

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form..

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [ 08/04/2009 ] by the  
Date prior to or same as filing date  
Oregon Employment Department, Administration OAR 471

Agency and Division Administrative Rules Chapter Number  
Janet Orton 875 Union St NE, Salem OR 97311 (503) 947-1724  
Rules Coordinator Address Telephone

to become effective [ 08/04/2009 ] through [01/31/2010 ].  
Date upon filing or later A maximum of 180 days including the effective date.

**RULE CAPTION**

Adopts criminal records checks and fitness determinations as part of the agency's hiring practices.

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.  
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 471-007-0020, 471-007-0210, 471-007-0220, 471-007-0230, 471-007-0240, 471-007-0250, 471-007-0260, 471-007-0270, 471-007-0280, 471-007-0285, 471-007-0290, 471-007-0300, 471-007-0310

**AMEND:** OAR

**SUSPEND:** OAR

Stat. Auth.: ORS 657.610

Other Auth.: ORS 181.534, 181.537

Stats. Implemented: ORS 181.534(9)

**RULE SUMMARY**

Adopts the criminal records checks and fitness determination process as required part of the Oregon Employment Department's hiring practices.

*Laurie A. Warner* Laurie A Warner 08/04/2009  
Signature Printed name Date

\*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Employment Department, Administration  
Agency and Division

OAR 471  
Administrative Rules Chapter Number

In the Matter of: Adopt OAR 471 - 007-0020, 471-007-0210, 471-007-0220, 471-007-0230, 471-007-0240, 471-007-0250, 471-007-0260, 471-007-0270, 471-007-0280, 471-007-0285, 471-007-0290, 471-007-0300, 471-007-0310

Rule Caption: Adopts criminal records checks and fitness determinations as part of the agency's hiring practices.

Statutory Authority: ORS 657.610

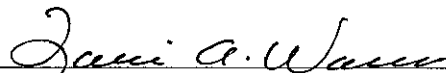
Other Authority: 181.534, 181.537

Stats. Implemented: ORS 181.534(9)

Need for the Temporary Rule(s): Allows the agency to begin criminal background checks and fitness determinations as part of their hiring practices enabling the agency to better safeguard it's customers confidential data by ensuring OED employees are fit for duty.

Documents Relied Upon, and where they are available: ORS 657, ORS 181, OAR Select, available from the Secretary of State's website or by contacting the Employment Department Rules Coordinator at [rules.emp@state.or.us](mailto:rules.emp@state.or.us) or (503) 947-1724 or by visiting the Employment Department's website: [www.workinginoregon.org](http://www.workinginoregon.org)

Justification of Temporary Rule(s): Because the rules allow the agency to better serve customers by ensuring employees are fit for duty the use of the temporary rule is justified.

  
Signature

Laurie A Warner, Director  
Printed name

08/04/2009  
Date

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Employment Department, Administration

OAR 471

Agency and Division

Administrative Rules Chapter Number

Janet Orton

875 Union St NE, Salem, OR 97311

(503) 947-1724

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Adopts criminal records checks and fitness determinations as part of the agency's hiring practices.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 471-007-0020, 471-007-0210, 471-007-0220, 471-007-0230, 471-007-0240, 471-007-0250, 471-007-0260, 471-007-0270, 471-007-0280, 471-007-0285, 471-007-0290, 471-007-0300, 471-007-0310

**AMEND:** OAR

**REPEAL:** OAR

**RENUMBER:** OAR

**AMEND & RENUMBER:** OAR

Stat. Auth.: ORS 657.610

Other Auth.: ORS 181.534, 181.537

Stats. Implemented: ORS 181.534(9)

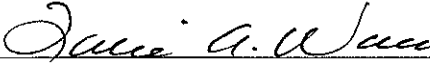
**RULE SUMMARY**

Adopts the criminal records checks and fitness determination process as required part of the Oregon Employment Department's hiring practices.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

**December 1, 2009**

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

 Laurie A Warner  
Signature Printed name

08/04/2009

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Employment Department, Administration

OAR 471

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Adopt OAR 471 - 007-0020, 471-007-0210, 471-007-0220, 471-007-0230, 471-007-0240, 471-007-0250, 471-007-0260, 471-007-0270, 471-007-0280, 471-007-0285, 471-007-0290, 471-007-0300, 471-007-0310

Rule Caption: Adopts criminal records checks and fitness determinations as part of the agency's hiring practices.

Statutory Authority: ORS 657.610

Other Authority: ORS 181.534, 181.537

Stats. Implemented: ORS 181.534(9)

Need for the Rule(s): Allows the agency to begin criminal background checks and fitness determinations as part of their hiring practices enabling the agency to better safeguard its customers confidential data by ensuring OED employees are fit for duty.

