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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

FILED
10/31/2025 1:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating OHCS's criminal background check rules to reflect current practices.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/31/2025 4:00 PM

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

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Filed By:
Jaci Davis
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/19/2025
TIME: 2:30 PM
OFFICER: Jaci Davis

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 503-986-6796
CONFERENCE ID: 2256394738172
SPECIAL INSTRUCTIONS:
Meeting Passcode: kn2jy37y
A request for an interpreter for the hearing impaired or other accommodations for persons with disabilities should be made at least 72 hours prior to the meeting. Please contact our Administrative Rules Team at 503-986-6796, or email housinginfo@hcs.oregon.gov.

NEED FOR THE RULE(S)

OHCS has identified outdated guidance within the mediation and criminal background check rules, and this filing will help to align with current department practices.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Model Rules for Dispute Resolution, OAR 137-005-0054 and Department of Human Services, OAR 407-007.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule change will create additional transparency to the departments current practices and will strengthen the racial equity. There are no foreseen negative impacts resulting from these proposed changes.

FISCAL AND ECONOMIC IMPACT:

These rules do not create any fiscal or economic impact as they are aligning the rules with the department's current practices for conducting criminal background checks prior to hiring.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no foreseen cost of compliance for local governments or members of the public. These rules review the department's criminal background check procedures.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

These rules do not impact small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Criminal background check procedures do not have negative impacts to the state and were not needed to be vetted with a rules advisory committee.

HOUSING IMPACT STATEMENT:

These rules do not affect the cost of development of a 6000 square foot parcel and the construction of a 1200 square foot detached single-family dwelling on that parcel.

RULES PROPOSED:
813-004-0001, 813-004-0002, 813-004-0200, 813-004-0210, 813-004-0220, 813-004-0230, 813-004-0240, 813-004-0250, 813-004-0260, 813-004-0270, 813-004-0280, 813-004-0290, 813-004-0300, 813-004-0310

AMEND: 813-004-0001

RULE SUMMARY: Updating to include referencing model rules for dispute resolution and definition for mediator.

CHANGES TO RULE:

813-004-0001
Confidentiality and Inadmissibility of Mediation Communications ¶

~~Pursuant to ORS 36.224, the Oregon Housing and Community Services Department adopts by reference OAR 137-005-0052 as promulgated by the Attorney General effective as of November 13, 2018~~The department is a party or is mediating a dispute as to which the department has regulatory authority. This rule does not apply when the department is acting as the "mediator" in a matter in which the department also is a party as defined in ORS 36.234.
Statutory/Other Authority: ORS 36.224, ~~OL 2015 & ch 114 (SB189)~~36.234
Statutes/Other Implemented: ORS 36.224,~~ ORS~~ 36.228,~~ ORS~~ 36.230,~~ ORS~~ 36.232, ~~OL 2015 & ch 114 (SB189)~~36.234

REPEAL: 813-004-0002

RULE SUMMARY: By adopting the model rules of dispute resolution, this section of rule is no longer needed.

CHANGES TO RULE:

~~813-004-0002~~
~~Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications~~
~~(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a tort claim notice or a lawsuit has been filed.¶~~
~~(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.¶~~
~~(3) Nothing in this rule affects any confidentiality created by other law.¶~~
~~(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.¶~~
~~(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:¶~~
~~(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or¶~~
~~(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.¶~~
~~(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:¶~~
~~(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation, and;¶~~
~~(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:¶~~
~~(A) Is neither a party to the dispute nor the mediator, and¶~~
~~(B) Is designated by the agency to authorize confidentiality for the mediation, and¶~~
~~(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.¶~~
~~(7) Exceptions to confidentiality and inadmissibility.¶~~
~~(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.¶~~
~~(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.¶~~
~~(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.¶~~
~~(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.¶~~
~~(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.¶~~
~~(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at~~

~~the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.¶~~
~~(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.¶~~
~~(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.¶~~
~~(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.¶~~
~~(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).¶~~
~~(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.¶~~
~~(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.~~
~~Statutory/Other Authority: ORS 36.224~~
~~Statutes/Other Implemented: ORS 36.230(4)~~

AMEND: 813-004-0200

RULE SUMMARY: Updating criminal background purpose statement to current department practices.

