

(10) If an art or craft material complies with labeling standards D-4236 of the American Society for Testing and Materials (ASTM), the material complies with the provisions of ORS 453.205 to 453.275, unless the division determines that the label on an art or craft material does not satisfy the purposes of ORS 453.205 to 453.275. [1985 c.539 §4]

453.240 [Repealed by 1971 c.409 §16]

453.245 Order or purchase by school of material considered to contain toxic substance prohibited; exceptions. (1) For the 1986-1987 academic year and for each academic year thereafter, no art or craft material which is considered by the Department of Human Services to contain a toxic substance causing chronic illness, as defined in ORS 453.205, shall be ordered or purchased by any school or school district for use by students in kindergarten and grades 1 through 6.

(2) Commencing June 1, 1986, any substance which is defined in ORS 453.205 as a toxic substance causing chronic illness shall not be purchased or ordered by a school or school district for use by students in grades 7 through 12 unless it meets the labeling standards specified in ORS 453.235.

(3) If the department finds that, because the chronically toxic, carcinogenic or radioactive substances contained in an art or craft material cannot be ingested, inhaled or otherwise absorbed into the body during any reasonably foreseeable use of the material in a way that could pose a potential health risk, the department may exempt the material from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety. [1985 c.539 §5]

(Information; Labeling)

453.255 List of authorized art and craft materials; distribution of lists; information about and disposal of toxic materials. (1) By June 1, 1986, the Department of Human Services shall develop a list of those art or craft materials which can be purchased or ordered for use in kindergarten and in grades 1 through 6 and a list of materials which, while not currently sold or manufactured, may be reasonably suspected to still exist at some schools. In developing the lists, the department shall consult with manufacturers of art supplies, artists’ groups, health organizations and toxicologists as the department considers appropriate.

(2) The Superintendent of Public Instruction shall distribute the lists to all school districts and shall make the lists available to preschools, child care centers and other businesses and organizations which involve children in the use of art or craft materials.

(3) The superintendent shall inform school districts of the requirements of ORS 453.205 to 453.275 and shall encourage school districts to dispose of art or craft materials which may contain human carcinogens, potential human carcinogens or toxic substances causing chronic illness, but which are not affected by ORS 453.205 to 453.275. [1985 c.539 §§6,7]

453.265 Filing of formulation information with poison control centers required; labeling. (1) The manufacturer of any art or craft material sold, distributed, offered for sale or exposed for sale in this state shall supply to a national poison control network approved by the Director of Human Services of the Department of Human Services the formulation information required by that network for dissemination to poison control centers. Failure to file formulation information with an approved poison control network is a violation of ORS 453.205 to 453.275.

(2) The requirements set forth in ORS 453.235 shall not be considered to be complied with unless all required words, statements or other information accompany art or craft materials from manufacturer to consumer, not excluding any distributor, packager or repackager. [1985 c.539 §8]

(Civil Penalty)

453.275 Civil penalty. Violation of ORS 453.235 or 453.265 is punishable by a civil penalty of not to exceed $1,000 that may be imposed and collected in the manner prescribed in ORS 441.705 to 441.745. [1985 c.539 §9]

453.305 [1971 c.609 §2; 1975 c.606 §21; renumbered 469.300]

COMMUNITY INFORMATION ON HAZARDOUS SUBSTANCES

453.307 Definitions for ORS 453.307 to 453.414. As used in ORS 453.307 to 453.414:

(1) "Community right to know regulatory program" or "local program" means any law, rule, ordinance, regulation or charter amendment established, enforced or enacted by a local government that requires an employer to collect or report information relating to the use, storage, release, possession or composition of hazardous substances and toxic substances if a primary intent of the law, rule, ordinance, regulation or charter amendment is the public distribution of the information.

(2) "Emergency service personnel" includes those entities providing emergency services as defined in ORS 401.025 (8) and (10).

(3) "Employer" means:

(a) Any person operating a facility that is included in one or more of the 21 standard industrial classification categories in Appendix B of the Natural Resources Defense Council v. Train Consent Decree of June 8, 1976 (8 E.R.C. 2120); or

(b) Any person operating a facility designated by the State Fire Marshal.

(4) "Fire district" means any agency having responsibility for providing fire protection services.

(5) "Hazardous substance" means:

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the State Fire Marshal;

(b) Any substance for which a material safety data sheet is required by the Director of the Department of Consumer and Business Services under ORS 654.035 and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienists; or

(c) Radioactive waste and material as defined in ORS 469.300 and radioactive substance as defined in ORS 453.005.

(6) "Health professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(7) "Law enforcement agency" has the meaning given that term in ORS 181.010.

(8) "Local government" means a city, town, county, regional authority or other political subdivision of this state.

(9) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agency thereof, and the federal government and any agency thereof.

(10) "Trade secret" has the meaning given that term in ORS 192.501 (2). [1985 c.726 §1; 1987 c.259 §5; 1991 c.956 §14; 1993 c.187 §25; 1999 c.1089 §5]

453.310 [Amended by 1969 c.514 §51; renumbered 689.855]

453.312 Legislative findings. The Legislative Assembly finds and declares that:

(1) The public's health and safety may be endangered by a lack of knowledge about hazardous substances located within this state.

(2) Information on the use of hazardous substances in this state should be made readily available to members of the public, allowing them to take measures to protect themselves against dangers posed to health and safety.

(3) Emergency service personnel must know what types and amounts of hazardous substances are present within this state and where they are located in order to properly protect human life and property.

(4) A need exists to coordinate and make available to emergency service personnel information about the nature and amount of hazardous substances in Oregon.

(5) Access by emergency service personnel to information about hazardous substances assures better protection of homes and recreational facilities, increases safety in the place of employment, improves liveability and allows more control over emergency situations. [1985 c.726 §3]

453.315 [1971 c.609 §1; 1975 c.606 §22; renumbered 469.310]

453.317 Hazardous substance survey; information to be supplied. (1) The State Fire Marshal shall develop a hazardous substance survey and distribute the survey to employers in this state. The survey shall request the following information from such employers:

(a) The identity and hazard classification of the hazardous substance as listed on a material safety data sheet;

(b) The approximate amount and location of the hazardous substance;

(c) The name and telephone number of personnel qualified to give technical, onsite information about hazardous substances; and

(d) Any procedures established by the employer for the control of hazardous substances in the event of an emergency.

(2) In addition to the information to be provided under subsection (1) of this section, the State Fire Marshal may by rule establish additional requirements for obtaining hazardous substance information the State Fire Marshal considers necessary. All rules adopted under this subsection shall be adopted after public hearing in accordance with ORS 183.310 to 183.550.

(3) Before the development of the initial hazardous substance survey, the State Fire Marshal shall consult with the Interagency Hazard Communication Council established under ORS 453.510 regarding:

(a) Interagency cooperation in the development of the hazardous substance survey; and

(b) Interagency access to data collected as the result of ORS 453.307 to 453.414 and 476.030.

(4) Any employer receiving a hazardous substance survey shall complete the hazardous substance survey and return it to the State Fire Marshal not later than March 1 of each year or within 60 days after the date the State Fire Marshal mails the hazardous substance survey, whichever is later.

(5) The State Fire Marshal shall update the hazardous substance survey once every 12 months.

(6) An employer shall update and return the hazardous substance survey on or before March 1 of each year or within 60 days after the date the State Fire Marshal mails the survey, whichever is later, or an employer shall update the hazardous substance survey whenever any substantive information required to be provided changes, whichever situation occurs most often.

(7) The Director of the Department of Consumer and Business Services shall participate in the development and updating of the hazardous substance survey and shall have access to the data included in the survey.

(8) The State Fire Marshal may conduct an inspection to confirm the validity of a hazardous substance survey required by this section. The inspection shall be conducted according to the provisions of ORS 476.150. [1985 c.683 §6; 1985 c.696 §6; 1985 c.726 §4; 1987 c.259 §6; 1991 c.804 §1]

453.320 [Amended by 1969 c.514 §52; renumbered 689.860]

453.322 Retention of information; distribution of and access to information. (1) The State Fire Marshal shall retain for at least five years the information provided by the employer under ORS 453.317.

(2) The State Fire Marshal shall provide copies of the information to each local public health authority, fire district and any public or private safety agency administering a 9-1-1 emergency reporting system pursuant to ORS 401.710 to 401.790 and, upon request, provide copies of the information to the following agencies located within the geographic jurisdiction of the fire district:

(a) Fire districts and other emergency service personnel responding to a hazardous substance incident;

(b) Health professionals;

(c) Law enforcement agencies; and

(d) Local emergency management agencies as defined in ORS 401.025.

(3) The State Fire Marshal may distribute the information provided by an employer under ORS 453.317 to persons outside the jurisdiction of the fire district if the State Fire Marshal considers the information essential to the safe control of an emergency.

