

## DIVISION 5

### CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES

#### 863-005-0000

##### Purpose

These rules control the agency'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 trustworthy and competent to hold a real estate license or registration. The criminal background check is only one portion of the approval process required to obtain a license or registration.

Stat. Auth.: ORS 181.534, 696.022, 696.301 and 696.790

Stats. Implemented: ORS 181.534

Hist: f. 6-12-08, cert. ef. 7-1-08

#### 863-005-0005

##### Definitions

As used in OAR chapter 863, division 5 unless the context requires otherwise, the following definitions apply:

(1) "**Agency**" means the State of Oregon Real Estate Agency.

(2) "**Authorized Designee**" means a person authorized by the commissioner to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a criminal background fitness determination in accordance with these rules.

(3) "**Conviction**" means that a court of law has entered a final judgment on a verdict or 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 Background Clearance**" means that, pursuant to a criminal background check, an authorized designee has determined that a subject individual is trustworthy and competent to be a licensee through a criminal background fitness determination.

(5) "**Criminal Offender Information**" includes:

(a) Records and related data concerning physical description and vital statistics;

(b) Fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders;

(c) Records of arrests; and

(d) The nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(6) "**Crime Relevant to a Criminal Background Fitness Determination**" means a crime listed or described in OAR 863-005-0030.

(7) "**Criminal Records Check and Criminal Background Fitness Determination Rules**" or "**These Rules**" means OAR chapter 863, division 5.

(8) "**Criminal Records Check**" means any of the following three processes undertaken by the agency to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the Department's rules;

(b) A check of Oregon criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police

at the agency's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the agency's request (Nationwide Criminal Records Check).

(9) "**Denied**" means that, following a criminal background fitness determination under OAR 863-005-0020, an authorized designee has determined that a subject individual is not trustworthy and competent to hold a license or registration.

(10) "**False Statement**" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the agency with false information about the subject 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 information material to determining the individual's criminal history.

(11) "**Fingerprint Card**" means a form prescribed by the Oregon Department of State Police and Federal Bureau of Investigation.

(12) "**Criminal Background Fitness Determination**" means a determination made by an authorized designee pursuant to the process established in OAR 863-005-0020 whether a subject individual is trustworthy and competent to be a licensee or registrant.

(13) "**Licensee**" means a principal real estate broker, a real estate broker, a real estate property manager as defined in ORS 696.010, or a real estate marketing organization licensed under ORS 696.606. Licensee shall also mean an

escrow agent as defined in ORS 696.505(5).

(14) "**Other Criminal Records Information**" means any information, in addition to criminal offender information, sought or obtained by the agency about a subject individual and used by the agency to determine the individual's criminal history.

(15) "**Registrant**" means a person registered as a membership camping contract broker or salesperson as provided in ORS 94.980.

(16) "**Subject Individual**" means an applicant for a license or renewal of a license under ORS 696.020, a real estate marketing organization license under ORS 696.606, an escrow agent license or renewal under ORS 696.511, a membership camping contract broker or salesperson registrant under ORS 94.980 as someone from whom the agency may require fingerprints in order for the agency to conduct a criminal records check.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534  
Hist. f. 6-12-08, cert. ef. 7-1-08

## **863-005-0010**

### **Criminal Records Check Process**

(1) A subject individual shall complete and sign an agency background check application and an applicant fingerprint card approved by the agency.

(2) Within a reasonable period of time, a subject individual shall provide additional information as requested by the agency to resolve any issue hindering the completion of a criminal records check.

(3) An authorized designee shall request that the Oregon Department of State Police conduct a criminal records check for all new licensee and registrant applications.

(4) An authorized designee may request that the Oregon Department of State Police conduct a criminal background records check for licensee and registrant renewal applications when there is reason to believe that:

(a) A subject individual committed a crime listed in OAR 863-005-0030; or

(b) A factor relevant to a criminal background fitness determination listed in OAR 863-005-0020 was not previously identified.

