

**Fire Policy Committee
Minutes
February 20, 2009**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on February 20, 2009 at the Oregon Public Safety Academy in Salem, Oregon. Chair Jim Whelan called the meeting to order at 9:00 a.m.

Attendees

Committee Members:

James Whelan, Oregon Volunteer Firefighters' Association, Chair
Kelly Bach, Oregon State Fire Fighters Council, Vice Chair
Larry Goff, Oregon Fire District Directors' Association
William Klein, Community College Fire Programs
John Klum, Portland Fire & Rescue
Mark Prince, Oregon Fire Chiefs' Association
Joe Seibert, Non-Management Firefighter
Randy Simpson, Oregon State Fire Marshal
Rod Smith, Oregon Fire Instructors Association

Committee Members Absent:

William Lafferty, Oregon Department of Forestry

DPSST Staff:

Eriks Gabliks, Deputy Director
Mark Ayers, Assistant Training Division Director
Julie Olsen-Fink, Senior Fire Certification Coordinator
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Support Specialist
Marilyn Lorance, Standards & Certification Program Supervisor
Bonnie Salle-Narvaez, Certification Coordinator
Kristen Turley, Standards & Compliance Coordinator
Harry Ward, Regional Fire Training Coordinator
Rocky Desimini, Regional Fire Training Coordinator
George Jamieson, Regional Fire Training Coordinator
Steve Roehl, Regional Fire Training Coordinator
John West, Academy Training Coordinator
Thelma Denney, Fire Training Support Specialist

Guests:

Michelle Stevens, Oregon State Fire Marshal's Association (for Charles Chaffin)
Don Willis, Sunriver Fire District
Ryan Karjala, Sisters-Camp Sherman RFPD
Marty Nelson, Lane County Fire District #1
Steve Straily, McKenzie Fire & Rescue
Kevin Wickman, Keizer Fire District
Jay Alley, Stayton Fire District
Jack Carriger, Stayton Fire District
Chris Hunt, Corvallis Fire Department
Michael Kinkade, OFIA
Bob Garrison, International Code Council
Allen Aschim, Amity Fire District

1. Minutes from September 19, 2008 meeting

Mark Prince moved to approve the minutes from the September 19, 2008 Fire Policy Committee meeting. Bill Klein seconded the motion. The motion carried in a unanimous vote.

Eriks Gabliks announced that Joe Seibert has been approved by the Board and is the new representative from the Oregon State Fire Fighters Council. He is taking Kevin Gray's place on the Fire Policy Committee (FPC). Michelle Stevens is a nominee to take Chuck Chaffin's place. She can not officially vote today but she can participate in the process. Randy Simpson is the new State Fire Marshal and he is eligible to vote.

2. Proposed Administrative Rules – Definitions OAR 259-009-0005

Julie Olsen-Fink discussed the potential adoption of NFPA 472 for the State of Oregon. DPSST had the privilege of working with an excellent group of individuals: Grant Coffey – Portland Fire & Rescue, Bryan Profit – Portland Fire & Rescue, Sam Phillips – Hillsboro Fire Dept., Reed Godfrey – Salem Fire Dept., Andrew Klein – TVF&R, Michael Carlsen – Clackamas County Fire Dist. #1, Dan Riblett – Klamath County Fire Dist. #1, Harry Ward and myself – DPSST staff members. The group met originally on July 25, 2008 and concluded their work on September 16, 2008.

First Responder will now be called “**Operations Level Responder.**” There is the requirement of a task evaluation sheet.

Hazardous Materials Technician had no changes. Applicant is still required to be certified as an Operations Level Responder and complete a task book.

On-Scene Incident Commander will now be called “**Incident Commander.**” Applicants will be required to be certified as an Operations Level Responder for certification.

Hazardous Materials Safety Officer is a NEW level of certification for applicants. To achieve this level of certification the applicant must be certified as a HazMat Technician and completion of the specified task book. This standard includes course work in:

- Analyzing the Incident
- Planning the Response
- Implementing the Planned Response
- Evaluating the Progress

Specialty Levels of Certification have been reformatted and have new classification titles:

- Tank Car Specialty
- Cargo Tank Specialty
- Intermodal Tank Specialty
- Marine Tank Vessel Specialty

There will be a one year time frame for implementation.

The task force is recommending that the FPC adopt the NFPA 472 Standard for Hazardous Materials and Weapons of Mass Destruction, 2008 Edition with the provisions and modified language of the rules that now reflect what is in NFPA.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0005 with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0005 with the Secretary of State as permanent rule if no comments are received and no hearing is held.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses (See House Bill 3238). *No fiscal impact by consensus.*

Kelly Bach moved to recommend to the Board to file the proposed language for OAR 259-009-0005 with the Secretary of State as proposed rule and as permanent rule if no comments are received. Randy Simpson seconded the motion. The motion carried in a unanimous vote.