(4) In addition to the requirements of subsections (2) and (3) of this section, the State Fire Marshal shall provide, upon request, access to the information provided by employers under ORS 453.317 to any agency of this state. [1985

c.726 §6; 1989 c.793 §27]

453.325 [1971 c.609 §3; 1975 c.606 §23; renumbered 469.320]

453.327 Public access; identity of requester. (1) Notwithstanding any other provision of ORS 453.307 to 453.414 and 476.030, the public is permitted access to records retained under ORS 453.322 relating to hazardous substances not otherwise protected as a trade secret or by a confidentiality agreement described in ORS 453.332 and 453.337. A person requesting information under this section may be required to complete the form provided by the State Fire Marshal pursuant to subsection (2) of this section.

(2) If, in the discretion of the State Fire Marshal, it is necessary to protect the public safety and welfare, the State Fire Marshal may require a person requesting information under subsection (1) of this section to complete a form developed by the State Fire Marshal. The form shall require the person making the request for information to provide the name and address and proof of identity of the person making the request. [1985 c.726 §7]

453.332 When disclosure of identity may be withheld. (1) An employer responding to a request under ORS 453.317 may withhold the specific hazardous substance identity, including the chemical name and any other specific identification of a hazardous substance, if:

(a) Upon a showing satisfactory to the State Fire Marshal, the records, reports or information, or particular parts thereof, if made public, would divulge product identities, methods or processes and are entitled to protection as a trade secret under ORS 192.501; and

(b) Other information provided by the employer describes the properties, quantities stored and used and effects of the hazardous substance.

(2) Under no circumstances shall this section be construed to require the disclosure of information about a process or percentage of mixture that is a trade secret.

(3) A claim of trade secret by the employer, if the claim is substantiated by the Department of Consumer and Business Services or any other agency, may be recognized by the State Fire Marshal as sufficient for purposes of trade secret protection under ORS 453.307 to 453.414 and 476.030.

(4) Site specific information regarding the exact amount and location of a hazardous substance provided to or obtained by the State Fire Marshal or by an agency identified in ORS 453.322 shall be treated by the State Fire Marshal or the agency as confidential.

(5) Any claim of trade secret by an employer pursuant to this section must be made at the time the employer provides the information to the State Fire Marshal. [1985 c.726 §8]

453.335 [1971 c.609 §7a; 1975 c.606 §25; renumbered 469.330]

453.337 When disclosure of identity of hazardous substance required. (1) If a health professional determines that a medical emergency exists and the specific identity of a hazardous substance is necessary for emergency or first-aid treatment, the employer shall immediately, if known, disclose the specific hazardous substance identity without first requiring a written statement of need or a confidentiality agreement. The employer may request a written statement of need and confidentiality agreement as required under subsection (2) of this section as soon as circumstances permit.

(2) In a nonemergency situation, an employer shall disclose a specific hazardous substance identity, if known, otherwise permitted to be withheld under ORS 453.332, to a health professional if the health professional provides a statement of need and enters into a confidentiality agreement with the employer.

(3) A statement of need required under subsection (2) of this section shall:

(a) Be in writing;

(b) Describe in sufficient detail the reason the information is needed;

(c) Explain in detail why disclosure of the specific hazardous substance identity is essential and that without disclosure the health professional would be unable to provide adequate medical assistance; and

(d) Include a description of the procedures to be used to maintain the confidentiality of the disclosed information.

(4) The health professional providing medical assistance and the employer shall enter into a written confidentiality agreement stating that:

(a) The health professional will not use the trade secret information for any purpose other than the health needs asserted; and

(b) The health professional agrees not to release the information under any circumstances except as otherwise

authorized by the terms of the agreement or in writing by the employer.

(5) The State Fire Marshal shall establish a uniform form for the confidentiality agreement required under this section. [1985 c.726 §9]

453.342 When incident of injury to be reported; summary of injuries. Any fire department, emergency service personnel or law enforcement agency responding to an incident of injury to a human, wildlife, domestic animal or property resulting from a hazardous substance emergency shall make a report of the incident, in writing, to the office of the State Fire Marshal. The State Fire Marshal annually shall summarize all incidents reported to the State Fire Marshal and the information received as a result of the survey conducted under ORS 453.317. The State Fire Marshal shall submit a copy of the summary to:

(1) The Governor;
(2) The Legislative Assembly;
(3) The Department of Environmental Quality;
(4) The Department of Consumer and Business Services;
(5) The Department of Transportation;
(6) The Department of Human Services;
(7) The Environmental Health Sciences Center at Oregon State University;
(8) The Office of Emergency Management of the Department of State Police; and
(9) Every public library as defined in ORS 357.400. [1985 c.726 §10; 1993 c.187 §26]

453.345 [1971 c.609 §8; 1973 c.80 §57; 1975 c.606 §26; renumbered 469.350]

453.347 Emergency response planning. (1) The State Fire Marshal shall assist with emergency response planning by appropriate agencies of government at the local, state and national levels to assure that the response to a hazardous substance fixed site or transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This planning shall include assisting in and training for the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The State Fire Marshal may apply for funds as available to train, equip and maintain an appropriate response capability at the state and local level.

(3) The State Fire Marshal shall issue certificates to local agency personnel who have completed the training.

(4) To the extent practicable, the emergency preparedness and response program for hazardous substances as provided in this section shall be consistent with the program for radioactive material, wastes and substances developed by the Office of Energy and Department of Human Services under ORS chapters 453 and 469. [1985 c.726 §11]

453.352 Exemption from reporting requirements. The State Fire Marshal may exempt by rule certain hazardous substances from all or part of the reporting requirements of ORS 453.317 and 453.342. Such an exemption can be made only if the State Fire Marshal finds that the location, quantity, concentration or type of hazardous substance or substances is not likely to endanger the public health, welfare or safety or the environment. [1985 c.726 §12]

453.355 [1971 c.609 §9; 1975 c.606 §27; renumbered 469.360]

453.357 Civil penalty. (1) In addition to any other liability or penalty provided by law the State Fire Marshal may impose a civil penalty in an amount not to exceed $1,000 per day against any employer who, by a complete or partial failure to report hazardous substances, does not comply with the provisions of ORS 453.307 to 453.352 or any order or rule entered or adopted under ORS 453.307 to 453.414.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090. [1985 c.726 §§13,14; 1987 c.259 §7; 1991 c.734 §29]

453.362 Department of Consumer and Business Services to supply employers' names; reimbursement. In order to conduct the hazardous substance survey under ORS 453.317, the State Fire Marshal may obtain employers' names and addresses from the Department of Consumer and Business Services. The State Fire Marshal shall pay for the expenses incurred by the Department of Consumer and Business Services in providing such information. [1985 c.726 §15]

453.365 [1971 c.609 §10; 1975 c.552 §38; 1975 c.606 §28; renumbered 469.370]

453.367 Rules. In accordance with applicable provisions of ORS 183.310 to 183.550, the State Fire Marshal shall adopt rules necessary to carry out the provisions of ORS 453.307 to 453.414. [1985 c.726 §5]

453.370 Limitations on local community right to know regulatory programs; local fees. (1) In order to maintain and ensure the effectiveness of state programs established under ORS 453.307 to 453.414, as well as to ensure the effectiveness of local efforts, a local government may establish, enforce or enact a local community right to know regulatory program provided that the local program complies with the requirements of this section.

(2) To the extent that a local program is supported in whole or in part by fees, those fees may be set, imposed or assessed only by the local government that is implementing the local program. Such fees are allowed only to the extent not otherwise prohibited or limited by law. Such fees:

(a) Shall be adopted by ordinance as a fee schedule, after notice and public hearing; and

(b) May not exceed $2,000 for any single facility in any calendar year.

(3)(a) All local community right to know regulatory program enforcement, including but not limited to penalties, may be imposed only by a local fire official or a board established by the local government to implement the local community right to know regulatory program.

(b) Penalties for violations of a community right to know regulatory program shall not exceed $1,000 per day and shall be assessed according to a schedule adopted by the local government after notice and public hearing. Except when a local government has reasonable grounds to find that an employer willfully and knowingly avoided compliance with the local program, and as long as the employer submits the required information within 30 days following a written notification of noncompliance, penalties shall be suspended if the employer has no history of violating the local program.

(4) After notice and public hearing, the local government must determine that:

(a) Existing reporting to local, state or federal agencies is inadequate to meet the needs and concerns of the local government;

(b) The state or federal government does not collect data that will provide substantially the same information desired by the local government;

(c) The local government has asked the appropriate state agency to operate the program desired by the local government and the state agency has not committed to do so within 180 days;

(d) The Department of Environmental Quality, the State Fire Marshal and the Department of Human Services have had an opportunity to comment on the proposed program and the local government has responded to those comments; and

(e) The local government has provided an opportunity for written and oral public comment on the proposed program.