(5) When an authorized designee requires a criminal record check to be performed under section(3) or (4) of this rule, an authorized designee shall request that the Oregon Department of State Police conduct Oregon and nationwide criminal records checks through fingerprint identification. The authorized designee may also perform a Law Enforcement Data System (LEDS) criminal records check as part of any criminal background fitness determination conducted in regard to a subject individual.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534

Hist.: f. 6-12-08, cert. ef. 7-1-08

### **863-005-0020**

#### **Criminal Background Fitness Determination**

(1) An authorized designee shall make a criminal background fitness determination about a subject individual based on:

(a) Background check application and fingerprint card;

(b) Any criminal records check(s) conducted; and

(c) Any false statements made by the subject individual.

(2) In addition to the information in section (1) of this rule, an authorized

designee may obtain any other criminal records information about the subject individual from any source, including law enforcement agencies or courts within or outside of Oregon.

(3) A criminal background fitness determination shall be based on the factors described in section (5) of this rule in relation to information provided by the subject individual under OAR 863-005-0010.

(4) An authorized designee may request to meet with the subject individual to obtain additional criminal offender information necessary to complete a criminal background fitness determination.

(5) An authorized designee shall consider all collected information in determining:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 863-005-0030;

(b) The nature of any crime identified under subsection (a) of this section of the rule;

(c) The facts that support the conviction, a finding of guilty except for insanity, or that a pending indictment or uncompleted diversion exists;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) of this section of the rule or of a false statement made by the subject individual to the specific requirements of the subject individual's license or registration; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the license or registration for which the criminal background fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a) of this section of the 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 863-005-0030;

(E) Whether a conviction identified under subsection (a) of this section of the rule has been set aside or pardoned, and the legal effect of setting aside the conviction or pardon;

(F) The disposition of a pending indictment identified under subsection (a) of this section of the rule;

(G) Whether the subject individual:

(i) Has been arrested for or charged with a crime listed under OAR 863-005-0030 within the last five years;

(ii) Is being investigated, or has an outstanding warrant, for a crime listed under OAR 863-005-0030;

(iii) Is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 863-005-0030;

(iv) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 863-005-0030;

(v) 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 863-005-0030 if committed by an adult;

(vi) Has been incarcerated and length of incarceration; and

(vii) Has a history of drug or alcohol abuse which relates to the criminal

activity and the history of treatment or rehabilitation for such abuse.

(6) Approval. An authorized designee shall approve a criminal background clearance application if the information described in sections (1) and (2) of this rule shows no credible evidence that the subject individual:

(a) Has been convicted of, has a pending indictment or has been found guilty except for insanity (or comparable disposition) of a crime listed in OAR 863-005-0030;

(b) Has an uncompleted diversion; or

(c) Has made a false or incomplete statement or omitted information; and

(d) No discrepancies exist between the criminal offender information, other criminal records information and information obtained from the subject individual.

(7) Denial. An authorized designee shall not approve a criminal background clearance application if a criminal background fitness determination based on the factors described in section (5) of this rule demonstrates that the subject person is not trustworthy and competent to hold a professional real estate license or registration in a manner that protects the public.

(8) A denial of a criminal background clearance shall become a final order of the agency unless the subject individual appeals the authorized designee's criminal background fitness determination by requesting a contested case hearing as provided by OAR 863-005-0070.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534