CHANGES TO RULE:

813-004-0200
Criminal Background Purpose ¶

The purpose of these rules is to provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they are not fit to work or volunteer in positions covered in OAR 813-004-0220. The fact that the ~~Agency~~Department determines that a subject individual is fit does not guarantee the individual a position as a~~n Agency~~ Department employee, volunteer, contractor or vendor or that the individual will be hired by the ~~Agency~~Department.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0210

RULE SUMMARY: Updating criminal background definitions to those currently used.

CHANGES TO RULE:

813-004-0210
Definitions ¶

As used in OAR chapter 813, division 4, unless the context of the rule requires otherwise, the following definitions apply: ¶
(1) ~~Agency: Oregon Housing and Community Services.¶~~
~~(2)~~ "Conviction~~: A~~" means a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision. ¶
(3~~2~~) ~~Fitness determination: A determination made by the Agency, pursuant to the process established under OAR 813-004-0230, that a subject individual is fit or not fit to be an Agency employee, volunteer, contractor or vendor in a position covered by OAR 813-004-0220.¶~~
~~(4) Criminal offender information: R~~"Criminal Offender Information" means records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon ~~Department of~~ State Police Department to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records. ¶
(~~5~~3) "Criminal ~~r~~Records ~~c~~Check~~: O~~" means one or more of the following three processes undertaken by the ~~Agency~~Department to check the criminal history of a ~~s~~Subject ~~i~~Individual: ¶
(a) A name-based check of ~~c~~Criminal ~~o~~Offender ~~i~~Information conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon ~~Department of~~ State Police Department, in accordance with the rules adopted and procedures established by the Oregon ~~Department of State Police;~~State Police Department; ¶
(b) A check of Oregon ~~c~~Criminal ~~o~~Offender ~~i~~Information, through fingerprint identification and other means, conducted by the Oregon ~~Department of State Police at the Agency~~State Police Department at the Department's request (Oregon Criminal Records Check); or ¶
(c) A nationwide check of federal ~~c~~Criminal ~~o~~Offender ~~i~~Information, through fingerprint identification and other means, conducted by the Oregon ~~Department of~~ State Police Department through the Federal Bureau of Investigation or otherwise at the ~~Agency~~Department's request (~~N~~nationwide Criminal Records Check). ¶
(~~6~~4) "Criminal ~~r~~Records ~~r~~Request ~~f~~Form~~: An Agency~~ " means a Department approved form, completed by a ~~s~~Subject ~~i~~Individual, requesting ~~the Agency to conduct~~ a ~~c~~Criminal ~~r~~Records ~~c~~Check. ¶
(~~7~~5) "False ~~s~~Statement~~: I~~" means, in association with an activity governed by these rules, a ~~s~~Subject ~~i~~Individual either: ¶
(a) Provided the ~~Agency~~Department with false information about the ~~s~~Subject ~~i~~Individual's criminal history, including but not limited to false information about the individual's identity or conviction record; or ¶
(b) Failed to provide the ~~Agency~~Department information material to determi~~n~~nge the individual's criminal history. ¶
(~~8~~6) "Fitness Determination" means a determination made by the Department, pursuant to the process established under OAR 813-004-0230, that a Subject Individual is fit or not fit to be a Department employee, volunteer, contractor or vendor in a position covered by OAR 813-004-0220.¶
(7) "Subject Individual~~: A~~" means an individual identified in OAR 813-004-0220 as someone from whom the ~~Agency~~Department may require a ~~c~~Criminal ~~r~~Records ~~c~~Check.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0220

RULE SUMMARY: Updating criminal background requirements for subject individuals.