(5) Any local government that operates a local community right to know regulatory program shall:

(a) Provide for an opportunity to report data electronically;

(b) Place data reported under the program on the Internet with instructions for the general public that explain the organization of the data; and

(c) Keep records of data usage and otherwise document interest in the collected data.

(6) Data and other information presented under a local community right to know regulatory program:

(a) Shall clearly distinguish, where appropriate, public health interpretations from the raw data;

(b) May, where feasible, indicate specifically which hazardous substances and toxic substances are being released into the local air, water and land; and

(c) Shall include locations where a person may obtain epidemiological statistics related to health effects of the hazardous substances and toxic substances, if available.

(7) For any hazardous substance or toxic substance that a local government proposes to require an employer to report under a local community right to know regulatory program established pursuant to this section, the local government shall seek written and oral public comment and provide written notice to interested parties prior to adoption as a reporting requirement. The local government must provide the public with an opportunity to comment on the appropriateness of reporting on the proposed hazardous substance or toxic substance, including but not limited to commenting on health and environmental considerations, economic concerns and feasibility of compliance. The local government shall consider the comments before adopting a list or making additions to a list of hazardous substances and toxic substances to be reported.

(8) In administering a local community right to know regulatory program, a local government shall establish procedures to exempt, when reasonable, an entity from all or part of the local program for the purpose of protecting trade secrets or where the local government determines that the operations of the entity pose little or no risk to the public health or the environment.

(9) Except as prohibited by federal or state law, a local program shall not differentiate between public and private employers.

(10) Nothing in this section shall be construed to limit the authority of a local government to:

(a) Distribute information collected under the state Community Right to Know and Protection Act; or

(b) Adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

(A) The Uniform Building Code as adopted and amended by the Director of the Department of Consumer and Business Services;

(B) A uniform fire code; or

(C) Any requirement of a state or federal statute, rule or regulation, including but not limited to those controlling hazardous substances, toxic substances or other environmental contaminants.

(11) For any local community right to know regulatory program established before January 1, 1999, subsections (2), (4) to (7) and (9) of this section shall not apply until July 1, 2003. [1999 c.1089 §3; 2001 c.104 §191]

453.372 Short title. ORS 453.307 to 453.414 may be cited as the Community Right to Know and Protection Act. [1985 c.726 §2]

453.374 Hazardous material emergency response system; implementation; contents. The State Fire Marshal shall establish by rule a plan for the effective implementation of a statewide hazardous material emergency response system, which, to the extent practicable, shall be consistent with the emergency response plan adopted under ORS 466.620. The statewide hazardous material emergency response system shall include, but need not be limited to:

(1) Provisions for coordinating the duties and responsibilities of regional hazardous material response teams, including related procedures for 24-hour dispatching and emergency communications;

(2) A schedule of fees for computing the reimbursement for extraordinary response costs incurred by a regional hazardous material response team as authorized by ORS 453.374 to 453.390; and

(3) Provisions for ongoing training programs for local government and state agency employees involved in response to spills or releases of oil and hazardous material. The Department of Public Safety Standards and Training may coordinate its training programs with emergency response training programs offered by local, state and federal agencies, community colleges and institutes of higher education and private industry in order to reach the maximum number of employees, avoid unnecessary duplication and conserve limited training funds. [1989 c.833 §82; 1993 c.185 §18; 1997 c.853 §39]

453.375 [1971 c.609 §22; 1975 c.606 §29; renumbered 469.380]

453.376 Disclosure of information to State Fire Marshal; entry onto premises. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 453.307 to 453.414, or enforcing the provisions of ORS 453.307 to 453.414, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of the State Fire Marshal:

(a) Furnish information relating to the oil or hazardous material; and

(b) Permit the State Fire Marshal at all reasonable times to have access to, and to make copies of, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section, the State Fire Marshal may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) Any person possessing or holding a quantity of oil or hazardous material meeting or exceeding the reporting criteria established by the State Fire Marshal shall notify the State Fire Marshal of the presence, quantity and other information required under statute or rule, and shall conform to the requirements of ORS 453.307 to 453.414. [1989 c.833 §83; 1999 c.1089 §6; 2001 c.104 §193]

453.378 Disclosure of information to local government official; entry onto premises. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 453.307 to 453.414, any person who

prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of any authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, “local government official” includes but is not limited to an officer, employee or representative of a county, city, fire department, fire district or police agency. [1989 c.833 §84]

453.380 Regional hazardous material response team; use. In order to protect life and property against the dangers of emergencies involving a hazardous substance as defined in ORS 453.307, the State Fire Marshal may assign and make available for use and duty in any county, city or district, under the direction and command of a person designated by the State Fire Marshal, any part of a regional hazardous material response team and specialized equipment that may be necessary to respond to the emergency. [1989 c.833 §81]

453.382 Cost of responding to emergency; responsibility; billing; recovery. (1) Whenever the State Fire Marshal or a local fire department or district dispatches a regional hazardous material response team to an emergency involving a hazardous material or hazardous substance, the State Fire Marshal or local fire department or district may bill the person responsible for causing the emergency for the cost of responding to the emergency. The State Fire Marshal or the local fire department or district also may bill the responsible party for the cost of billing for and collecting the emergency response costs, including but not limited to the costs of administration, investigation and legal services. The billing shall be on forms established by the State Fire Marshal for such purposes.

(2) If the person fails to pay the cost set forth in a billing within 30 days after the second billing, the State Fire Marshal, acting for the State Fire Marshal or on behalf of the local fire department or district, may either:

(a) Bring an action for the recovery of such unpaid cost from the person responsible for causing the hazardous material or hazardous substance emergency; or

(b) Initiate a contested case hearing according to the applicable provisions of ORS 183.310 to 183.550.

(3) Notwithstanding any provision of ORS 183.310 to 183.550, nothing in subsection (2) of this section shall be considered to require the State Fire Marshal to conduct a contested case hearing as a prerequisite to bringing an action under subsection (2)(a) of this section. [1989 c.833 §89; 1991 c.804 §3; 1993 c.707 §10]

453.384 Immunity of team members from liability. During operations authorized under ORS 453.374 to 453.390, members of regional hazardous materials response teams shall be protected and defended from liability under ORS 30.260 to 30.300. [1989 c.833 §85]

453.385 [1971 c.609 §11; 1975 c.606 §30; renumbered 469.390]

453.386 Equipment and personnel; loaning; grants. (1) In order to accomplish the purposes of ORS 453.374 to 453.390, the State Fire Marshal may lend equipment and personnel and make grants for the purchase of equipment and for personnel costs, as funds are available, to any local government participating in the statewide hazardous material emergency response system.

(2) In allocating state equipment and personnel grants under ORS 453.374 to 453.390, the State Fire Marshal may provide up to 90 percent of the financing for the equipment and personnel. A local government receiving grant moneys shall contribute at least 10 percent to the costs. Such contribution may be in a form agreed upon by the local government and the State Fire Marshal and may include, but need not be limited to, providing emergency response to areas outside the local jurisdiction, paying of insurance costs of the equipment or providing maintenance for the equipment. [1989 c.833 §86; 1991 c.356 §1]

453.388 Contracts for equipment, personnel loans or equipment purchases; provisions; rules. (1) The State Fire Marshal and any local government may enter into contracts with each other concerning eligible equipment or personnel loans or equipment purchases. The contract may include any provisions agreed upon by the parties thereto, and for grants shall include the following provisions:

(a) An estimate of the reasonable personnel costs or cost of the eligible equipment purchases, as determined by the State Fire Marshal.

(b) An agreement by the local government:

(A) To proceed expeditiously with, and complete, the equipment purchases in accordance with plans approved by the State Fire Marshal; and

(B) To provide for the payment of the local government's share of the personnel costs or the cost of the equipment purchases.

(2) The State Fire Marshal may adopt rules necessary for making and enforcing contracts under this section and establishing procedures to be followed in applying for state equipment and personnel loans or grants authorized by ORS 453.386.

(3) All contracts entered into pursuant to this section shall be subject to approval by the Attorney General as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant on vouchers approved by the State Fire Marshal. [1989 c.833 §87; 1991 c.356 §2]

453.390 Revolving fund; use. (1) When requested in writing by the State Fire Marshal, the Oregon Department of Administrative Services shall draw a warrant on the State Fire Marshal Fund in favor of the State Fire Marshal for use as a revolving fund. The State Treasurer shall hold the revolving fund in a special account against which the State Fire Marshal may draw checks.

(2) The State Fire Marshal may use the revolving fund for the purposes specified in ORS 453.386 and 453.388.

(3) All claims by the State Fire Marshal for reimbursement of advances paid from the revolving fund are subject to approval by the Oregon Department of Administrative Services. When such claims have been approved, a warrant covering them shall be drawn in favor of the State Fire Marshal, charged against the appropriate funds and accounts and used to reimburse the revolving fund.

