

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
Teri Kucera	503-947-6033
Rules Coordinator	Telephone

3406 Cherry Ave N, Salem, OR 97303

RULE CAPTION

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

Amend Rules to Expands the Authority of ODFW to Require Fingerprints in Certain Circumstances
 Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 10, 2009	1:00 PM	3406 Cherry Ave N, Salem, OR 97303	Oregon Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

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:

AMEND: OAR 635 Division 600

REPEAL:

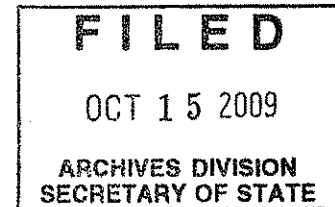
RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : **ORS: 181.534, ORS 496.121**

Other Auth.:

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



RULE SUMMARY

Amendments expands the authority of the Oregon Fish and Wildlife Department to require fingerprints of employees, those who provide services or volunteer to the department, in certain circumstances, for the purpose of requesting a state or federal criminal records check.

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 10, 2009

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

Michelle Tate

Michelle Tate

Signature

Printed name

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

DM#1679453

Fiscal and Economic Impact Statement for the December 11, 2009 Hearing on Staff Criminal Background Checks

Fiscal and economic impact: Rule changes are being proposed to expand the criteria for duties that would make individuals subject to criminal background checks in accordance with expanded statutory authority contained in House Bill 2224, which was signed into law on June 2, 2009, with an effective date of January 1, 2010. With this rule change, the following additional duties would subject job applicants, current employees, volunteers, vendors and contractors (and their employees and subcontractors and employees of subcontractors) to background checks through LEDS and fingerprint checks:

- 1) Residing on property managed by the department;
- 2) Having access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;
- 3) Having payroll functions or in which the person has responsibility for receiving, receipting, or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or having access to property held in trust or to private property in the temporary custody of the state;
- 4) Having mailroom duties as a primary duty or job function;
- 5) Having responsibility for auditing the department;
- 6) Having access to Social Security numbers, dates of birth or criminal background information of employees or members of the public
- 7) Having access to tax or financial information about individuals or business entities.

Proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

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

A. The only state agencies that might be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW). There may be workload increases for ODFW Human Resources staff, but we do not expect those increases to have a significant impact. Under the existing rules, the Oregon Department of Fish and Wildlife (ODFW) conducts criminal records checks on employees and applicants for employment through the Law Enforcement Data System (LEDS), and through the use of fingerprint cards on certain positions. Under current rules, there are 270 employment positions subject to background checking through LEDS and fingerprinting. With this rule amendment, we expect that approximately 275 additional employment positions will be subject to background checking through LEDS and fingerprinting.

Historically, however, Criminal History Checks through LEDS or fingerprinting are not conducted on all potentially subject employees and applicants. In 2007 Criminal History Checks (CHC) through LEDS and fingerprinting were completed on 27 employees. In 2008, we completed LEDS and fingerprint checks on 49 employees. With the revised rules, we anticipate that additional LEDS and fingerprint checks will be conducted based only on employee turnover in subject positions.

With the expansion in positions subject to CHCs, the number of fingerprint checks is likely to increase, but again, ODFW does not anticipate that fingerprint checks will be conducted for all positions newly subject to the rules. Instead, as stated above, ODFW expects that approximately 275 additional positions will be subject to fingerprint checks in 2010, as a result of the proposed rules; however, the number of actual fingerprint checks will be based on employee turnover.

Whether LEDS or fingerprint checks, ODFW does not currently pass along the cost of criminal records checks to applicants. The proposed rules would permit, however, a change in policy to be implemented quickly. If ODFW decided to do so in the future, the costs explained below would apply.

The increased number of LEDS checks and fingerprinting checks will likely also require some additional Human Resources Division staff time, but the work can be absorbed by existing staff without incurring additional expense.

The current costs for fingerprinting, which ODFW pays (in addition to any costs associated with LEDS checks, if LEDS checks are performed) and applicants may be required to reimburse, is as follows:

- 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)

Additional costs that would result from the proposed rule amendment would depend on the number of checks performed. After the initial implementation of the expanded criminal background checks under the proposed rule, the number of checks in a given period of time will depend on the number of new hires. The number of new hires will vary from year to year, but is not expected to be large enough to require a significantly increased number of fingerprint checks as a result of the proposed rule.

The proposed rule continues the allowance for an applicant to request a hearing to challenge a fitness determination. The expanded rules may have a fiscal impact on ODFW because with more positions subject to criminal background checks, it is possible more individuals may challenge a fitness determination. In a hearing where a fitness determination is challenged, 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 \$137 per hour; the cost of paralegal time at \$77 per hour; the cost of law clerk time at \$39 per hour; and the cost of secretarial time at \$45 per hour. At this time, ODFW is unable to predict how many additional 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 applicant or employee has been denied employment due to a CHC since the existing rules were enacted in April 2008, and no hearings have been requested.

Volunteers are also subject to the existing and proposed rules. In 2007 there were 222 volunteers; in 2008, there were 200 volunteers. Historically, ODFW has not run LEDS checks or fingerprint checks on volunteers and at this time, the agency does not anticipate doing so after adoption of the proposed rules. However, concurrent with this expanded rule ODFW will begin conducting employment background checks on Volunteer Hosts residing on property managed by the department. These checks will be done through an online service and not through LEDS or fingerprinting. (Note: These checks do not have to be accomplished through these rules; however, ODFW will follow Fair Credit Reporting Act procedures. The price of these checks is a one-time start-up fee of \$50.00 and \$18.00 for each individual national check. There is no limit to the number of terminals ODFW can use to conduct these checks). Should ODFW choose to run LEDS checks or fingerprint checks on volunteers in the future, the expenses would be as follows:

- Cost of nationwide criminal record check for any volunteer: \$43.25 (\$28 state; \$15.25 FBI)

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. Members of the public likely to be affected include job applicants, current employees, volunteers, vendors and contractors (and their employees and subcontractors and employees of subcontractors) of ODFW. The rule amendments will apply to an increased number of individuals based on the expanded duties addressed above.

Volunteers, vendors and contractors (and their employees and subcontractors and employees of subcontractors) of ODFW are also subject to the existing and proposed rules. Historically, ODFW has not run LEDS checks or fingerprint checks on these individuals, and the agency does not anticipate doing so after adoption of the proposed rules. Under the rules, however, ODFW could implement a policy change relatively quickly. Again, if ODFW were to run LEDS checks and fingerprint checks on volunteers in the future and were to choose to pass along the cost of those criminal records checks to applicants, the costs explained above would apply.

Any applicant 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. An updated survey (the 2008 Hourly Rates Survey) showed an average hourly rate of \$315 for a selection of legal specialties. We do not believe, however, that the average hourly rate has increased significantly since that update. 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.

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.