CHANGES TO RULE:

813-004-0220
Subject Individual ¶

The ~~Agency~~Department may require a ~~subject individual to complete a c~~Criminal ~~r~~Records ~~c~~Check pursuant to these rules because the person: ¶
(1)(a) Is employed by or applying for employment with the ~~Agency~~Department; or ¶
(b) Provides services or seeks to provide services to the ~~Agency~~Department as a volunteer, contractor, or vendor; and ¶
(2) Is, or will be, working or providing services in a position: ¶
(a) In which the ~~s~~Subject ~~i~~Individual is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems; ¶
(b) In which the ~~s~~Subject ~~i~~Individual has access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential; ¶
(c) That has payroll functions; ¶
(d) In which the ~~s~~Subject ~~i~~Individual has responsibility for receiving, receipting or depositing money or negotiable instruments; ¶
(e) In which the ~~s~~Subject ~~i~~Individual has responsibility for billing, collections or other financial transactions; ¶
(f) In which the ~~s~~Subject ~~i~~Individual has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state; ¶
(g) That has mailroom duties as the primary duty or job function; ¶
(h) That has personnel or human resources functions as one of the position's primary responsibilities; ¶
(i) In which the ~~s~~Subject ~~i~~Individual has access to ~~S~~social ~~S~~security numbers, dates of birth or criminal background information of employees or members of the public; ¶
(j) In which the ~~i~~Subject Individual has access to tax or financial information about individuals or business entities.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0230

RULE SUMMARY: Updating fingerprinting requirements and criminal records process to current department practices.

CHANGES TO RULE:

813-004-0230
Criminal Records Check Process ¶

(1) Disclosure of ~~i~~information by Subject Individual. ¶
(a) Preliminary to a ~~c~~Criminal ~~r~~Records ~~c~~Check, a ~~s~~Subject ~~i~~Individual must complete and sign the ~~Agency~~ ~~c~~Department Criminal ~~r~~Records ~~r~~Request Form and a fingerprint ~~car~~appointment if required. ¶
(b) A ~~s~~Subject ~~i~~Individual must complete and submit to the ~~Agency~~Department the Criminal Records Request ~~f~~Form and, if requested, a fingerprint ~~card~~appointment within three business days of receiving the forms. The ~~Agency~~Department may extend the deadline for good cause. The ~~Agency~~Department's ~~c~~Criminal ~~r~~Records ~~r~~Request ~~f~~Form will require the following information:, name, birth date, social security number, physical characteristics, driver's license or identification card number and current address, prior residences in other states and any other identifying information deemed necessary by the ~~Agency.¶~~
~~(c) The Agency~~Department. ¶
(c) The Department may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information. ¶
(d) The ~~Agency~~Department shall not request ~~a~~ fingerprint ~~card~~ing from a ~~s~~Subject ~~i~~Individual under the age of 18 years unless the ~~s~~Subject ~~i~~Individual is emancipated pursuant to ORS 419B.550 et seq, or unless the ~~Agency~~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. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 813-004-0250(3). ¶
(2) ~~W~~The~~n a Criminal Records Check is Required. The Agency~~ Department may conduct, or request the Oregon State Police to conduct, a ~~c~~Criminal ~~r~~Records check when: ¶
(a) An individual meets the definition of a ~~s~~Subject ~~i~~Individual; or ¶
(b) Required by federal law or regulation, by state or administrative rule, or by contract or written agreement with the ~~Agency.¶~~
~~(3) Which Criminal Records Check is Conducted. When the Agency~~Department. ¶
(3) When the Department determines under section (2) of this rule that a ~~c~~Criminal ~~r~~Records ~~c~~Check will be done, the ~~Agency~~Department may request (any additional information needed to make determinations.) or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof. ¶
(4) The department requires Subject Individual that have had out of state residency, being outside Oregon for 60 or more consecutive days during the previous five years, to complete fingerprint-based criminal records check by Fieldprint.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0240

RULE SUMMARY: Updating preliminary basis hiring requirements to current department practices.