(4) The State Fire Marshal may disburse moneys from the revolving fund established under subsections (1) to (3) of this section to any local government unable to pay the expenses incurred by a regional hazardous material response team that responds to an emergency within the jurisdiction of the local government or to defray any extraordinary costs of a local response team responding to the emergency. [1989 c.833 §§88,90]

453.395 [1971 c.609 §12; 1975 c.606 §31; renumbered 469.400]

453.396 Definitions for ORS 453.396 to 453.414. As used in ORS 453.396 to 453.414:

(1) "Department" means the Department of Revenue.

(2) "Facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by or under common control with such person.

(3) "Hazardous substance" means any chemical substance or waste for which a material safety data sheet is required by the Department of Consumer and Business Services.

(4) "Material safety data sheet" means written or printed material concerning a hazardous chemical which is prepared in accordance with rules of the Department of Consumer and Business Services.

(5) "Person" includes any entity operating a facility that is included in one or more of the standard industrial classification categories identified by the State Fire Marshal or added by the State Fire Marshal under ORS 453.408 (2). "Entity" includes any individual, trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the federal government and any agency thereof.

(6) "Possess" or "possession" means the physical possession of a hazardous substance within this state. [1989 c.833 §121; 1993 c.744 §228]

453.398 Purpose. It is the intent of ORS 453.396 to 453.414 to impose a fee on the possession of hazardous substances at facilities in this state. These provisions are not intended to relieve any person from any other duty or responsibility imposed by law. [1989 c.833 §122]

453.400 Possession of hazardous substance; fee. (1) Beginning January 1, 1990, and annually thereafter, any person possessing a hazardous substance at a facility in this state in aggregate amounts at or above the threshold quantities designated by rule by the State Fire Marshal shall pay a fee for each facility in accordance with the fee schedules established under ORS 453.402.

(2) If any person fails to pay the fee imposed under subsection (1) of this section within 60 days, there shall be

added to the fee a penalty of five percent of the amount of the fee. Any payment made after 60 days shall bear interest at the rate prescribed under ORS 305.220.

(3) The fee imposed by this section is in addition to all other state, county or municipal fees on a hazardous substance. [1989 c.833 §§123,130]

453.402 Fees; statement; schedules; uses; collection; local hazardous substance fees. (1) Not later than November 15, 1989, and annually thereafter, the State Fire Marshal shall send a statement to each person subject to the fee imposed under ORS 453.400, indicating the amount of the fee due. The amount of the fee shall be in accordance with the fee schedules established under subsection (2) of this section.

(2) By rule and after hearing, the State Fire Marshal shall establish three schedules of fees to be submitted annually by each employer returning a hazardous substance survey under ORS 453.317, except as otherwise provided in subsection (4) of this section. In each case the fee shall be based upon the aggregate amount of the single largest annual aggregate substance reported that is manufactured, stored or used at the facility. The fee schedule shall be graduated and shall include but need not be limited to categories of fees for minimally hazardous substances, generally hazardous substances and very hazardous substances. In addition, the State Fire Marshal may establish a registration fee to be paid for certain hazardous substances and quantities of hazardous substances in lieu of the fee under the graduated schedule. When the State Fire Marshal assesses a registration fee, no local fee shall be assessed for those substances. The programs to be funded from fees collected under ORS 453.396 to 453.414 and the maximum range of the fees that may be considered, beginning July 1, 1989, are as follows:

(a) For funding the Community Right to Know and Protection Act, not less than $25 and not more than $2,000.

(b) For funding the Toxics Use Reduction and Hazardous Waste Reduction Act, not less than $25 and not more than $2,000.

(c) For each employer's share of a total of up to $1 million to be deposited into the Orphan Site Account established under ORS 465.381, not less than zero and not more than $9,000. This schedule shall not require an employer to pay more than $25,000.

(3) The Department of Revenue shall collect fees established under this section. The department shall determine the amounts to be distributed under subsection (2) of this section and shall transfer the appropriate amounts to the State Fire Marshal, the Department of Environmental Quality and the Orphan Site Account in accordance with expenditures approved by the Legislative Assembly for the State Fire Marshal and the Department of Environmental Quality. The remaining moneys are continuously appropriated to the State Fire Marshal to pay the expenses of the State Fire Marshal in administering and enforcing the provisions of ORS 453.396 to 453.414.

(4) The following are exempt from the fee imposed under this section:

(a) Crude oil and petroleum products derived from the refining of crude oil, including plant condensate, gasoline, diesel motor fuel, aviation fuel, lubrication oil, crankcase motor oil, kerosene, benzol, fuel oil, residual fuel, petroleum coke, asphalt base, liquified or liquifiable gases such as butane, ethane and propane and other products described during petroleum processing, but not including derivatives, such as petroleum jellies, cleaning solvents or asphalt paving.

(b) Solid waste as defined in ORS 459.005.

(c) Hazardous waste as defined in ORS 466.005.

(d) Any substance or activity which the Constitution or laws of the United States prohibit the state from taxing.

(e) From the fee imposed under the schedule established under subsection (2)(c) of this section, any person whose property is exempt from taxation under ORS 307.090.

(f) Natural gas unless stored in liquified form for nonvehicular use in quantities greater than 200 cubic feet.

(5) Propane, butane and blended or compounded petroleum products produced by processes other than the refining of crude oil and for nonvehicle use are not exempt from the fees imposed by subsection (2) of this section.

(6) Local government assessments of hazardous substance fees based on quantity or the hazardous substance survey shall be used solely to supplement and not to duplicate the State Fire Marshal's programs under ORS 453.307 to 453.414 and shall be billed and collected only through contract with the State Fire Marshal. A local government shall not charge any fee under its program for a hazardous substance for which an employer pays a registration fee to the State Fire Marshal under subsection (2) of this section.

(7) The State Fire Marshal shall not enter into a contract with a local government under subsection (6) of this section unless the local government meets the following requirements:

(a) The local government certifies that the revenue from the local hazardous substance fee will be used solely to supplement and not duplicate the State Fire Marshal's programs under ORS 453.307 to 453.414;

(b) The local hazardous substance fee system is structured to be compatible with the fee schedule adopted under subsection (2)(a) of this section;

(c) The local hazardous substance fee system will not raise moneys in excess of that needed to carry out the local government's supplemental community right to know programs; and

(d) The contract under this section shall include:

(A) Provisions that assure that the local government pays the portion of the costs that may be attributed to its fee assessment program; and

(B) Conditions that require the local government to bear all costs related to collection of its fee, including but not limited to costs associated with conducting hearings or appeals on the fee.

(8) Any local government operating a hazardous substance fee assessment program shall comply with this section on or before July 1, 1992.

(9) In addition to collecting the fees due to the State Fire Marshal under this section, the Department of Revenue also may collect the fees authorized for collection under a contract established under subsection (6) of this section. The Department of Revenue shall determine the amount to be distributed to each local government according to fee assessment totals provided by the State Fire Marshal for each local government for whom the State Fire Marshal has contracted to assess a fee. [1989 c.833 §124; 1991 c.804 §2]

453.404 Extension of payment date. (1) The State Fire Marshal for good cause may extend, for not to exceed one month, the time for payment of the fee due under ORS 453.396 to 453.414. The extension may be granted at any time if a written request is filed with the State Fire Marshal within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid.

(2) If the person fails to pay the amount due, the State Fire Marshal may either:

(a) Bring an action for the recovery of the fee due; or

(b) Initiate a contested case hearing according to the applicable provisions of ORS 183.310 to 183.550.

(3) Notwithstanding any provision of ORS 183.310 to 183.550, nothing in subsection (2) of this section shall be considered to require the State Fire Marshal to conduct a contested case hearing as a prerequisite to bringing an action under subsection (2)(a) of this section. [1989 c.833 §125]

453.405 [1971 c.609 §21; 1973 c.687 §2; 1975 c.606 §32; renumbered 469.420]

453.406 Records of hazardous substance possessed; examinations. (1) Every person who possesses a hazardous substance shall keep at its registered place of business complete and accurate records for each facility of any hazardous substance purchased by, or brought in or caused to be brought in to the facility, or stored, used or manufactured at the facility.

(2) The State Fire Marshal or an authorized representative of the State Fire Marshal, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 453.396 to 453.414. [1989 c.833 §126]

453.408 Rules. (1) The Department of Revenue, in consultation with the State Fire Marshal, is authorized to establish those rules and procedures for the implementation and enforcement of ORS 453.396 to 453.414 that are consistent with its provisions and are considered necessary and appropriate.

(2) The State Fire Marshal by rule may add persons or substances to or exempt persons or substances from liability for the fee imposed under ORS 453.396 to 453.414 to conform to the reporting requirements established by the State Fire Marshal under the Community Right to Know and Protection Act.