Documents Relied Upon, and where they are available: ORS 657, ORS 181, OAR Select, available from the Secretary of State's website or by contacting the Employment Department Rules Coordinator at [rules.emp@state.or.us](mailto:rules.emp@state.or.us) or (503) 947-1724 or by visiting the Employment Department's website: [www.workinginoregon.org](http://www.workinginoregon.org)

Fiscal and Economic Impact, including Statement of Cost of Compliance: Estimated cost for the Employment Department is \$280 annually. This is based on requesting fingerprint checks for 14 people, which is 5% of the total number of new employees. The fingerprint check is requested from the Oregon State Police and their charge to Employment is \$20 per check. The cost to the Employment Department would be \$420 for 2009-2011 and \$560 for 2011-13.

Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
  - N/A
2. Cost of compliance effect on small business (ORS 183.336):
  - N/A
  - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
    - N/A
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
    - N/A
  - c. Equipment, supplies, labor and increased administration required for compliance:
    - N/A

How were small businesses involved in the development of this rule? Small businesses were not involved in the development of this rule.

Administrative Rule Advisory Committee consulted?: No

If not, why?: The rule deals with the hiring practices of the agency rather than the administration of the program, the agency's HR team worked on the rule with the assistance of the Department of Justice.

 Laurie A Warner, Director  
 Signature Printed name

08/04/2009  
Date

# EMPLOYMENT DEPARTMENT

## DIVISION 7

### CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

#### **471-007-0200 Statement of Purpose and Statutory Authority**

(1) **Purpose.** These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, contractor, subcontractor, vendor or volunteer in a position or assignment covered by OAR 471-007-0220(1)(a)-(d). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee.

(2) **Authority.** These rules are authorized under ORS 181.534, 181.537.

Stat. Auth.: ORS 181.534, 181.537.

Stats. Implemented: ORS 181.534(9)

#### **471-007-0210 Definitions**

As used in OAR chapter 471, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a criminal records check and any required fitness determination have been completed on a subject individual and an authorized designee has determined that the subject individual is fit to be an employee in a position, or contractor, subcontractor, vendor, or volunteer covered by OAR 471-007-0220(1)(a)-(d).

(2) "Authorized Designee" means a Department employee authorized to obtain and/or review criminal offender information and other records about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case.

(4) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(5) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 471-007-0250.

(6) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 471, division 007.

(7) "Criminal Records Check" or "CRC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) a check of criminal offender information conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) a check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) a nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(8) "Denied" means that a criminal records check and subsequent fitness determination have been completed on a subject individual, and an authorized designee has determined that the subject individual is not fit to be an employee, contractor, subcontractor, vendor or volunteer in a position covered by OAR 471-007-0220(1)(a)-(d).

(9) "Department" means the Oregon Employment Department (OED) or any subdivision thereof.

(10) "False Statement" means that, in association with an activity governed by these rules, a subject individual either: (a) provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record, or (b) failed to provide to the Department information material to determining his or her criminal history.

(11) "Fitness Determination" means a determination made by an authorized designee pursuant to the process established 471-007-0240 that a subject individual is or is not fit to be a Department employee in a position covered by OAR 471-007-0220(1)(a)-(d).

(12) "Family Member" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) “Subject Individual” means an individual identified in OAR 471-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 181.537, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **471-007-0220 Subject Individual**

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, “Subject Individual” means a person who:

- (a) Is employed by OED;
- (b) Has applied for or been offered employment by OED;
- (c) Is offered temporary employment by OED;
- (d) Is a contractor, subcontractor, vendor or volunteer over whom OED has direction and control when providing services to or on behalf of OED, or as a participant in an internship program or an individual who volunteers on a recurring basis.

Stat. Auth.: ORS 181.534, 181.537.

Stats. Implemented: ORS 181.534(9).

#### **471-007-0230 Criminal Records Check Process**

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual, if requested, shall complete and sign the Employment Department Criminal Records Request form and, if requested by the Department, a fingerprint card.

(b) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 471-007-0240(3)(c)(B).

(c) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve any issues hindering the completion of a criminal records check.

(2) When a Criminal Records Check Is Conducted. An authorized designee may conduct or request that the Oregon Department of State Police conduct a Criminal Records Check when:

(a) an individual meets the definition of “subject individual”; or

(b) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee may conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(b) Oregon Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct an Oregon criminal records check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or review of any other information deemed relevant to the inquiry; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of, or information provided by, a subject individual. Reasonable grounds to question the information provided by a subject individual include, but are not limited to: the subject individual fails to disclose a Social Security Number, discloses a Social Security Number that appears to be invalid, or does not have an Oregon driver's license or identification card; or

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

Stat. Auth.: ORS 181.534, 181.537.

