

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and Wildlife (ODFW) – Human Resources Division	635	
Agency and Division	Administrative Rules Chapter Number	
Casaria Tuttle	3406 Cherry Ave. NE, Salem, OR 97303	(503)947-6033
Rules Coordinator	Address	Telephone

RULE CAPTION

Establishes Procedures for Criminal Offender Record Checks for Applicants, Employees, Volunteers, and Contractors

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

April 18, 2008	8:00 AM	3406 Cherry Ave N, Salem, OR 97303	Oregon Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.
ADOPT: 635-600-0000, 635-600-0005, 635-600-635-600-0010, 635-600-0015, 635-600-635-600-0020, 635-600-0025, 635-600-0030, 635-600-0035, 635-600-0040, 635-600-0050, 635-600-0055, 635-600-0065.

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS: 181.534, ORS 496.121

Other Auth.:

Stats. Implemented: ORS: 181534, ORS 496.121, ORS 469.118.

RULE SUMMARY

The proposed rules establish procedures for the Oregon Department of Fish and Wildlife to perform criminal background checks and use the information obtained to evaluate the fitness of job applicants, employees, volunteers, and contractors (collectively, "applicants") of the Department. Criminal records checks under this rule include name-based checks through the Law Enforcement Data System (LEDS) and fingerprint-based checks for certain positions and classifications. The rules require applicants to provide personal information to facilitate criminal records checks and establish procedures to keep criminal history information confidential. The rules specify the crimes that the Department will consider when making determinations about the fitness of applicants to hold a position within, or provide services to, the Department and establish procedural rules for challenges to the Department's fitness determinations. The rules permit the Department to require applicants to pay the actual cost of criminal records checks.

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.

April 18, 2008

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



Michelle Tate
Printed name

2/15/08
Date

*Hearing 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. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Department of Fish and Wildlife (ODFW) Human Resources Division

635

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Adoption of Rules: OAR 635)	Statutory Authority,
Division 600; Relating to Criminal Records Checks)	Statutes Implemented,
)	Statement of Need,
)	Principal Documents Relied Upon,
)	Statement of Fiscal Impact

Establishes Procedures for Criminal Offender Record Checks for Applicants, Employees, Volunteers, and Contractors

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Statutory Authority: ORS: 181.534, ORS 496.121

Other Authority:

Stats. Implemented: ORS: 181.534, ORS 496.121, ORS 496.118

Need for the Rule(s): The rules are required to comply with the legislative directive to adopt rules in the event that the Oregon Department of Fish and Wildlife (ODFW) wants to conduct criminal records checks on applicants, employees, volunteers, or contractors.

Documents Relied Upon, and where they are available: Sample rules on criminal background checks, available from AAG Leigh Salmon, Department of Justice, General Counsel Division, Labor & Employment Section, 1162 Court Street NE, Salem, Oregon 97301-4096.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Unless otherwise provided, this fiscal impact statement uses the term "applicant" to refer to job applicants, current employees, volunteers, and contractors, and their employees and the employees of their subcontractors.

The Oregon Department of Fish and Wildlife (ODFW) currently conducts criminal records checks through the Law Enforcement Data System (LEDS), and through the use of fingerprint cards on certain positions. ODFW contracts with the Oregon State Police for access to LEDS, and that access is provided based on an annual flat rate of \$380. Under the proposed rules, additional positions will be subjected to LEDS checks, but because ODFW obtains the information on a flat-rate basis, this will not result in additional cost to the Department. ODFW does not currently pass along the cost of criminal records checks to applicants. No immediate change in the practice of requiring fingerprint-based criminal records checks is anticipated, and thus, there is no new cost associated with fingerprint-based criminal records checks. The proposed rules would permit, however, a change in policy to be implemented quickly.