Hist.: f. 6-12-08, cert. ef. 7-1-08

**863-005-0030**

**Crimes Relevant to a Criminal Background Fitness Determination**

(1) Permanent Review Crimes:  
(a) ORS 162.015, Bribe giving;  
(b) ORS 162.025, Bribe receiving;  
(c) ORS 162.065, Perjury;  
(d) ORS 162.085, Unsworn falsification;  
(e) ORS 162.117, Public Investment Fraud  
(f) ORS 162.155, Escape II;  
(g) ORS 162.165, Escape I;  
(h) ORS 162.235, Obstructing governmental or judicial administration;  
(i) ORS 162.265, Bribing a witness;  
(j) ORS 162.275, Bribe receiving by a witness;  
(k) ORS 162.305, Tampering with public records;  
(l) ORS 162.325, Hindering prosecution;  
(m) ORS 162.355, Simulating legal process;  
(n) ORS 162.367, Criminal impersonation of peace officer;  
(o) ORS 162.405, Official misconduct II;  
(p) ORS 162.415, Official misconduct I;  
(q) ORS 162.425, Misuse of confidential information;  
(r) ORS 163.005, Criminal homicide;  
(s) ORS 163.095, Aggravated murder;  
(t) ORS 163.115, Murder;  
(u) ORS 163.118, Manslaughter I;  
(v) ORS 163.125, Manslaughter II;  
(w) ORS 163.145, Criminally negligent homicide;  
(x) ORS 163.160, Assault IV;  
(y) ORS 163.165, Assault III;  
(z) ORS 163.175, Assault II;  
(aa) ORS 163.185, Assault I;  
(bb) ORS 163.187, Strangulation;  
(cc) ORS 163.190, Menacing;  
(dd) ORS 163.205, Criminal mistreatment I;

(ee) ORS 163.207, Female genital mutilation;  
(ff) ORS 163.208, Assault of Public Safety Officer;  
(gg) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;  
(hh) ORS 163.225, Kidnapping II;  
(ii) ORS 163.235, Kidnapping I;  
(jj) ORS 163.257, Custodial interference I;  
(kk) ORS 163.275, Coercion;  
(ll) ORS 163.355, Rape III;  
(mm) ORS 163.365, Rape II;  
(nn) ORS 163.375, Rape I;  
(oo) ORS 163.385, Sodomy III;  
(pp) ORS 163.395, Sodomy II;  
(qq) ORS 163.405, Sodomy I;  
(rr) ORS 163.408, Unlawful Sexual penetration II;  
(ss) ORS 163.411, Unlawful Sexual penetration I;  
(tt) ORS 163.415, Sexual abuse III;  
(uu) ORS 163.425, Sexual abuse II;  
(vv) ORS 163.427, Sexual abuse I;  
(ww) ORS 163.452, Custodial sexual misconduct I;  
(xx) ORS 163.454, Custodial sexual misconduct II;  
(yy) ORS 163.465, Public indecency;  
(zz) ORS 163.476, Unlawfully being in a location where children regularly congregate;  
(aaa) ORS 163.479, Unlawful contact with a child;  
(bbb) ORS 163.525, Incest;  
(ccc) ORS 163.535, Abandonment of a child;  
(ddd) ORS 163.537, Buying or selling a person under 18 years of age;  
(eee) ORS 163.547, Child neglect I;  
(fff) ORS 163.555, Criminal nonsupport;  
(ggg) ORS 163.575, Endangering the welfare of a minor;  
(hhh) ORS 163.670, Using child in display of sexually explicit conduct;

(iii) ORS 163.684, Encouraging child sexual abuse I;  
(jjj) ORS 163.686, Encouraging child sexual abuse II;  
(kkk) ORS 163.687, Encouraging child sexual abuse III;  
(lll) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child;  
(mmm) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child;  
(nnn) ORS 163.732, Stalking;  
(ooo) ORS 163.750, Violating court's stalking order;  
(ppp) ORS 164.045, Theft II;  
(qqq) ORS 164.055, Theft I;  
(rrr) ORS 164.057, Aggravated theft I;  
(sss) ORS 164.075, Theft by extortion;  
(ttt) ORS 164.085, Theft by deception;  
(uuu) ORS 164.095, Theft by receiving;  
(vvv) ORS 164.125, Theft of services;  
(www) ORS 164.135, Unauthorized use of a vehicle;  
(xxx) ORS 164.162, Mail theft or receipt of stolen mail;  
(yyy) ORS 164.170, Laundering a monetary instrument;  
(zzz) ORS 164.172, Engaging in a financial transaction in property derived from unlawful activity;  
(aaaa) ORS 164.215, Burglary II;  
(bbbb) ORS 164.225, Burglary I;  
(cccc) ORS 164.235, Possession of burglar's tools or theft device;  
(dddd) ORS 164.255, Criminal trespass I;  
(eeee) ORS 164.265, Criminal trespass while in possession of firearm;  
(ffff) ORS 164.315, Arson II;  
(gggg) ORS 164.325, Arson I;  
(hhhh) ORS 164.365, Criminal Mischief I;