3. Proposed Administrative Rules – NFPA 472 OAR 259-009-0062

Julie Olsen-Fink stated that the task force is recommending that the FPC review the modified language and determine whether to approve the changes in OAR 259-009-0062 and adopt these certification levels and requirements for fire service professionals. If the FPC approves the language, staff will incorporate the changes with the existing language.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0062 with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0062 with the Secretary of State as permanent rule if no comments are received and no hearing is held.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses (See House Bill 3238). *No fiscal impact by consensus.*

Mark Prince moved to recommend to the Board to file the proposed language for OAR 259-009-0062 with the Secretary of State as proposed rule and as permanent rule if no comments are received. Bill Klein seconded the motion. The motion carried in a unanimous vote.

4. Proposed Administrative Rules – Denial and Revocation OAR 259-009-0059

Marilyn Lorance reviewed the background and history of where we are today with revocation and denial.

Although state law and administrative rules now either require or permit denial or revocation of certification based on conviction of specific crimes, the administrative rules adopted to govern this process for the fire service did not include language that would provide for a fire service agency and the Department to be notified when future convictions occur.

Additionally, a fire service professional was previously determined to have a Federal Bureau of Investigations (FBI) number and an out-of-state conviction. However, there is currently no administrative rule that requires an individual who is identified as a *multi-source offender* to submit to the fingerprint process in order to obtain a complete criminal record on the individual.

Staff recommends that the FPC review the modified language relating to notification of conviction and determine whether to amend the rules governing fire service professionals.

(4) Fingerprints. Any individual utilized by a fire service agency that is identified in the Oregon LEDS system as a multi-source offender is required to be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and must forward one (1) card, with the appropriate fees to the Department.

(5) Notification of Conviction:

(a) A fire service professional or instructor who is convicted of a crime, as identified in OAR 259-009-0070, while employed by a fire service agency must notify the agency head within ~~72 hours~~ 72 hours 5 business days of the conviction.

(b) When an agency receives notification of a conviction from a fire service professional, instructor, or another source, they must notify the Department within ~~five thirty (5) (5)(30) businessbusiness~~ days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0059 with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0059 with the Secretary of State as permanent rule if no comments are received and no hearing is held.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses (See House Bill 3238). *No fiscal impact by consensus.*

Mark Prince moved to recommend to the Board to file the proposed language for OAR 259-009-0059 with the following amendments that an individual fire service professional or instructor must make notification to their employing agency within 5 business days of conviction and within the agency having jurisdiction making note as to DPSST within 30 days with the Secretary of State as proposed rule and as permanent rule if no comments are received. Rod Smith seconded the motion. The motion carried in a unanimous vote.

5. Proposed Administrative Rules – Denial and Revocation OAR 259-009-0070(3)

The FPC and Board previously approved the inclusion of all Measure 11 offenses as mandatory disqualifying crimes.

Staff recommends that the FPC review the modified language relating to mandatory disqualifying conviction and determine whether to amend the rule to include the entire list of current Measure 11 crimes within the text of the rule.

With one addition of: ORS 164.325 Arson in the First Degree will now include exception under OAR 259-009-0070(4) and listed in ORS 137.700.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0070(3) with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0070(3) with the Secretary of State as permanent rule if no comments are received and no hearing is held.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses (See House Bill 3238). *No fiscal impact by consensus.*

Randy Simpson moved to recommend to the Board to file the proposed language for OAR 259-009-0070(3) with the Secretary of State as proposed rule and as permanent rule if no comments are received. John Klum seconded the motion. The motion carried in a unanimous vote.

6. Proposed Administrative Rules – Denial and Revocation OAR 259-009-0070 (Discretionary Convictions)

As Professional Standards staff has begun reviewing criminal background information for firefighters, they have identified some concerns related to the list of mandatory and discretionary disqualifying convictions.

ISSUE 1: When the Fire Policy Committee and Board identified the list of discretionary disqualifying convictions, it was assumed that every “Measure 11” crime listed in ORS 137.700 was already a mandatory disqualifier. However, when a notice of intent to revoke a fire service professional’s certification was filed on a fire service professional who had been convicted of a Measure 11 offense (Arson I), it was discovered that this particular crime has an exception that could potentially receive a sentence as a non-Measure 11 crime.

ISSUE II: When the Fire Policy Committee and Board identified the list of discretionary disqualifying convictions, those sex crimes not already identified as mandatory disqualifiers were included in the discretionary crimes list. However, staff has encountered a situation in which an individual had been adjudicated of an unidentified sex crime and is required to be registered as a sex offender. Staff recommends that the Fire Policy Committee review the modified language relating to discretionary disqualifying convictions and determine whether to include any law that requires a fire service professional or instructor to register as a sex offender as a discretionary disqualifying conviction.