Stats. Implemented: ORS 181.534(9).

**471-007-0240 Fitness Determination**

(1) If the Department elects to conduct a criminal records check, an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 471-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)-(f) in relation to information provided by the subject individual under OAR 471-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The subject individual shall meet with the authorized designee if requested and provide additional information within a reasonable period of time, as established by the authorized designee. The authorized designee will use all collected information in considering:

(a) whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 471-007-0250;

(b) the nature of any crime(s) identified under subsection (a);

(c) the facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) the facts that indicate the subject individual made a false statement;

(e) the relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) the following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) the passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) the age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) the likelihood of a repetition of offenses or of the commission of another crime;

(D) the subsequent commission of another crime listed in OAR 127-007-0250;

(E) whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon; and

(F) a recommendation of an employer.

(3) Possible Outcomes of a Fitness Determination.

(a) Automatic Approval. An authorized designee shall approve as fit a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 471-007-0250;

(B) Evidence that the subject individual has a pending indictment for a crime listed in OAR 471-007-0250;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 471-007-0250;

(D) Evidence that the subject individual made a false statement; or

(E) Any discrepancies between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines: (i) that the evidence is not credible; or (ii) that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(c) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process. A subject individual may not appeal any determination made based on a refusal to consent.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services to the Department.

(4) Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262.

(5) Final Order. A completed fitness determination is final unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 471-007-0280(2)(a) or an alternative appeals process as provided by OAR 471-007-0280(6).

Stat. Auth.: ORS 181.534, 181.537.  
Stats. Implemented: ORS 181.534(9).

#### **471-007-0250 Crimes Relevant to a Fitness Determination**

##### (1) Crimes Relevant to a Fitness Determination

(a) All felonies;

(b) All Class A misdemeanors;

(c) All Class B misdemeanors;

(d) Any United States Military crime or international crime;

(e) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection (1) pursuant to ORS 161.405, 161.435, or 161.450;

(f) Any crime based on criminal liability for conduct of another person pursuant to ORS 161.555, when the underlying crime is listed in this subsection (1);

(2) Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

Stat. Auth.: ORS 181.534, 181.537.  
Stats. Implemented: ORS 181.534(9).

#### **471-007-0260 Incomplete Fitness Determination.**

- (1) The Department will close a fitness determination as incomplete when:
  - (a) circumstances change so that a person no longer meets the definition of a “subject individual” under OAR 471-007-0220;
  - (b) the subject individual does not provide materials or information under OAR 471-007-0230(1) within the timeframes established under that rule;
  - (c) an authorized designee cannot locate or contact the subject individual;
  - (d) the subject individual fails or refuses to cooperate with an authorized designee’s attempts to acquire other relevant information under OAR 471-007-0240(2);
  - (e) the Department determines that the subject individual is not eligible or not qualified for the position for a reason unrelated to the fitness determination process; or
  - (f) the position is no longer open.
- (2) A subject individual does not have a right to a contested case hearing under OAR 471-007-0280 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 181.537.  
Stats. Implemented: ORS 181.534(9).

#### **471-007-0270 Notice to Subject Individual of Fitness Determination**

- (1) An authorized designee shall provide written notice to a subject individual upon completion of a fitness determination, or upon the closing of a fitness determination due to incompleteness.
- (2) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed. This shall include the mailing date.
- (3) If the notice pertains to a completed fitness determination, it shall comply with the requirements of OAR 137-003-0505 and ORS 183.415.

Stat. Auth.: ORS 181.534, 181.537.  
Stats. Implemented: ORS 181.534(9).

#### **471-007-0280 Appealing a Fitness Determination**

(1) This rule sets forth a contested case hearing process by which a subject individual may appeal a fitness determination made under OAR 471-007-0240 that he or she is fit or not fit to be a department employee, contractor, subcontractor, vendor or volunteer in a position covered by 471-007-0220(1)(a)-(d). Section (8) of this rule identifies an alternative appeal process available only to current OED employees.

(2) The Attorney General's Model Rules of Procedure, OAR 137-003-0001 through 137-003-0092, apply unless the department refers the contested case hearing to an appropriate Administrative Law Judge. At the sole discretion of the Director, the matter may be referred to the Office of Administrative Hearings to assign an Administrative Law Judge. If the department refers the matter to the Office of Administrative Hearings, 137-003-0501 through 137-003-0700 shall apply.