(iiii) ORS 164.377, Computer crime;  
(jjjj) ORS 164.395, Robbery III;  
(kkkk) ORS 164.405, Robbery II;  
(llll) ORS 164.415, Robbery I;  
(mmmm) ORS 164.885, Endangering aircraft;  
(nnnn) ORS 165.007, Forgery II;  
(oooo) ORS 165.013, Forgery I;  
(pppp) ORS 165.017, Criminal possession of a forged instrument II;  
(qqqq) ORS 165.022, Criminal possession of a forged instrument I;  
(rrrr) ORS 165.032, Criminal possession of a forgery device;  
(ssss) ORS 165.042, Fraudulently obtaining a signature;  
(tttt) ORS 165.055, Fraudulent use of a credit card;  
(uuuu) ORS 165.065, Negotiating a bad check;  
(vvvv) ORS 165.074, Unlawful factoring of payment card transaction;  
(wwww) ORS 165.080, Falsifying business records;  
(xxxx) ORS 165.095, Misapplication of entrusted property;  
(yyyy) ORS 165.100, Issuing a false financial statement;  
(zzzz) ORS 165.102, Obtaining execution of documents by deception;  
(aaaaa) ORS 165.581, Cellular counterfeiting I;  
(bbbbb) ORS 165.800, Identity theft;  
(ccccc) ORS 165.810, Unlawful possession of a personal identification device;  
(ddddd) ORS 165.813, Unlawful possession of fictitious identification;  
(eeeee) ORS 166.005, Treason;  
(fffff) ORS 166.015, Riot;  
(ggggg) ORS 166.085, Abuse of corpse II;  
(hhhhh) ORS 166.087, Abuse of corpse I;  
(iiiiii) ORS 166.155, Intimidation II;  
(jjjjj) ORS 166.165, Intimidation I;

(kkkkk) ORS 166.220, Unlawful use of weapon;  
(lllll) ORS 166.270, Possession of weapons by certain felons;  
(mmmmm) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;  
(nnnnn) ORS 166.275, Possession of weapons by inmates of institutions;  
(ooooo) ORS 166.385, Possession of hoax destructive device;  
(ppppp) ORS 166.429, Firearms used in felony;  
(qqqqq) ORS 166.720, Racketeering activity unlawful;  
(rrrrr) ORS 167.012, Promoting prostitution;  
(sssss) ORS 167.017, Compelling prostitution;  
(ttttt) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;  
(uuuuu) ORS 167.065, Furnishing obscene materials to minors;  
(vvvvv) ORS 167.070, Sending obscene materials to minors;  
(wwwww) ORS 167.075, Exhibiting an obscene performance to a minor;  
(xxxxx) ORS 167.080, Displaying obscene materials to minors;  
(yyyyy) ORS 167.212, Tampering with drug records;  
(zzzzz) ORS 167.262, Adult using minor in commission of controlled substance offense;  
(aaaaa) ORS 167.315, Animal abuse II;  
(bbbbb) ORS 167.320, Animal abuse I;  
(ccccc) ORS 167.322, Aggravated animal abuse I;  
(ddddd) ORS 167.333, Sexual assault of animal;  
(eeeee) ORS 181.599, Failure to report as sex offender;