The proposed rules permit a person to request a hearing to challenge a fitness determination. This provision will have a fiscal impact on ODFW. ODFW will be required to pay for an administrative law judge (ALJ), through the Office of Administrative Hearings, to preside at any contested case hearings that take place. This will result in an anticipated cost of \$82 per hour for ALJ time and \$55 per hour for operational staff time. Additionally, ODFW anticipates that it will choose to have its case prepared and its evidence presented by an attorney at contested case hearings at an average cost of \$126 to \$130 per hour; the cost of paralegal time at \$74 per hour; the cost of law clerk time at \$46 to \$55 per hour; and the cost of secretarial time at \$44 to \$50 per hour. At this time, ODFW is unable to predict how many affected persons will request hearings. ODFW does not expect many hearings, and we do not expect that the hearings held will be particularly long or complex.

No unit of local government is economically affected by this rule and there will be no fiscal impact upon any unit of local government.

Members of the public likely to be affected include job applicants, current employees, volunteers, and contractors (and their employees and subcontractors) of ODFW. If ODFW implements a policy requiring fingerprints from applicants, ODFW would likely pay and applicants may be required to reimburse the following costs:

- Cost of obtaining fingerprints on fingerprint card for any applicant: \$20
- Cost of state only criminal record check for any applicant: \$28
- Cost of nationwide criminal record check for any applicant other than volunteer: \$47.25 (\$28 state; \$19.25 FBI)
- Cost of nationwide criminal record check for any volunteer: \$43.25 (\$28 state; \$15.25 FBI)

Any member of the public who requests a contested case hearing to challenge a fitness determination may incur additional costs, including the cost of attorney representation (if the person chooses to be represented) and the time required to prepare for and participate in a hearing. The 2007 Oregon State Bar's economic survey showed an average hourly rate for attorneys in Oregon of \$213 per hour. No newer survey is available. We do not believe, however, that the average hourly rate has increased significantly since 2007. We do not anticipate that most of those who participate in the hearings will hire an attorney because the issues are straightforward. While the issues at most hearings would not be complex, we have no experience upon which to base an estimate of total costs in the event that a person chose to be represented.

Cost of small business affected: Only a small percentage of small businesses in Oregon will be affected, limited to those small businesses seeking to, or involved in, providing services to ODFW.

The number of contracts entered into varies from year to year, but any of these potential contractors could be affected by these rules by being asked to have their employees undergo a criminal records check. No immediate change in the practice of requiring fingerprint-based criminal records checks is anticipated, and thus, there is no new cost associated with fingerprint-based criminal records checks. The proposed rules would permit, however, a change in policy to be implemented quickly.

The cost of a fingerprint criminal records check is outlined above. Because ODFW currently subscribes to LEDS on a flat-rate basis, it does not intend to pass that cost along to the public. Should it do so in the future, Oregon State Police currently charges approximately \$4 per name for LEDS checks. In addition, each small business seeking to provide services to ODFW would have to ensure that their employees working with the Department completed the criminal records check process. A small business with employees who were found to be unfit might be unable to contract with the Department or might be required to hire additional employees, if current employees were deemed unfit based upon a criminal records check.

In addition to the costs outlined above, we do not anticipate any professional services would be required to comply with the rule, beyond the cost of attorney representation at a contested case hearing, and then only if a small business opted to challenge a fitness determination in a contested case hearing and opted to be represented at the hearing. Those costs are described above. No additional equipment or supplies would be required for small businesses to comply with the rules.

Additional labor would be required for any affected small business to ensure that the business's employees completed and returned fingerprint cards and personal information required to conduct the criminal records check. We are unable to estimate the cost of employee time for each employee to be fingerprinted because we are unable to predict how a small business would obtain fingerprints (from the State Police, from the local police, or from a private fingerprinting agency), whether and how far employees might have to travel to be fingerprinted, and at what hourly rate a small business would pay employees for the time it takes to be fingerprinted.

How were small businesses involved in the development of this rule?

They were not.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The 2005 Legislative Assembly had extensive discussions of the policy and other implications of HB 2157 (2005). ODFW followed and participated in that discussion. ODFW consulted with the Department of State Police on the proposed rules. In addition, these rules were derived in part from sample rules created after the 2005 legislative session in collaboration with the Oregon Department of Administrative Services, Human Resources Division. Under these circumstances, no additional advisory discussion was sought.


Signature

Michelle Tate
Printed name


Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2005

GENW8498