CHANGES TO RULE:

813-004-0240
Hiring or Appointing on a Preliminary Basis ¶

(1) If the ~~Agency~~Department elects to conduct a ~~c~~Criminal ~~r~~Records ~~c~~Check pursuant to these rules, the ~~Agency~~Department, in its sole discretion, may hire or appoint the ~~s~~Subject ~~i~~Individual on a preliminary basis pending completion of a ~~c~~Criminal ~~r~~Records check when: ¶
(a) The ~~s~~Subject ~~i~~Individual has provided all information (including ~~a~~ fingerprint ~~card~~ing, if requested) as required by the ~~Agency~~Department pursuant to OAR 813-004-0230; and ¶
(b) The ~~Agency~~Department, in its sole discretion, determines that preliminary hiring is in the ~~Agency~~Department's best interests. ¶
(2) A ~~s~~Subject ~~i~~Individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, and work activities as assigned by the ~~Agency.~~Department. ¶
(3) Nothing in this rule shall be construed as requiring the ~~Agency~~Department to hire on a preliminary basis. ¶
(4) A ~~s~~Subject ~~i~~Individual hired on a preliminary basis is deemed to be on trial service.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0250

RULE SUMMARY: Updating rule to reflect current department practices.

CHANGES TO RULE:

813-004-0250
Final Fitness Determination ¶

(1) If the ~~Agency~~Department elects to conduct a ~~c~~Criminal ~~r~~Records ~~c~~Check, the ~~Agency~~Department shall make a ~~f~~Fitness ~~d~~Determination about a ~~s~~Subject ~~i~~Individual based on information provided by the ~~s~~Subject ~~i~~Individual under OAR 813-004-0230, the ~~c~~Criminal ~~r~~Records ~~c~~Check(s) conducted, and any false statements made by the ~~s~~Subject ~~i~~Individual. ¶
(2) In making a fitness determination about a ~~s~~Subject ~~i~~Individual, the ~~Agency~~Department will also consider the factors in subsections (a) through (f) below in relation to information provided by the ~~s~~Subject ~~i~~Individual under OAR 813-004-0230(1), any LEDS report or criminal offender information obtained through a ~~c~~Criminal ~~r~~Records ~~c~~Check, and other information known by the ~~Agency~~Department. To assist in considering these factors, the ~~Agency~~Department may obtain any other information deemed relevant from the ~~s~~Subject ~~i~~Individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other criminal offender information from the ~~s~~Subject ~~i~~Individual, the ~~Agency~~Department may request to meet with the ~~s~~Subject ~~i~~Individual, and may request to receive written materials or authorization to obtain other relevant information, from ~~him or her~~the Subject Individual. The ~~s~~Subject ~~i~~Individual shall meet with the ~~Agency~~Department if requested and provide additional information or authorization within a reasonable period of time, as established by the ~~Agency. The Agency~~Department. The Department will use all collected information in considering: ¶
(a) Whether the ~~s~~Subject ~~i~~Individual has been convicted, found guilty except for insanity (or a comparable disposition), or has a pending indictment for a crime listed in OAR 813-004-0260; ¶
(b) The nature of any crime identified under section (2)(a) of this rule; ¶
(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment; ¶
(d) Any facts that indicate the ~~s~~Subject ~~i~~Individual made a ~~f~~False ~~s~~Statement; ¶
(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a ~~f~~False ~~s~~Statement made by the subject individual to the specific requirements of the ~~s~~Subject ~~i~~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 ~~f~~Fitness ~~d~~Determination is being made: ¶
(A) The passage of time since the commission or alleged commission of a crime identified under section (2)(a) of this rule; ¶
(B) The age of the ~~s~~Subject ~~i~~Individual at the time of the commission or alleged commission of a crime identified under section (2)(a) of this rule; ¶
(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 813-004-0260; ¶
(E) Whether a conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction; ¶
(F) A recommendation of an employer; ¶
(G) The disposition of a pending indictment identified under section (2)(a) of this rule; ¶
(H) Whether the ~~s~~Subject ~~i~~Individual has been arrested for or charged with a crime listed under OAR 813-004-0260; ¶
(I) Whether the ~~s~~Subject ~~i~~Individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 813-004-0260; ¶
(J) Whether the ~~s~~Subject ~~i~~Individual is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 813-004-0260; ¶
(K) Whether the ~~s~~Subject ~~i~~Individual has a deferred sentence or conditional discharge in connection with a crime listed under OAR 813-004-0260; ¶
(L) Whether the ~~s~~Subject ~~i~~Individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 813-004-0260 if committed by an adult; ¶
(M) Periods of incarceration of the ~~s~~Subject ~~i~~Individual; ¶
(N) The education and work history (paid or volunteer) of the ~~s~~Subject ~~i~~Individual since the commission or alleged commission of a crime. ¶
(3) Refusal to Consent. If a ~~s~~Subject ~~i~~Individual refuses to submit or consent to a ~~c~~Criminal ~~r~~Records ~~c~~Check