(ffffff) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;  
(ggggg) ORS 411.630, Unlawfully obtaining public assistance;  
(hhhhh) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);  
(iiiiii) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;  
(jjjjj) ORS 471.410, Providing liquor to person under 21 or to intoxicated  
(kkkkk) ORS 475.525, Sale of drug paraphernalia prohibited;  
(lllll) ORS 475.805, Providing hypodermic device to minor prohibited;  
(mmmmm) ORS 475.840, Prohibited acts generally (regarding drug crimes);  
(nnnnn) ORS 475.846, Unlawful manufacture of heroin;  
(ooooo) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;  
(ppppp) ORS 475.850, Unlawful delivery of heroin;  
(qqqqq) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;  
(rrrrr) ORS 475.854, Unlawful possession of heroin;  
(sssss) ORS 475.856, Unlawful manufacture of marijuana;  
(ttttt) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;  
(uuuuu) ORS 475.860, Unlawful delivery of marijuana;  
(vvvvv) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;  
(wwwww) ORS 475.864, Unlawful possession of marijuana;  
(xxxxx) ORS 475.866, Unlawful manufacture of 3,4 methylenedioxymethamphetamine;

(yyyyyy) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;  
(zzzzzz) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;  
(aaaaaaa) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;  
(bbbbbbb) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;  
(ccccccc) ORS 475.876, Unlawful manufacture of cocaine;  
(ddddddd) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;  
(eeeeeee) ORS 475.880, Unlawful delivery of cocaine;  
(ffffff) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;  
(ggggggg) ORS 475.884, Unlawful possession of cocaine;  
(hhhhhhh) ORS 475.886, Unlawful manufacture of methamphetamine;  
(iiiiiii) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school;  
(jjjjjjj) ORS 475.890, Unlawful delivery of methamphetamine;  
(kkkkkkk) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;  
(lllllll) ORS 475.894, Unlawful possession of methamphetamine;  
(mmmmmmm) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;  
(nnnnnnn) ORS 475.906, Penalties for distribution to minors;  
(ooooooo) ORS 475.908, Causing another person to ingest a controlled substance;

(ppppppp) ORS 475.910, Application of controlled substance to the body of another person;  
(qqqqqqq) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);  
(rrrrrrr) ORS 475.916, Prohibited acts involving records and fraud;  
(sssssss) ORS 475.918, Falsifying drug test results;  
(ttttttt) ORS 475.920, Providing drug test falsification equipment  
(uuuuuuu) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;  
(vvvvvvv) ORS 475.975, Unlawful possession and distribution of iodine in its elemental form;  
(wwwwwww) ORS 475.976, Unlawful possession and distribution of iodine matrix;  
(xxxxxxx) ORS 475.977, Possessing or disposing of methamphetamine manufacturing waste;  
(yyyyyyy) ORS 677.080, Prohibited acts (regarding the practice of medicine);  
(zzzzzzz) ORS 803.080, Unlawfully publishing certificate of title forms prohibited;  
(aaaaaaaa) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;  
(bbbbbbbb) ORS 807.500, Unlawful production of certain documents; affirmative defense;  
(ccccccc) ORS 807.520, False swearing to receive license;  
(ddddddd) ORS 807.530, False application for license;  
(eeeeeee) ORS 807.620, Giving false information to police officer;  
(ffffff) ORS 811.182, Criminal driving while suspended or revoked;  
(ggggggg) ORS 811.540, Fleeing or attempting to elude police officer;



(hhhhhhh) ORS 811.700, Failure to perform duties of driver when property is damaged;

(iiiiiii) ORS 811.705, Failure to perform duties of driver to injured persons;

(jjjjjjj) ORS 811.740, False accident report;

(kkkkkkk) ORS 813.010, Driving under the influence of intoxicants (DUII);

(lllllll) ORS 819.300, Possession of a stolen vehicle;

(mmmmmmm) ORS 819.310, Trafficking in stolen vehicles;

(nnnnnnn) ORS 822.605, False swearing relating to regulation of vehicle related businesses;

(oooooooo) ORS 830.035/990, Fleeing or attempting to elude a peace officer (small watercraft);

(ppppppp) ORS 830.053/990, Fraudulent report of theft of boat;

(qqqqqqq) ORS 830.325, Operating boat while under the influence of intoxicating liquor or controlled substance;

(rrrrrrr) ORS 830.475, Duties of operators and witnesses at accidents;

(sssssss) Any federal crime;

(ttttttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;

(uuuuuuu) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that an authorized designee determines is relevant to performance under the subject individual's license or registration;

(vvvvvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;

(wwwwwww) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the

underlying crime is listed in this section of the rule;

(xxxxxxx) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(yyyyyyy) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(2) Ten-Year Review Crimes.