(3) Process.

(a) To request a contested case hearing under this rule, the subject individual or the subject individual's legal representative must submit a timely written request to the department's Office of Human Resources. To be considered timely, the request must be received by the department's Office of Human Resources within five working days of the postmark of the notice of fitness determination letter.

(b) Upon timely receipt of a request for a hearing pursuant to section (3)(a), the Director shall appoint a hearing officer and schedule a hearing

(4) The hearings officer will establish the time and place of the hearing. Notice of the hearing shall be served on the department's Office of Human Resources authorized designee and participants at least five working days in advance of the hearing date.

(5) No Public Attendance. Contested case hearings conducted pursuant to this rule are closed to non-participants.

(6) A fitness determination made under OAR 471-007-0240 becomes final when:

(a) A subject individual fails to file a timely request for hearing; or

(b) A subject individual withdraws a hearing request, notifies the agency or the hearings officer that the subject individual will not appear, or fails to appear for the hearing.

(7) The hearings officer will issue a proposed order within five working days following a hearing. Exceptions, if any, must be received by the department within 10 working days after the service of the proposed order.

(8) After considering exceptions, if any, to the proposed order, the Director shall issue a final order.

(9) A subject individual who is currently employed by the department and who is determined to be unfit pursuant to a final fitness determination may appeal the fitness determination either under the contested case process made available by this rule or through a process available under applicable personnel rules, policies and collective bargaining agreements. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining agreements is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process pursuant to sections 3 through 8 of this rule.

(10) The only remedy that the department is required to award under this rule, is a determination that the subject individual is fit or not fit. Under no circumstances shall the department be required to place a subject individual in any position, nor shall the department be required to accept services or enter into a contractual agreement with a subject individual.

(11) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation. Challenges to the accuracy or completeness of information identified in this section (11), must be made pursuant to the rules of the agency that provided the information.

(12) Nothing under these rules shall be construed as requiring the department to delay, postpone, or suspend its hiring process or employment decisions pending an appeal of a fitness determination, or criminal offender information pursuant to the rules of the agency that provided the information, or a request for a new criminal records check and re-evaluation of the original fitness determination.

Stat.Auth.: ORS 181.534 & 181.537 & 657.610

Stats. Implemented: ORS 181.534(9) & 181.534

#### **471-007-0285 Agency Representation**

(1) The Director shall designate an authorized representative of the department to participate in hearings conducted pursuant to these rules.

Stat. Auth.: ORS 181.534 & 657.610

Stats. Implemented: ORS 181.534(9) & 181.534

#### **471-007-0290 Recordkeeping and Confidentiality**

(1) An authorized designee shall document a fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal laws and regulations.

(b) Only the Department's authorized designees shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR Chapter 257, Division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity before providing this criminal offender information to him or her. The Department shall require that the subject individual sign a receipt confirming his or her receipt of the criminal offender information.

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including OED Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Only authorized designees shall have access to the records identified under subsection (a).

(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.

Stat. Auth.: ORS 181.534, 181.537.

Stats. Implemented: ORS 181.534(9).

#### **471-007-0300 Authorized Designees**

(1) Appointment.

(a) The Department Director or the Director's designee shall designate positions within the Department as including the responsibilities of an authorized designee.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her sole discretion.

(2) The Department Director and Deputy Director may also serve as authorized designees, contingent on being approved under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is a family member of the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status.

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position within the Department, and thereby suspend or terminate his or her status as an authorized designee, if the employee fails to comply with OAR 471-007-0200 through OAR 471-007-0290 in conducting criminal records checks and fitness determinations.

(c) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 471-007-0250. Failure to make the required report is grounds for termination of the individual's appointment to a designated position within the Department, and thereby termination of his or her status as an authorized designee.

(d) The Department will review and update an authorized designee's eligibility for service in a designated position within the Department. As part of a review or update, a new criminal records check and fitness determination may be required:

(A) Every three years; or

(B) At any time the Department has reason to believe that the authorized designee has violated these rules or no longer is eligible to serve in his or her current position within the Department.

(5) A denial under OAR 471-007-0240(3) related to a designated position within the Department is subject to the appeal rights provided under OAR 471-007-0290.

Stat. Auth.: ORS 181.534, 181.537.

Stats. Implemented: ORS 181.534(9).

#### **471-007-0310 Fees**

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.

(3) The Department shall not charge a fee if the subject individual is a Department employee or an applicant for employment with the Department.

Stat. Auth.: ORS 181.534, 181.537.

Stats. Implemented: ORS 181.534(9).