

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 **May 22, 2008** by the

**Department of Human Services, Administrative Services Division and Director's Office** **407**  
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective **May 22, 2008** through **November 17, 2008**.

**RULE CAPTION**

**Variance Process for Criminal History Check Rules for Department Employees, Volunteers, and Contractors**  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**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: 407-007-0100**

Stat. Auth.: **ORS 181.534, 181.537, 409.050**

Other Auth.:

Stats. Implemented: **ORS 181.534, 181.537, 409.050**

**RULE SUMMARY**

The Department of Human Services (Department) currently conducts criminal history checks for all its employees, applicants or persons offered employment, volunteers, and contractors under OAR 407-007-0000 through 407-007-0090. In certain specific and time-limited instances, the process for criminal history checks needs to be modified. To protect the Department, its clients, and vulnerable persons, this process should only be reviewed as a variance to determine risk. This variance rule allows for variance requests to be reviewed and processed.

  
Authorized Signer

**Kym Gasper, Authorized Signer**  
Printed name

**5/22/2008**  
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

Secretary of State  
**STATEMENT OF NEED AND JUSTIFICATION**  
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Administrative Services Division and Director's Office  
Agency and Division

407  
Administrative Rules Chapter Number

In the Matter of:  
The temporary adoption of OAR 407-007-0100.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)  
**Variance Process for Criminal History Check Rules for Department Employees, Volunteers, and Contractors**

Statutory Authority: ORS 181.534, 181.537, 409.050  
Other Authority:  
Stats. Implemented: ORS 181.534, 181.537, 409.050

Need for the Temporary Rule(s):  
The Department of Human Services (Department) currently conducts criminal history checks for all its employees, applicants or persons offered employment, volunteers, and contractors under OAR 407-007-0000 through 407-007-0090. In certain specific and time-limited instances, the process for criminal history checks needs to be modified. To protect the Department, its clients, and vulnerable persons, this process should only be reviewed as a variance to determine risk. This variance rule allows for variance requests to be reviewed and processed.

Documents Relied Upon, and where they are available:  
ORS 181.534, 181.537; available from [http://www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/)  
OAR 407-007-0000 through 407-007-0090; available from  
[http://www.sos.state.or.us/archives/rules/OARS\\_400/OAR\\_407/407\\_007.html](http://www.sos.state.or.us/archives/rules/OARS_400/OAR_407/407_007.html)

Justification of Temporary Rule(s):  
Making variances to the criminal history check process is not adequately addressed by the current rules. The Department finds that failure to act promptly will result in serious prejudice to the public interest, the Department, and the Department's clients and vulnerable persons. These rules need to be adopted promptly so that these considerations may be addressed immediately. If not adopted, some programs administered by the Department cannot be implemented.

  
Authorized Signer

Kym Gasper, Authorized Signer  
Printed name

5/22/2008  
Date

**CHAPTER 407  
DEPARTMENT OF HUMAN SERVICES,  
ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

**DIVISION 7  
CRIMINAL HISTORY CHECKS**

**Department Employees, Volunteers, and Contractors**

**407-007-0100**

**Variances**

- (1) Criteria for a Variance. The Department may grant a variance based upon a demonstration by the Department program area or work unit that the variance would not pose a significant risk to the Department, its clients, or vulnerable individuals.
- (2) Variance Application. The program office or work unit requesting a variance shall submit, in writing, an application to the Department's Administrative Services Division that contains the following:
  - (a) The section of the rule from which the variance is sought;
  - (b) The reason for the proposed variance;
  - (c) The alternative practice, service, method, concept, or procedure proposed;
  - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and
  - (e) An explanation on how the safety and well-being of the Department or affected individuals will be ensured during the time the variance period is in effect.
- (3) Department Review. The Assistant Director of the Department's Administrative Services Division or designee may approve or deny the request for a variance.
- (4) Notification. The Department shall notify the program office or work unit of the decision. This notice shall be sent within 30 days of receipt of the request by the Department with a copy to other relevant sections of the Department.
- (5) Appeal Application. Appeal of the denial of a variance request shall be made in writing to the Assistant Director of the Department's Administrative Services Division, whose decision shall be final.

## TEMPORARY ADOPT

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- (6) Duration of Variance. The duration of the variance shall be determined by the Department. All reapplications for variances shall be submitted before the duration of the variance expires.
- (7) Implementation. The Department program office or work unit may implement a variance only after written approval is received from the Department.
- (8) No Precedent. Granting a variance does not set a precedent for subsequent requests for variances.
- (9) Fitness Determination Outcomes Not Subject. The outcome of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made through contested case hearing rights set forth in these rules or alternative options available to Department employees.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.050