(a) ORS 133.076, Failure to appear on criminal citation;

(b) ORS 162.075, False swearing;

(c) ORS 162.145, Escape III;

(d) ORS 162.175, Unauthorized departure;

(e) ORS 162.185, Supplying contraband;

(f) ORS 162.195, Failure to appear II;

(g) ORS 162.205, Failure to appear I;

(h) ORS 162.247, Interfering with a peace officer or parole & probation officer;

(i) ORS 162.285, Tampering with a witness;

(j) ORS 162.295, Tampering with physical evidence;

(k) ORS 162.315, Resisting arrest;

(l) ORS 162.335, Compounding;

(m) ORS 162.365, Criminal impersonation;

(n) ORS 162.369, Possession of false law enforcement identification card;

(o) ORS 162.375, Initiating a false report;

(p) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;

(q) ORS 163.195, Recklessly endangering another person;

(r) ORS 163.200, Criminal mistreatment II;

(s) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;  
(t) ORS 163.245, Custodial interference II;  
(u) ORS 163.435, Contributing to the sexual delinquency of a minor;  
(v) ORS 163.445, Sexual misconduct;  
(w) ORS 163.467, Private indecency;  
(x) ORS 163.700, Invasion of personal privacy;  
(y) ORS 164.043, Theft III;  
(z) ORS 164.140, Criminal possession of rented or leased personal property;  
(aa) ORS 164.272, Unlawful entry into motor vehicle;  
(bb) ORS 164.335, Reckless burning;  
(cc) ORS 164.354, Criminal Mischief II;  
(dd) ORS 165.037, Criminal simulation;  
(ee) ORS 165.070, Possessing fraudulent communications device;  
(ff) ORS 165.540, Obtaining contents of communication;  
(gg) ORS 165.543, Interception of communications;  
(hh) ORS 165.570, Improper use of emergency reporting system;  
(ii) ORS 165.572, Interference with making a report;  
(jj) ORS 165.577, Cellular counterfeiting III;  
(kk) ORS 165.579, Cellular counterfeiting II;  
(ll) ORS 165.692, Making false claim for health care payment;  
(mm) ORS 166.023, Disorderly conduct I;  
(nn) ORS 166.025, Disorderly conduct II;  
(oo) ORS 166.065, Harassment;  
(pp) ORS 166.076, Abuse of a memorial to the dead;  
(qq) ORS 166.116, Interfering with public transportation;

(rr) ORS 166.180, Negligently wounding another;  
(ss) ORS 166.190, Pointing firearm at another;  
(tt) ORS 166.240, Carrying of concealed weapon;  
(uu) ORS 166.250, Unlawful possession of firearms;  
(vv) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;  
(ww) ORS 166.382, Possession of destructive device prohibited;  
(xx) ORS 166.384, Unlawful manufacture of destructive device;  
(yy) ORS 166.470, Limitations and conditions for sales of firearms;  
(zz) ORS 166.480, Sale or gift of explosives to children;  
(aaa) ORS 166.649, Throwing an object off an overpass II;  
(bbb) ORS 166.651, Throwing an object off an overpass I;  
(ccc) ORS 166.660, Unlawful paramilitary activity;  
(ddd) ORS 167.007, Prostitution;  
(eee) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;  
(fff) ORS 167.222, Frequenting a place where controlled substances are used;  
(ggg) ORS 167.337, Interfering with law enforcement animal;  
(hhh) ORS 433.010, Spreading disease (willfully) prohibited;  
(iii) ORS 475.900, Commercial drug offense;  
(jjj) ORS 475.912, Unlawful delivery of imitation controlled substance;  
(kkk) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);  
(lll) ORS 475.950, Failure to report precursor substance;