(3) Before final adoption of initial rules to carry out the provisions of ORS 453.396 to 453.414 or subsequent amendment of the initial fee schedules established under ORS 453.398, the State Fire Marshal shall obtain prior approval of the fees by the Oregon Department of Administrative Services and shall submit a report to the Emergency Board prior to adopting the fees. The fees established under ORS 453.396 to 453.414 shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees shall not exceed the cost of the program. [1989 c.833 §§127,131,134; 1991 c.703 §11]

453.410 Application of ORS chapters 305 and 314. The provisions of ORS chapters 305 and 314 as to liens,

delinquencies, claims for refund, issuance of refunds, conferences, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpoenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the Department of Revenue under ORS 453.396 to 453.414, except where the context requires otherwise. [1989 c.833 §128; 1995 c.650 §54]

453.412 Deposit and distribution of moneys received from fees. All moneys received by the Department of Revenue under ORS 453.396 to 453.414 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of ORS 453.396 to 453.414 and of refunds or credits arising from erroneous overpayments, the balance of the money shall be distributed according to the provisions of ORS 453.402. Moneys collected under ORS 453.396 to 453.414 and credited to the Orphan Site Account shall not be used for removal or remedial action costs at solid waste disposal sites for which a fee is collected under ORS 459.311 or 459.236. [1989 c.833 §129]

453.414 Exemption for local government; circumstances allowing. Nothing in ORS 453.396 to 453.412 shall require units of local government to pay a fee imposed under the schedules established under ORS 453.402 (2)(a) and (b) because of the use of material which would otherwise be subject to a fee under ORS 453.396 to 453.414, if the use of such material by the unit of local government is specifically required by a state or federal law or rule or if the use of such material is reasonably necessary to enable the unit of local government to meet a standard imposed by state or federal law or rule, or is the by-product of processes employed to meet a standard imposed by state or federal rule or law. [1989 c.833 §135]

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]

INTERAGENCY HAZARD COMMUNICATION COUNCIL

453.510 Interagency Hazard Communication Council; membership; functions; meetings. (1) There is established the Interagency Hazard Communication Council consisting of 21 members.

(2) The council shall consist of the following:

(a) The State Fire Marshal or designee.

(b) The Director of Human Services or designee.

(c) The Director of Agriculture or designee.

(d) The State Forester or designee.

(e) The State Fish and Wildlife Director or designee.

(f) The Director of the Department of Consumer and Business Services or designee.

(g) The chairperson of the Public Utility Commission or designee.

(h) The Director of the Office of Emergency Management of the Department of State Police or designee.

(i) The chairperson of the Department of Agricultural Chemistry of Oregon State University or designee.

(j) The director of the Poison Control and Drug Information Program of the Oregon Health and Science University or designee.

(k) The Director of the Department of Environmental Quality or designee.

(L) The administrator of the Office of Energy or designee.

(m) The Director of Transportation or designee.

(n) The Superintendent of State Police or designee.

(o) The Governor or designee from the office of the Governor.

(p) The Governor may appoint the Director or designee of the Center for Research on Occupational and Environmental Toxicology created under ORS 353.460 and administered by the Oregon Health and Science University.

(q) Two representatives of local government appointed by the Governor, at least one of whom is either a firefighter or another emergency response person.

(r) Three members appointed by the Governor for four-year terms shall represent the public at large, at least one of whom represents a public interest group.

(3) The council shall:

(a) Facilitate interagency cooperation in updating the hazardous substance survey under ORS 453.317;

(b) Facilitate interagency access to data collected that relates to hazardous material or hazardous substances;

(c) Coordinate state agencies' regulatory responsibilities over hazardous material and hazardous substances;

(d) Provide, in a timely manner, advice or recommendations to a state agency required to consult with the council regarding programs involving hazardous material or hazardous substances; and

(e) Undertake all duties of a state emergency response commission required by the Emergency Planning and Community Right-to-Know Act of 1986 (P.L. 99-499) including but not limited to:

(A) Designating emergency planning districts.

(B) Appointing members of local emergency planning committees.

(C) Providing oversight for the implementation of reporting requirements in connection with the council's duties under paragraph (a) of this subsection.

(D) Commenting on local emergency plans.

(4) Public members shall be entitled to compensation and expenses as provided in ORS 292.495 which shall be paid by the State Fire Marshal.

(5) The council shall meet on a regular basis at a time and place determined by the council.

(6) The chairperson of the Interagency Hazard Communication Council shall be the Governor or the Governor's designee.

(7) As used in this section:

(a) "Hazardous material" means one of the following:

(A) A material designated by the commission under ORS 466.630.

(B) Hazardous waste as defined in ORS 466.005.

(C) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

(D) Communicable disease agents as regulated by the Department of Human Services under ORS 433.010 to 433.045 and 433.106 to 433.990 and ORS chapter 431.

(E) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) "Hazardous substance" means:

(A) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the State Fire Marshal;

(B) Any substance for which a material safety data sheet is required by the Director of the Department of Consumer and Business Services under ORS 654.035 and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienists; or

(C) Radioactive waste and material as defined in ORS 469.300 and radioactive substance as defined in ORS 453.005. [1985 c.696 §§4,7; 1987 c.597 §4; 1989 c.6 §13; 1989 c.171 §57; 1993 c.187 §27; 1995 c.162 §84; 1997 c.249 §152; 1997 c.632 §8]

453.515 [1971 c.609 §7; 1975 c.606 §39; renumbered 469.510]

453.517 Council staff. The Department of Environmental Quality and the State Fire Marshal shall provide the staff support to the Interagency Hazard Communication Council that is necessary to carry out the purposes of ORS 453.510 to 453.527. [1987 c.597 §2]

453.520 Council as state emergency response commission. The Governor shall designate the Interagency Hazard Communication Council as the state emergency response commission as required by the Emergency Planning and Community Right-to-Know Act of 1986 (P.L. 99-499). [1987 c.597 §1]

453.525 [1971 c.609 §18; 1975 c.606 §40; renumbered 469.520]

453.527 Executive committee; membership; meetings; duties. (1) The Interagency Hazard Communication Council shall use an executive committee consisting of:

(a) The State Fire Marshal or designee.

(b) The Director of Human Services or designee.

(c) The chairperson of the Public Utility Commission or designee.

(d) The Director of the Office of Emergency Management of the Department of State Police or designee.

(e) The Director of the Department of Environmental Quality or designee.

(f) The administrator of the Office of Energy or designee.

(g) The Director of Transportation or designee.

(h) The Governor or designee from the office of the Governor who shall be the chairperson of the executive committee.

(i) The Superintendent of State Police or designee.

(2) The executive committee shall meet at least once each month at a time and place determined by the committee.

(3) The executive committee shall:

(a) Make recommendations to the full Interagency Hazard Communication Council regarding:

(A) The boundaries of local emergency planning districts;

(B) Members of local emergency planning committees; and

(C) Proposed comments on the local emergency plans.

(b) Provide oversight and assistance to local emergency planning committees in carrying out the requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (P.L. 99-499). [1987 c.597 §3; 1993 c.187 §28]

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

(Generally)

453.605 Definitions for ORS 453.605 to 453.800. In ORS 453.605 to 453.800, unless the context requires otherwise:

(1) “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.

(2) “Department” means the Department of Human Services.

(3) “Director” means the Director of Human Services.

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

(c) Any sonic, ultrasonic or infrasonic waves that are emitted from an electronic product as a result of the operation of an electronic circuit in such product and that the department 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 that the department 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 department 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 that the department 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.

(13) “X-ray machine registration” means an authorization granted by the department allowing the operation of an X-ray machine. [1961 c.664 §3; 1973 c.90 §1; 1995 c.444 §12; 2001 c.900 §258]

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 insofar 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 453.800. It is the purpose of ORS 453.605 to 453.800 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 State Radiation Control Agency; duties; applicability of ORS 453.605 to 453.800. (1) The Department of Human Services is the State Radiation Control Agency, but ORS 453.605 to 453.800 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 Department of Transportation 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 Department of Human Services 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 469.563, 469.590 to 469.619 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 department 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 employees and prescribe their duties and fix their compensation. [1961 c.664 §4; 1971 c.699 §17; 1977 c.796 §6; 1995 c.733 §44]

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

453.645 Radiation Advisory Committee; composition; compensation and expenses. The Director of Human Services shall appoint a Radiation Advisory Committee to advise the Department of Human Services 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 department on such matters and they shall serve at the pleasure of the 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 453.800 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 Department of Human Services 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 department shall not require a specific license for the use of an X-ray machine within the limits of the license by a licensed dentist, chiropodist or veterinarian or by a person licensed to practice medicine, surgery, osteopathy, chiropractic, naturopathic medicine or any other system or method of healing. Otherwise the department 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 department 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 department may require further written statements, and may cause such inspections to be made as the department 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 department 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 department 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 department.

