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CHAPTER 837

DEPARTMENT OF THE STATE FIRE MARSHAL

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FILING CAPTION: Adopting rules for conducting employment related criminal records checks.

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RULES:

837-007-0200, 837-007-0210, 837-007-0220, 837-007-0230, 837-007-0240, 837-007-0250, 837-007-0260, 837-007-0270, 837-007-0280, 837-007-0290, 837-007-0300, 837-007-0310

ADOPT: 837-007-0200

RULE TITLE: Statement of Purpose and Statutory Authority

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Defines the purpose of conducting criminal record checks.

RULE TEXT:

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 covered by OAR 837-007-0220.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0210

RULE TITLE: Definitions

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Establishes definitions for the division.

RULE TEXT:

As used in OAR chapter 837, division 007, unless the context of the rule requires otherwise, the following definitions apply:

- (1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 837-007-0240 or a final fitness determination under OAR 837-007-0250, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, or contractor in a position covered by OAR 837-007-0220.
- (2) "Authorized Designee" means a department employee authorized to obtain and review criminal offender information and other relevant information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.
- (3) "Conviction" or "Convicted of" means that a court of law has entered a final judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.
- (4) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled and disseminated by the Oregon Department of State Police (OSP), or by other states, for purposes of identifying criminal offenders and alleged offenders, and maintained as part of an individual's records of arrests, the nature and disposition of criminal charges, sentencing, confinement, but does not include the retention by OSP or records of transfer of inmates between penal institutions or other correctional facilities, and release.
- (5) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 837-007-0260.
- (6) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 837, division 007.
- (7) "Criminal Records Check" or "CRC" means obtaining and reviewing criminal records as required or permitted by these rules and includes the following:
 - (a) 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
 - (b) 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, pursuant to a preliminary fitness determination under OAR 837-007-0240 or a final fitness determination under OAR 837-007-0250, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, or contractor in a position covered by OAR 837-007-0220.
- (9) "Department" means the Department of the State Fire Marshal or any subdivision thereof. "Department" does not include a criminal justice agency as defined in ORS 181A.195(1)(a)(B).
- (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 in OAR 837-007-0230 (preliminary fitness determination) or OAR 837-007-0250 (final fitness determination) that a subject individual is or is not fit to be a Department employee in a position covered by OAR 837-007-0220.
- (12) "Subject Individual" means an individual identified in OAR 837-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0220

RULE TITLE: Subject Individual

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes the subject individuals who may be required to complete a criminal records check.

RULE TEXT:

The Department may require a Subject Individual to complete a criminal records check due to the following reasons:

(1) Is applying for employment or is employed with the Department; or

(2) Provides services or seeks to provide services to the Department as a contractor, subcontractor, vendor or volunteer.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0230

RULE TITLE: Criminal Records Check Process

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes the criminal records check process for subject individuals.

RULE TEXT:

A subject individual will be required to have a criminal records check.

(1) Preliminary to performing a criminal records check, a subject individual shall complete and sign the Department Applicant Background Check Release Authorization. Applicant Background Check Release Authorization require the following information: name, Social Security Number, driver's license or identification card number, and any other identifying information deemed necessary by the authorized designee.

(2) Upon submission of Department Applicant Background Check Release Authorization form, subject individual will be required to be fingerprinted for the Nationwide Criminal Records Check

(3) The Oregon State Police conducts a Nationwide Criminal Records Check and provides the results to the Department.

(4) The Department shall not request a Department Criminal Records Request 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 and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a failure to complete process under OAR 837-007-0280(2).

(5) 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 issue(s) hindering the completion of a criminal records check.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0240

RULE TITLE: Hiring on a Preliminary Basis

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes a preliminary fitness determination and process for approving a subject individual.

RULE TEXT:

(1) An authorized designee may conduct a preliminary fitness determination pending the receipt of the Nationwide Criminal Records check and the Department Weigh Test.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired on a preliminary basis is deemed to be on trial service. If the subject individual is denied upon completion of a final fitness determination, as provided under OAR 837-007-0250(2), then the Department shall immediately terminate the subject individual's employment in or appointment to a position.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0250

RULE TITLE: Final Fitness Determination

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: The department final fitness determination process.

RULE TEXT:

An authorized designee shall make a fitness determination using the Department Weight Test Worksheet about a subject individual based on information provided by the subject individual under OAR 837-007-0230, and any criminal records check(s) conducted. False statements and omissions provided by the subject individual may be cause for denial.