(mmm) ORS 475.955, Failure to report missing precursor substances;

(nnn) ORS 475.960, Illegally selling drug equipment;

(ooo) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;

(ppp) ORS 475.965, Providing false information on precursor substances report;

(qqq) ORS 475.979 Unlawful possession of lithium or sodium metal;

(rrr) ORS 807.580, Using invalid license;

(sss) ORS 811.140, Reckless driving;

(ttt) ORS 819.420, Failure to obtain vehicle identification number for vehicle with altered or removed number;

(uuu) ORS 819.430, Trafficking in vehicles with destroyed or altered identification numbers;

(vvv) ORS 830.730/990, False information to peace officer or State Marine Board;

(www) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;

(xxx) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that an authorized designee determines is relevant to performance of the subject individual's license or registration;

(yyy) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;

(zzz) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(aaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes

listed in this section of the rule as determined by an authorized designee; or

(bbbb) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(3) Five-Year Review Crimes.

(a) ORS 164.245, Criminal trespass II;

(b) ORS 164.345, Criminal mischief III;

(c) ORS 165.805, Misrepresentation of age by a minor;

(d) ORS 166.090, Telephonic harassment;

(e) ORS 166.416, Providing false information in connection with a transfer of a firearm;

(f) ORS 166.425, Unlawful purchase of firearm;

(g) ORS 418.630, Operating uncertified foster home;

(h) ORS 685.990, Violations pertaining to naturopathic medicine;

(i) ORS 803.070, False statement in application or assignment;

(j) ORS 803.075, False swearing prohibited;

(k) ORS 803.375, False application prohibited;

(l) ORS 803.385, False swearing relating to registration;

(m) ORS 807.430, Misuse of identification card;

(n) ORS 807.510, Transfer of documents for purposes of misrepresentation;

(o) ORS 807.590, Permitting misuse of license;

(p) ORS 807.600, Using another's license;

(q) ORS 822.005, Acting as vehicle dealer without certificate;

(r) ORS 822.045, Crimes relating to conducting a vehicle dealer business;

(s) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435 or 161.450;

(t) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(u) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(v) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(4) An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the criminal background fitness determination.

(5) A subject individual's criminal background fitness determination shall not be denied under these rules based on the existence or contents of a record that has been expunged pursuant to ORS 419A.260 and 419A.262 or other similar process under the laws of this state or another jurisdiction.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534  
Hist.: f. 6-12-08, cert. ef. 7-1-08

#### **863-005-0040 Incomplete Criminal Background Application**

The agency will close an incomplete criminal background application and

terminate a criminal background fitness determination without issuing a decision when:

(1) The subject individual submits a written request to withdraw a criminal background application for a new license or registration, or license or registration renewal, or otherwise requests the agency to terminate a criminal records check;

(2) The subject individual does not provide the agency all of the materials and information required under OAR 863-005-0010 within a reasonable period of time;

(3) A subject individual does not respond to an authorized designee's request for additional information within a reasonable period of time; or

(4) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 863-005-0020.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534  
Hist.: f. 6-12-08, cert. ef. 7-1-08

#### **863-005-0050 Notice to Subject Individual of Incomplete Criminal Background Application**

(1) When an authorized designee proposes to close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision the authorized designee shall:

(a) Provide written notice via first class mail to the subject individual within 14 calendar days of a decision to terminate the subject individual's criminal background fitness determination due to incompleteness;

(b) State the reason the subject individual's criminal background fitness

determination application was found to be incomplete; and

(c) Record on the notice the date the criminal background fitness determination application was terminated and closed due to incompleteness.