(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 department 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 department 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 department 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 [1969 c.304 §2; 1973 c.182 §10; 1979 c.696 §9; 1989 c.436 §1; 1993 c.728 §1; 1995 c.444 §13; renumbered 453.757 in 1995]

453.675 State assumption of federal responsibility for radiation sources; effect of federal licenses. (1) When in the opinion of the Governor, 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, the person shall

be considered to have a like license under ORS 453.605 to 453.800 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 Department of Human Services 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 Director of Human Services 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 453.800 and rules lawfully issued pursuant thereto. When such permission is not obtained or given, if the director has grounds to believe that a violation of ORS 453.605 to 453.800 or rules lawfully issued pursuant thereto exists, the 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 453.800; except that in a case where the director has grounds to believe that a violation of ORS 453.605 to 453.800 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 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 the judicial officer finds such exists, the judicial officer shall immediately issue a warrant authorizing entry by the director upon the described property for the purposes of ORS 453.605 to 453.800. The director shall not be liable for injury or damage resulting from the 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 Department of Human Services by regulation so requires, any person who possesses or uses a radiation source shall cause to be made, in the manner prescribed by the department, records relating to the receipt, storage, transfer and disposition of the source and to such other matters as the department prescribes.

(2) Any person who possesses or uses a radiation source shall cause to be made, in the manner prescribed by the department, records showing the radiation exposure of any individual who is affected by such possession or use and for whom the department 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 department 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 department 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 department 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 department or its authorized representative, the custodian of any record required by this section shall give a copy of that record to the department 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 453.800, upon the issuance of an emergency order under ORS 453.807 the Department of Human Services 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 Department of Human Services in writing notifies the Attorney General that, in the judgment of the department, 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 453.800, if the department 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 department 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 453.800 and rules supersede contrary laws or regulations. Each provision of ORS 453.605 to 453.800 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 Department of Human Services 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 department may institute programs to qualify personnel to carry out the provisions of ORS 453.605 to 453.800 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 453.800. [1961 c.664 §9]

453.750 [1975 c.241 §3; 1987 c.158 §85; renumbered 453.805 in 1995]

(X-ray Machines)

453.752 X-ray machine registration; inspection and testing requirements; evidence of registration. (1) No X-ray machine shall be operated on or after July 1, 1996, unless the X-ray machine has a valid X-ray machine registration.

(2) Prior to issuance of an X-ray machine registration to a hospital, the X-ray machine shall be approved by an X-ray machine inspector employed by the Department of Human Services or inspected by an accredited radiology inspector. The inspector shall also review procedures used during X-ray machine operation and the adequacy of the physical surroundings and equipment used in conjunction with operation of the X-ray machine.

(3) Prior to issuance of an X-ray machine registration to a facility other than a hospital, the X-ray machine shall be approved by an X-ray machine inspector employed by the department.

(4) An accredited radiology inspector conducting a registration inspection on a hospital X-ray machine shall conduct information gathering tests in the manner required by the department. The inspector shall make calculations in the manner prescribed by the department and shall enter the results and such other information as the department may require on a form provided by the department.

(5) The department shall evaluate the test results submitted by an accredited radiology inspector and shall grant a hospital X-ray machine registration provided that all standards adopted by rule of the department are met, a properly completed registration application has been submitted by the X-ray machine owner and all required fees have been paid.

(6) When an X-ray machine is registered by the department, the department shall issue the X-ray machine owner a document, sticker, plate or other device selected by the department to evidence registration of the X-ray machine. [1995 c.444 §2]

453.754 Application for X-ray machine registration; renewal notice. (1) Each application for an X-ray machine registration shall be in writing and shall state such information as the Department of Human Services by regulation determines to be necessary. The application shall be accompanied by the registration fee due under ORS 453.670.

(2) Not less than 90 nor more than 120 days prior to the expiration of an X-ray machine registration, the department shall mail notice to the X-ray machine owner of the pending expiration of the registration. The notice shall inform the owner of the requirements for renewing the registration. [1995 c.444 §4]

453.755 [1971 c.734 §66; 1975 c.241 §2; renumbered 453.807 in 1995]

453.757 X-ray machine biennial registration fee; annual license fees; use of fees. (1) The Department of Human Services shall charge a biennial registration fee for a registration granted pursuant to ORS 453.752 in the following amounts for:

(a) Hospital, radiological, chiropractic, osteopathic or medical X-ray machine, $173.

(b) Hospital X-ray machine when X-ray machine inspection is performed by an accredited radiology inspector,

$88.

(c) Industrial or podiatry X-ray machine, $115.

(d) Dental, academic or veterinary X-ray machine, $87.

(e) Microwave oven repair facility, $87.

(2) The Department of Human Services 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 Department of Human Services and approved by the Oregon Department of Administrative Services.

(3) The fees prescribed by the Department of Human Services pursuant to subsections (1)(e) and (2) of this section are due and payable on or before July 1 of each year.

(4) The department shall impose a $200 fee for accreditation as a radiology inspector and a biennial renewal fee of $200.

(5) All moneys received by the department under subsections (1)(e) and (2) of this section shall be paid into the State Treasury, deposited in the General Fund to the credit of the Public Health Account, and used exclusively by the department for the purposes of ORS 453.605 to 453.800. [Formerly 453.670]

Note: 453.757 was added to and made a part of 453.605 to 453.800 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

453.761 X-ray machine registration period; denial, conditioning, suspension or revocation of registration; termination. (1) An X-ray machine registration for a hospital radiological provider shall be valid for one year, expiring in the following year on the last day of the month of issuance.

(2) An X-ray machine registration for a chiropractic, osteopathic or medical doctor office or clinic shall be valid for two years, expiring in the second year on the last day of the month of issuance.

(3) An X-ray machine registration for a podiatry, dental or veterinary office or clinic or an academic or industrial facility shall be valid for three years, expiring in the third year on the last day of the month of issuance.

(4) Notwithstanding subsection (1), (2) or (3) of this section, the Department of Human Services shall, at the request of the X-ray machine owner, adjust the registration expiration date of any X-ray machine to coincide with the registration expiration date of other X-ray machines registered to the machine owner. The department shall prorate the registration fee accordingly.

(5) If an X-ray machine or the physical surroundings or equipment associated with the operation of the X-ray machine does not comply with one or more standards adopted by rule of the department, the department may deny the registration or may grant a provisional registration permitting temporary operation pending compliance with department standards.

(6) The department may require that X-ray machines having a valid registration be repaired, calibrated or modified or the physical surroundings or equipment used in conjunction with the operation of the registered X-ray machine be changed to comply with new standards adopted by rule of the department provided that compliance prior to expiration of the registration is determined by the department to be necessary to protect occupational and public health and safety.

(7) The department may deny, condition, suspend or revoke an X-ray machine registration if the department reasonably believes that the X-ray machine or the physical surroundings or equipment used in conjunction with the operation of the X-ray machine presents a danger to the health or safety of the operator or the public.

(8) An X-ray machine registration shall terminate if the X-ray machine is relocated for use in a physical surrounding other than the physical surrounding it occupied when inspected. [1995 c.444 §3]

453.765 [Formerly 453.590; 1979 c.726 §1; renumbered 469.533]

453.766 Prohibited conduct. A person shall not knowingly:

(1) Misrepresent a device evidencing X-ray machine registration as evidencing the registration of a different X-ray machine.

(2) Alter, obscure, deface or remove a device evidencing registration of an X-ray machine registration.

(3) Operate an X-ray machine not having a valid X-ray machine registration. [1995 c.444 §5]

453.770 [Formerly 453.595; 1979 c.726 §2; renumbered 469.536]

453.771 Imposition of civil penalty for X-ray machine registration violations. Upon a complaint by any person,

the Department of Human Services may investigate any alleged act prohibited by ORS 453.766. If, after investigation by a department-employed X-ray machine inspector, the department has reason to believe a prohibited act has been committed, the department may impose a civil penalty. Any person subject to a civil penalty under this section may request a hearing before the department. The hearing shall be conducted in accordance with ORS 183.413 to 183.470. [1995 c.444 §6]

453.775 Duties of Department of Human Services pertaining to X-ray machines. The Department of Human Services shall:

(1) Develop programs to evaluate hazards associated with the use of X-ray machines.

(2) Promulgate standards and make reasonable regulations relating to the registration of X-ray machines, X-ray machine operation, physical surroundings and equipment related to the operation of X-ray machines, operator training and approved X-ray machine operating practices.

(3) Collect and disseminate information relating to proper X-ray machine operation.

(4) Provide technical assistance and safety information to X-ray machine users. [1995 c.444 §7]

(Radiology Inspectors)

453.780 Radiology inspectors; license; minimum qualifications. (1) All applicants for accreditation as radiology inspectors shall possess at a minimum one of the following combinations of education and experience:

(a) One year of experience and one of the following:

(A) Certification by the American Board of Radiology or the American Board of Health Physics;

(B) A doctoral degree in a physical or biological science; or

(C) A Doctor of Medicine degree or a degree recognized by the Department of Human Services as an equally qualified health professional degree.