(1) Approval. The subject individual is approved to work, obtain certifications, have direct access, or otherwise provide services as defined in OAR 837-007-0210(1).

(2) Denial:

(a) If a fitness determination shows credible evidence of any of the factors identified in the Department Weight Test Worksheet, 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 or the State, the authorized designee shall deny the subject individual as not fit for the position.

(b) If a subject individual is denied as not fit, the subject individual may not be employed by or provide services as a volunteer or contractor to the Department in a position covered by OAR 837-007-0220.

(3) Expunged Juvenile Record. 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 419A.262.

(4) If a final fitness determination is denial, the Department shall inform the subject individual of appeal rights via email or US mail to the most current contact information provided by the subject individual.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0260

RULE TITLE: Crimes Relevant to a Fitness Determination

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes crimes that are relevant to a fitness determination.

RULE TEXT:

Crimes Relevant to a Fitness Determination will be evaluated through the Weight Test Worksheet, including:

- (1) All felonies;
- (2) All Class A misdemeanors;
- (3) Any United States Military crime or international crime;
- (4) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450; and
- (5) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (1).

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0270

RULE TITLE: Appealing a Fitness Determination

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes an appeals process after fitness determination.

RULE TEXT:

To contest a denial, a Subject Individual will follow the steps below:

(1) A Subject Individual may choose to appeal a fitness determination under the process made available by this rule. The Department provides the Subject Individual an informal meeting with the Human Resources Director to allow Subject Individual to provide additional or corrected information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation. The Department will conduct a new criminal records check, Weigh Test and re-evaluate the original fitness determination made under OAR 837-007-0250.

(2) Office of Administrative Hearings (OAH): If the informal meeting with Human Resources results in a denial, the Subject Individual will be offered the option of a contested case hearing in the notice provided by the Department. To request a contested case hearing, the Subject Individual or the Subject Individual's legal representative shall submit a written request for a contested case hearing as outlined in the notice provided under OAR 837-007-0250(4), within the time required by law.

(3) When the fitness determination is performed as part of the Department's final determination of the appeal process, the only remedy awarded is a determination the Subject Individual is fit or not fit. Under no circumstances shall the Department be required to place a Subject Individual in any position or be required to accept services or enter into a contractual agreement with a Subject Individual.

(4) The Department will not be required to delay or postpone the Department's hiring process or employment decision pending the appeal decision of a final fitness determination.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0280

RULE TITLE: Incomplete Fitness Determination

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes the process the department will use to close a check when a fitness determination is considered incomplete.

RULE TEXT:

(1) The Department will close the review for a final fitness determination when:

(a) Circumstances change so that a person no longer meets the definition of a “subject individual” under OAR 837-007-0220;

(b) An authorized designee cannot locate or contact the subject individual;

(c) The Department determines that the subject individual is not eligible or not qualified for the position of employee, volunteer, or contractor for a reason unrelated to the fitness determination process; or

(d) The position is no longer open.

(2) Failure to Complete Process for Criminal Background Check. If the subject individual fails to complete any portion of the criminal background check process under OAR 837-007-0230, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.

(3) A subject individual does not have a right to a contested case hearing under OAR 837-007-0270(2) to challenge the closing of an incomplete fitness determination.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0290

RULE TITLE: Recordkeeping and Confidentiality

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes confidentiality and record keeping practices.

RULE TEXT:

(1) Criminal Offender information obtained in the criminal records check is confidential. The Department will restrict the dissemination of information obtained in the criminal records check. Only authorized designees as identified by the Department with a legitimate need to know may have access to the information.

(2) Records Received from the Oregon Department of State Police. Authorized designees shall maintain and disclose records received from the Oregon Department of State Police or an FBI authorized fingerprinting services vendor resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181A and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto, these rules, federal regulations, and any written agreement between the Department and the Oregon Department of State Police.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0300

RULE TITLE: Authorized Designees

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes the individuals who are authorized designees and clarifies conflict of interests.

RULE TEXT:

Appointment:

(1) The State Fire Marshal, a Chief Deputy State Fire Marshal or Human Resources Director may serve as authorized designees and have access to records received from the Oregon Department of State Police or FBI in accordance with ORS Chapter 181A.

(2) 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, the authorized designee shall consult with their supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)

ADOPT: 837-007-0310

RULE TITLE: Fees

NOTICE FILED DATE: 07/31/2025

RULE SUMMARY: Describes the fees that may be charged related to criminal records checks.

RULE TEXT:

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.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, 2024 Senate Bill 1510

STATUTES/OTHER IMPLEMENTED: ORS 181A.195(9)