(2) A subject individual that receives notice that the agency intends to terminate a criminal background fitness determination due to incompleteness may submit a written request to the agency requesting the agency to continue the fitness determination process. A subject individual's written request to continue the criminal background fitness determination process must be received by the agency within 30 days of the date of the original notice of termination. The request must include all information previously requested by the agency but not provided by the subject individual. If a subject individual fails to submit a written request to continue a fitness determination process within 30 days of receiving the notice described in section (1) of this rule, the subject individual shall be required to submit a new background check application, fingerprint card and fee.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534

Hist. f. 6-12-08, cert. ef. 7-1-08

### **863-005-0060**

#### **Notice to Subject Individual of Criminal Background Fitness Determination**

(1) An authorized designee shall provide written notice to a subject individual that the agency has completed a requested criminal background fitness determination. The notice shall state the date the agency completed the criminal background fitness determination and the agency's decision to approve or deny a

criminal background fitness determination application. If the agency denies a criminal background fitness determination, the notice shall state the reason for the denial based on the factors described in OAR 863-005-0020(5).

(2) The agency shall mail notice of a criminal background fitness determination via first class mail to the address provided by the subject individual on the agency background check application, or to an updated address as provided in writing by the subject individual no later than 14 calendar days after the date the agency has completed a criminal background fitness determination.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534

Hist.: f. 6-12-08, cert. ef. 7-1-08

### **863-005-0070**

#### **Appeals**

(1) A subject individual may not appeal a criminal background fitness determination or a decision to close a criminal background fitness determination for reason of incompleteness.

(2) If a licensing or registration applicant wishes to, they may complete any additional pre-licensing/registration requirements and submit a completed license/registration application together with the required fees. Upon review of a completed license/registration application, the agency shall issue a "notice of intent to deny" that describes the reason for the denial. The notice shall also include information required by OAR 137-003-0505 that describes the subject individual's right to request a contested case hearing to appeal the agency's decision.

(3) Contested case hearings on criminal background fitness determinations shall be closed to non-participants.

(4) 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 any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(5) Any challenge to any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation must follow the appeal process prescribed by the reporting agency.

(6) If the subject individual successfully challenges the accuracy or completeness of any 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 that the agency relied on to support a decision to deny a criminal background fitness determination, the subject individual may request the agency to conduct a new criminal records check and re-evaluate the original criminal background fitness determination made under OAR 863-005-0020. The subject individual shall submit a new background check application to the agency within 30 days of the date 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 issues a corrected criminal background report.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534  
Hist.: f. 6-12-08, cert. ef. 7-1-08

### **863-005-0080**

#### **Recordkeeping and Confidentiality**

(1) An authorized designee shall maintain all documents on a criminal background fitness determination or the closing of a criminal background fitness determination due to incompleteness in accordance with applicable archive retention requirements.

(2) Records the agency receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to Law Enforcement Data System (LEDS) reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534.

(3) Within the agency, only an authorized designee shall have access to records the agency receives from the Oregon Department of State Police resulting from a criminal records check.

(4) An authorized designee shall maintain and disclose any records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police in OAR chapter 257, division 15, these rules, and any written agreement between the agency and the Oregon Department of State Police.

(5) If a fingerprint-based criminal records check was conducted on a subject individual, the agency shall permit that subject individual to inspect the state and

federal criminal offender information, unless prohibited by state or federal law.

(6) If a subject individual with a right to inspect criminal offender information under section (5) of this rule requests, the agency shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by state or federal law.

(7) In addition to the records described in section (2) of this rule, the agency shall treat all records received or created under these rules that concern a subject individual's criminal history as confidential pursuant to ORS 181.534.

(8) Within the agency, only an authorized designee shall have access to the records identified under section (7) of this rule.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534  
Hist.: f. 6-12-08, cert. ef. 7-1-08

### **863-005-0090**

#### **Fees**

The agency shall charge a fee for acquiring criminal offender information to make a criminal background fitness determination, including re-evaluations of criminal background determinations made pursuant to OAR 863-005-0070. The fee shall not exceed the fee(s) charged the agency by the Oregon Department of State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181.534, 696.022 and 696.790

Stats. Implemented: ORS 181.534  
Hist.: f. 6-12-08, cert. ef. 7-1-08