(b) Two years of experience and a master's degree in a physical or biological science.

(c) Four years of experience and a bachelor's degree in a physical or biological science.

(d) Six years of experience and an associate's degree in a physical or biological science.

(2) Experience required of an applicant includes, but is not limited to, measuring ionizing radiation, evaluating radiation safety and documenting radiation protection needs.

(3) In addition to meeting the education and experience requirements of this section, applicants shall be tested on knowledge of department rules governing the X-ray machine inspection program, including but not limited to safety requirements and inspection procedures. Applicants shall also complete such additional written or practical testing as the department may require.

(4) A license shall not be issued to an applicant unless the applicant has paid all required fees. [1995 c.444 §8]

453.785 Accreditation; renewal. (1) Accreditation as a radiology inspector shall be valid for two years and shall expire in the second year on the last day of the month of issuance unless renewed.

(2) Accreditation may be renewed if the radiology inspector has complied with the continuing education requirements adopted by rule of the Department of Human Services and has paid the renewal fee. [1995 c.444 §9]

453.790 Authority of Department of Human Services to condition, suspend, revoke or refuse to renew radiology inspector accreditation. The Department of Human Services may condition, suspend, revoke or refuse to renew accreditation of a radiology inspector for the following reasons:

(1) Knowingly falsifying information included on the inspection report form supplied by the department.

(2) Substantially failing to comply with department procedures.

(3) Failing to meet department accuracy requirements.

(4) Such other grounds as the department may establish by rule. [1995 c.444 §10]

453.795 Duties of Department of Human Services pertaining to accreditation of radiology inspectors. The Department of Human Services shall:

(1) Develop testing, training and continuing education standards for accredited radiology inspectors.

(2) Adopt rules for the proper inspection of X-ray machines for registration purposes and for regulating the professional activities of accredited radiology inspectors.

(3) Develop and implement audit programs using department-employed X-ray machine inspectors to monitor

accredited radiology inspector results and to monitor changes in the performance of registered X-ray machines during the registration period. No charge shall be made to an X-ray machine owner for an audit.

(4) Investigate and resolve complaints against accredited radiology inspectors and their employers. [1995 c.444 §11]

453.800 X-ray Machine Inspection Account; sources; use of moneys in account. (1) There is created in the General Fund of the State Treasury an X-ray Machine Inspection Account. Moneys credited to the account are continuously appropriated to the Department of Human Services for the carrying out of ORS 453.752 to 453.795.

(2) All registration fees paid pursuant to ORS 453.757 (1) by owners of X-ray machines, all application or renewal fees paid by applicants for accreditation as radiology inspectors under ORS 453.757 (4) and all civil penalties collected under ORS 453.771 are credited to the X-ray Machine Inspection Account. [1995 c.444 §14]

453.805 Elimination of radiation source danger; compelling compliance. (1) Whenever it appears to the Director of Human Services that a radiation source is presenting an imminent and substantial endangerment to the health or safety of persons, the 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 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 for the county in which the radiation source is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 453.750]

453.807 When hearing required; procedure; rules. (1) Where the Department of Human Services 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 department, 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. [Formerly 453.755]

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

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

TRANSPORTATION OF HAZARDOUS SUBSTANCES AND RADIOACTIVE MATERIALS

453.825 Department of Transportation plan for regulating transport of hazardous substances and radioactive waste. (1) The Department of Transportation shall coordinate development of a single plan and procedure for the regulation of the transportation of hazardous material and waste and radioactive material and waste in Oregon.

(2) In developing the plan under subsection (1) of this section, the Department of Transportation shall cooperate with the Interagency Hazard Communication Council created under ORS 453.510.

(3) As used in this section, “hazardous waste” has the meaning given that term in ORS 466.005. [1985 c.696 §1]

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

453.835 Report to legislative committee. The Department of Transportation shall submit regular reports on progress made toward completion of the plans to a committee designated by the Speaker of the House and the President of the Senate. If no such committee is designated, the reports shall be submitted to the Emergency Board. [1985 c.696 §3]

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

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

CLEANUP OF TOXIC CONTAMINATION FROM ILLEGAL DRUG MANUFACTURING

453.855 Purpose. It is the purpose of ORS 105.555, 431.175 and 453.855 to 453.912 to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided by law, whereby property which endangers the life, safety or welfare of the general public or occupants of property because of toxic chemical contamination that may result from illegal drug manufacturing may be required to be decontaminated, vacated and secured against use, or demolished. [1989 c.915 §1]

453.858 Definitions for ORS 453.855 to 453.912. As used in ORS 453.855 to 453.912:

(1) "Controlled substance" does not include marijuana.

(2) "Illegal drug manufacturing site" means any property on which there is a reasonably clear possibility of contamination with chemicals associated with the manufacturing of controlled substances and:

(a) Where activity involving the unauthorized manufacture of a controlled substance listed on Schedules I and II or any precursor chemical for such substances occurs; or

(b) Wherein are kept, stored or located any of the devices, equipment, things or substances used for the unauthorized manufacture of a controlled substance listed on Schedules I and II.

(3) "Property" means any:

(a) Real property, improvements on real property or portions of the improvements;

(b) Boat, trailer, motor vehicle or manufactured dwelling; or

(c) Contents of the items listed in paragraph (a) or (b) of this subsection. [1989 c.915 §2; 1999 c.861 §1]

453.861 Applicability. The provisions of ORS 105.555, 431.175 and 453.855 to 453.912 apply to any property that is known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe that the property has been used as an illegal drug manufacturing site. Nothing in ORS 105.555, 431.175 and 453.855 to 453.912 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance are kept, stored or located in or on the property for the purpose of lawful sale or use of these items. [1989 c.915 §3; 1999 c.861 §4]

453.864 Rules. The Director of Human Services shall adopt rules to carry out ORS 105.555, 431.175 and 453.855 to 453.912. The rules shall be developed in consultation with:

(1) The State Fire Marshal or designee;

(2) The director of the Poison Control and Drug Information Program of the Oregon Health and Science University, or a designee thereof;

(3) The Director of the Department of Environmental Quality, or a designee thereof;

(4) The Director of the Department of Consumer and Business Services, or a designee thereof;

(5) The Director of Transportation, or a designee thereof; and

(6) Any other governmental agency determined appropriate by the Department of Human Services whose advice and information is necessary for the formulation of the rules authorized by this section. [1989 c.915 §6]

453.867 Restriction on transfer of property used as illegal drug manufacturing site; contracts voidable. (1) Unless determined fit for use, pursuant to ORS 105.555, 431.175 and 453.855 to 453.912 and rules of the Department of Human Services, or as authorized by ORS 453.870, no person shall transfer, sell, use or rent any property knowing or having reasonable grounds to believe it was used as an illegal drug manufacturing site.

(2) All contracts, oral or written, for the transfer, sale, use or rent of property in violation of subsection (1) of this section are voidable between the parties, at the instance of the purchaser, transferee, user or renter. This subsection shall not make voidable any promissory note or other evidence of indebtedness or any mortgage, trust deed or other security interest securing such a promissory note or evidence of indebtedness, where such note or evidence and any such mortgage, trust deed or other security interest were given to a person other than the person transferring, selling, using or renting the property to induce such person to finance the transfer, sale, use or rental of the property. This section shall not impair obligations or duties required to be performed upon termination of a contract, as required by the provisions of the contract, including but not limited to payment of damages or return of refundable deposits. [1989 c.915 §4]

453.870 Transfer allowed after full disclosure. (1) Any property that is not fit for use as determined under ORS 453.876 may be transferred or sold if full, written disclosure, as required by rules of the Department of Human

Services, is made to the prospective purchaser, attached to the earnest money receipt, if any, and shall accompany but not be a part of the sale document nor be recorded. However, such property shall continue to be subject to the provisions of ORS 453.876, regardless of transfer or sale under this section.

(2) Any transferee or purchaser who does not receive the notice described in subsection (1) of this section may set aside the transfer or sale as voidable and bring suit to recover damages for any losses incurred because of the failure to give such notice.

(3) The transferor or seller of any property described in subsection (1) of this section shall notify the department of the transfer or sale as required by rule of the department. [1989 c.915 §5]

453.873 Entry onto property; purposes; inspection. For the purposes of enforcement of ORS 105.555, 431.175 and 453.855 to 453.912, the Director of Human Services or a designee thereof or the State Fire Marshal or a designee thereof, upon presenting appropriate credentials and a warrant, if necessary, issued under ORS 431.175 to the owner or agent of the owner, may:

(1) Enter, at reasonable times, any property that is known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe that the property has been used as an illegal drug manufacturing site.