including fingerprint identification, the ~~Agency~~Department will deny the employment of the ~~s~~Subject ~~i~~Individual or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent. ¶
(4) If a ~~s~~Subject ~~i~~Individual is determined to be not fit, the ~~s~~Subject ~~i~~Individual may not be employed by or provide services as a volunteer, contractor or vendor to the ~~Agency~~Department in a position described in OAR 813-004-0220(2). ¶
(5) Final Order. A completed final ~~f~~Fitness ~~d~~Determination is a final order of the ~~Agency~~Department unless the affected ~~s~~Subject ~~i~~Individual appeals the determination by requesting a contested case hearing as provided by OAR 813-004-0290(2) or an alternative appeals process as provided by OAR 813-004-0290(6).
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0260

RULE SUMMARY: OHCS will be looking at further ways to align with OAR 407-007-004 by updating the disqualifying crimes to reflect current department practices.

CHANGES TO RULE:

813-004-0260
Potentially Disqualifying Crimes ¶

(1) Crimes ~~R~~relevant to ~~A~~a Fitness Determination: ¶
(a) All felonies; ¶
(b) All misdemeanors; ¶
(c) Any United States Military crime or international crime; ¶
(2) Evaluation of Crimes. The ~~Agency~~Department shall evaluate a crime on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination. ¶
(3) Expunged Juvenile Record. Under no circumstances shall a subject individual be determined to be not fit 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.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0270

RULE SUMMARY: Updating to reflect current department practices and correct OAR citations.

CHANGES TO RULE:

813-004-0270
Incomplete Fitness Determination ¶

(1) The ~~Agency~~Department will close a preliminary or final fitness determination as incomplete when: ¶
(a) Circumstances change so that a person no longer meets the definition of a "~~s~~Subject ~~i~~Individual" under OAR 813-004-0220. ¶
(b) The ~~s~~Subject ~~i~~Individual does not submit materials or information within the time required under OAR 813-004-0230(1); ¶
(c) The ~~Agency~~Department cannot locate or contact the ~~s~~Subject ~~i~~Individual; ¶
(d) The ~~s~~Subject ~~i~~Individual fails or refuses to cooperate with the ~~Agency~~Department's attempts to acquire other criminal records information under OAR 813-004-0260(2); or ¶
(e) The ~~Agency~~Department determines that the ~~s~~Subject ~~i~~Individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process. ¶
(f) The position is no longer open. ¶
(2) A ~~s~~Subject ~~i~~Individual does not have a right to a contested case hearing under OAR 813-004-0290(2) or a right to an alternative appeals process as provided by OAR 813-004-0290(6) to challenge the closing of a fitness determination as incomplete.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0280

RULE SUMMARY: Updating noticing standards for Subject Individuals.