(2) Inspect, at reasonable times, within reasonable limits and in a reasonable manner, property known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe the property has been used as an illegal drug manufacturing site. [1989 c.915 §7; 1999 c.861 §5]

453.876 Determination that property is not fit for use; appeal. (1) The Director of Human Services or a designee thereof, the State Fire Marshal or a designee thereof or any law enforcement agency may determine that property is not fit for use pursuant to ORS 105.555, 431.175 and 453.855 to 453.912 and applicable rules adopted by the Department of Human Services and may make that determination on site. The determination is effective immediately and renders the property not fit for use.

(2) The owner may appeal the determination, to the agency that made the determination, within 30 working days after the determination, pursuant to rules of the agency, or to circuit court.

(3) The appeal to the agency is not a contested case under ORS 183.310 to 183.550. The question on appeal is limited to whether the site is an illegal drug manufacturing site. [1989 c.915 §9; 1999 c.861 §2]

453.879 Director of the Department of Consumer and Business Services to be notified of determination. When the Assistant Director for Health or a designee thereof, the State Fire Marshal or designee thereof or any law enforcement agency makes a determination that property subject to ORS 105.555, 431.175 and 453.855 to 453.912 is not fit for use, the assistant director or designee thereof shall notify the Director of the Department of Consumer and Business Services of the determination. The director shall list the property as not fit for use until the director is notified that the property has been certified by the Health Division pursuant to ORS 453.885, or the initial determination is reversed on appeal, or the property is destroyed. Upon receipt of the certificate, the director shall cause the property to be removed from the list described in this section. [1989 c.915 §10]

453.882 Use of contaminated property constitutes public nuisance. The owner of property that has been determined to be not fit for use pursuant to ORS 453.855 to 453.912 who allows such property to be used as if it were fit for use shall be considered to be maintaining a public nuisance subject to being enjoined or abated under ORS 105.550 to 105.600. [1989 c.915 §12; 1999 c.168 §10]

453.885 Decontamination of property; certification process. (1) The owner of property determined to be not fit for use under ORS 105.555, 431.175 and 453.855 to 453.912 who desires to have the property certified as fit for use may use the services of a contractor licensed by the Department of Human Services to decontaminate the property or, upon approval by the department, the owner, or an agent of the owner, may perform the decontamination work. The contractor, in coordination with the owner or agent of the owner, shall prepare and submit a written work plan for decontamination to the department. If the work plan is approved and the decontamination work is completed according to the plan and is properly documented, the department shall certify the property as having been decontaminated in compliance with rules of the department. Upon the completion of the work plan, the department shall require the licensed contractor’s affidavit of compliance with the approved work plan.

(2) The property owner shall notify the Director of the Department of Consumer and Business Services of the

certification. No person who is not licensed by the Department of Human Services under ORS 105.555, 431.175 and 453.855 to 453.912 shall advertise to undertake or perform the work necessary to decontaminate property determined to be not fit for use under ORS 105.555, 431.175 and 453.855 to 453.912.

(3) Upon receipt of the certificate and a request by the property owner to remove the property from the list, the Director of the Department of Consumer and Business Services shall cause the property to be removed from the list. [1989 c.915 §11; 1999 c.861 §3]

453.888 License required to perform decontamination; procedure; grounds for denial, revocation or suspension of license; civil penalty. (1) The Department of Human Services by rule shall establish performance standards for contractors under ORS 105.555, 431.175 and 453.855 to 453.912.

(2) The department shall train and test, or may approve courses to train and test, contractors' personnel on the essential elements in assessing premises used as an illegal drug manufacturing site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment and relevant federal regulations and state rules.

(3) Upon the contractor's supervisory personnel's successful completion of the training and testing and the contractor having complied with the rules of the department and having paid the required fee, the contractor shall be licensed. Licenses are renewable biennially, as determined by rule of the department, upon supervisory personnel's successful completion of any required refresher course.

(4) The department may deny, suspend or revoke the license of any contractor pursuant to ORS 183.310 to 183.550 for:

(a) Failing to:

(A) Perform decontamination work under the supervision of trained personnel;

(B) File a work plan;

(C) Perform work pursuant to the plan;

(D) Pay a civil penalty imposed under ORS 105.555, 431.175 and 453.855 to 453.912; or

(E) Perform work that meets the requirements of ORS 453.903.

(b) Committing fraud or misrepresentation in:

(A) Applying for a license;

(B) Seeking approval of a work plan; or

(C) Documenting completion of the work to the department.

(5) The department may impose a civil penalty not to exceed $500, in addition to or in lieu of license denial, suspension or revocation, pursuant to ORS 183.310 to 183.550. [1989 c.915 §13; 1991 c.67 §126]

453.891 Department of Human Services to provide information to licensed contractors and those planning to become licensed. Between the dates of scheduled training for contractors under ORS 453.888, the Department of Human Services shall be available to consult with licensed contractors, as well as those planning to become licensed, on information pertinent to illegal drug manufacturing sites, including but not limited to chemicals found at such sites and their toxicity, new or revised decontamination procedures, personal protective equipment and applicable federal regulations and state rules. [1989 c.915 §19]

453.894 Licensing fees. (1) The Department of Human Services shall establish by rule a schedule of fees for at least the following:

(a) Initial licenses and renewal under ORS 105.555, 431.175 and 453.855 to 453.912.

(b) Training courses and examinations conducted by or on behalf of the department.

(c) Reexaminations for failing the initial examinations.

(d) Review of work plans.

(2) The fees established under subsection (1) of this section shall be based upon the costs of the department in carrying out the provisions of ORS 105.555, 431.175 and 453.855 to 453.912.

(3) If a license renewal application and fee is not received by the department within 15 days after the expiration of the license, a penalty of $100 shall be added and collected.

(4) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Public Health Account. Such moneys are continuously appropriated to the Department of Human Services to pay the department's expenses in administering the provisions of ORS 105.555, 431.175 and 453.855 to 453.912.

(5) Subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, any fee or change shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. [1989 c.915 §14; 1991 c.703 §12; 1999 c.861 §8]

453.897 Lists of licensed contractors to be made available. The Department of Human Services shall provide lists of the names of contractors licensed under ORS 105.555, 431.175 and 453.855 to 453.912 to the Director of the Department of Consumer and Business Services who shall distribute the lists to local building code enforcement agencies. The local agencies shall make the list available on request and shall supply a copy to any property owner whose property is determined to be not fit for use under ORS 105.555, 431.175 and 453.855 to 453.912. [1989 c.915 §15]

453.900 Inspection of decontamination work; contracts to perform. The Department of Human Services may contract with state or local agencies or private persons to perform any inspection or to obtain any samples relative to determining the adequacy of decontamination work. [1989 c.915 §16]

453.903 Evaluation of decontamination projects; civil penalty. The Department of Human Services shall evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension that prohibits the contractor from performing additional work until deficiencies have been corrected on the project. Civil penalties under this section shall be imposed as provided in ORS 183.090. [1989 c.915 §18; 1991 c.734 §30]

453.906 Condemnation or demolition of property; standards; rules. The Director of the Department of Consumer and Business Services shall adopt rules fixing uniform standards whereby local building code enforcement agencies may require that property determined under ORS 105.555, 431.175 and 453.855 to 453.912 to be not fit for use may be subject to action to condemn or demolish the property or to require the property be vacated or contents be removed from the property. [1989 c.915 §17]

453.909 Authority of counties and cities. Counties and cities by ordinance may prohibit use or occupancy of or provide for regulation of any property so long as such prohibition or regulation is consistent with ORS 105.555, 431.175 and 453.855 to 453.912 and rules of the Department of Human Services. [1989 c.915 §20; 1999 c.861 §6]

453.912 Governmental immunity from liability. The state and any local government, their officers, agents and employees shall not be liable for loss or injury resulting from the presence of any chemical or controlled substance at a site used to manufacture illegal drugs or from actions taken to carry out the provisions of ORS 105.555, 431.175 and 453.855 to 453.912 except for liability for damages resulting from gross negligence or intentional misconduct by the state or local government. [1989 c.915 §21]

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 453.800 is a Class A misdemeanor.

(4) In addition to the provisions of ORS 453.882 regarding enjoinder and abatement, a person who knowingly uses property that has been determined to be not fit for use pursuant to ORS 105.555, 431.175 and 453.855 to 453.912 as if it were fit for use commits a Class B misdemeanor.

(5) Violation of ORS 453.885 (2) is a Class B 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; subsection (4) enacted as 1989 c.915 §22; 1997 c.769 §2]

453.992 [Amended by 1969 c.631 §16; 1977 c.582 §53; repealed by 1995 c.658 §127]

453.994 [1971 c.609 §27; renumbered 469.992]

453.995 Civil penalties. (1) In addition to any other liability or penalty provided by law, the Department of Human Services may impose a civil penalty on a person for violation of ORS 453.885.

(2) A civil penalty imposed under this section may not exceed $2,000.

(3) ORS 183.090 applies to civil penalties imposed under this section. [1999 c.861 §7]

Note: 453.995 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 453 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.