CHANGES TO RULE:

813-004-0280
Notice to Subject Individual of Fitness Determination ¶

The ~~Agency~~Department shall inform the ~~s~~Subject ~~i~~Individual who has been determined not to be fit on the basis of a ~~c~~Criminal ~~r~~Records ~~c~~Check, via personal service, or registered or certified mail to the most current address provided by the ~~s~~Subject ~~i~~Individual, of such disqualification.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0290

RULE SUMMARY: Updating fitness determination appeal and remedy process to reflect current department standards.

CHANGES TO RULE:

813-004-0290
Appealing a Fitness Determination ¶

(1) Purpose. Sections (2) to (5) of this rule set forth the contested case hearing process a ~~s~~Subject ~~i~~Individual must use to appeal a completed final fitness determination made under OAR 813-004-0250 that the individual is not fit to hold a position with~~,~~ or provide services to the ~~Agency~~Department as an employee, volunteer, contractor, or vendor. Section (6) of this rule identifies an alternative appeal process available only to current ~~Agency~~Department employees. ¶
(2) Appeal process. ¶
(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case hearing to the address specified in the notice provided under OAR 813-004-0280. To be timely, the request must be received by the ~~Agency~~Department at the specified address within 14 calendar days of the date stated on the notice. The ~~Agency~~Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528. ¶
(b) When a timely request is received by the ~~Agency~~Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings~~, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.~~. ¶
(3) Discovery. The ~~Agency~~Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0566. ¶
(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants. ¶
(5) Proposed and Final Order: ¶
(a) Proposed Order. After a hearing, the administrative law judge will issue a proposed order. ¶
(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent. ¶
(c) Default. A completed final fitness determination made under OAR 813-004-0250 becomes final: ¶
(A) Unless the subject individual makes a timely request for a hearing; or ¶
(B) When a party withdraws a hearing request, notifies the ~~Agency~~Department or the ALJ that the party will not appear, or fails to appear at the hearing. ¶
(6) Alternative Process. A subject individual currently employed by the ~~Agency~~Department may choose to appeal a fitness determination either under the process made available by this rule or through a process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions 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 made available by this rule. ¶
(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances shall the ~~Agency~~Department be required to place a subject individual in any position, nor shall the ~~Agency~~Department be required to accept services or enter into a contractual agreement with a subject individual. ¶
(8) Challenging Criminal Offender Information. 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. ¶
(a) To challenge information identified in this section of the rule, a subject individual may use any process made available by the ~~agency~~Department that provided the information. ¶
(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an ~~agency~~Department reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the ~~Agency~~Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 813-004-0250 by submitting a new ~~Agency~~Department criminal records request. This provision only applies if the position for which the original criminal history check was conducted is vacant and available. ¶
(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the ~~agency~~Department that provided the information, or requesting a new criminal records

check and re-evaluation of the original fitness determination under section (8)(b) of this rule, will not delay or postpone the ~~Agency~~Department's hiring process or employment decisions.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0300

RULE SUMMARY: Updating recordkeeping standards for the department's criminal background process.

CHANGES TO RULE:

813-004-0300
Recordkeeping and Confidentiality ¶

Any information obtained in the criminal records check is confidential. The ~~Agency~~Department must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the ~~Agency~~Department, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569

AMEND: 813-004-0310

RULE SUMMARY: Updating department's fees for criminal background checks.

CHANGES TO RULE:

813-004-0310
Fees ¶

(1) The ~~Agency~~Department may charge a fee for acquiring criminal offender information for use in making a fitness determination that will not exceed the fee charged the ~~Agency~~Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain such information. ¶
(2) The ~~Agency~~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 an ~~Agency~~Department contractor or vendor and is undergoing a fitness determination in that capacity, the ~~Agency~~Department may charge the fee to the subject individual's employer.
Statutory/Other Authority: ORS 181.534, 456.135
Statutes/Other Implemented: ORS 181.534, 456.569