ISSUE III: To simplify the references to discretionary disqualifying convictions and make it easier for fire service professionals to determine what crimes are included in the list, staff recommends that the list of crimes be included within the text of the rule.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0070 with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0070 with the Secretary of State as permanent rule if no comments are received and no hearing is held.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses (See House Bill 3238). *No fiscal impact by consensus.*

Kelly Bach moved to recommend to the Board to file the proposed language for OAR 259-009-0070 with the Secretary of State as proposed rule and as permanent rule if no comments are received. Randy Simpson seconded the motion. The motion carried in a unanimous vote.

ACTION ITEM: Table to the next FPC meeting on 3/2/09 a discussion to add “attempted” Measure 11 Crimes to the Discretionary Crimes list.

7. Proposed Administrative Rules – Denial and Revocation OAR 259-009-0070 (Arbitrator Opinion)

The Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule with the Secretary of State’s office to adopt rules relating to the denial or revocation of a fire service professional’s or instructor’s certification. Those rules were based, in large part, on the rule language adopted by the Police Policy committee, Corrections Policy Committee and Telecommunications Policy Committee for the criminal justice disciplines.

During 2008, the criminal justice rules relating to denial and revocation were amended to address some of the concerns expressed in comments received during the public comment period. The original proposed rules, as well as staff’s proposed amendments to address the public comments received, were reviewed with the Department’s legal counsel. In addition to the initially proposed language, staff included minor

housekeeping and structural changes to the rules for clarity and to address concerns expressed by constituents, where appropriate.

Marilyn Lorance reviewed and clarified several of the changes as questioned by the FPC members.

Staff recommends that the FPC review the modified language and determine whether to amend the rules governing fire service professionals.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0070 with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0070 with the Secretary of State as permanent rule if no comments are received and no hearing is held.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses (See House Bill 3238). *No fiscal impact by consensus.*

Randy Simpson moved to recommend to the Board to file the proposed language for OAR 259-009-0070 with the Secretary of State as proposed rule and as permanent rule if no comments are received. Mark Prince seconded the motion. The motion carried in a unanimous vote.

8. Proposed Administrative Rules – Denial and Revocation OAR 259-009-0070(4)(d)

The Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule with the Secretary of State's office to adopt rules relating to the denial or revocation of a fire service professional's or instructor's certification. Since those rules were adopted, questions have been raised about the circumstances under which denial or revocation would be initiated.

Staff recommends modifying the current language to clarify that the Department will not initiate denial or revocation proceedings for a discretionary conviction against a fire service professional who has obtained certification(s) prior to the effective date of this rule, only as long as the individual does not apply for any future certification levels. If future certification levels are requested, the Department may initiate proceedings against an individual for a discretionary conviction. The rule already provides that all certifications must be revoked if a revocation is finalized.

The following proposed language contains recommended additions (**bold and underlined text**).

(d) For discretionary convictions that occurred before January 15, 2008:

(A) The Department will not initiate denial or revocation proceedings against any certification the Department granted the fire service professional or instructor prior to January 15, 2008, unless the fire service professional applies for certification after January 15, 2008.

(B) If the fire service professional applies for certification after January 15, 2008, the Department may initiate both denial and revocation proceedings.
(e) For discretionary convictions that occurred after January 15, 2008, the Department may initiate either denial or revocation proceedings upon learning of the conviction.

The following is from a hand-out of the current rule language:

(b) The Department will not initiate revocation proceedings for a discretionary conviction against any certification that a fire service professional or instructor has been granted prior to the effective date of this rule.

(c) The Department may initiate denial or revocation proceedings for a discretionary conviction that occurred prior to the effective date of this rule for any fire service professional or instructor who applies for a fire service certification not held prior to the effective date of this rule.

(8) Scope of Revocation. Whenever the Department revokes the certification of any fire service professional or instructor, the revocation shall embrace all fire service certificates the Department has issued to that person.

If the FPC approves the language, staff will incorporate the changes with other changes currently under review.

(Discussion occurred and the following concept was agreed upon):

OLD CRIMES (BEFORE 1/15/08)

Firefighters employed and certified before 1/15/08

1. No new app for certification – no action
2. New app for cert – committee review
No authority to revoke current
Authority to deny app

New Firefighters after 1/15/08

1. App for cert – authority to deny/revoke

NEW CRIMES (AFTER 1/15/08)

Authority to deny and revoke both for current and new firefighters

HOW LONG TO “LOOK BACK” TO OLD CRIMES

1/15/2003 from date of conviction

(1/15/2003 is a stationary date and will not move forward)

Kelly Bach moved to accept the concept as written above and review the draft language for OAR 259-009-0070 at the next FPC meeting on 3/2/09. Mark Prince seconded the motion. The motion carried in a unanimous vote.

9. Fallen Fire Fighters Memorial Wall Nomination

Eriks Gabliks reviewed the nomination for the Fallen Fire Fighters Memorial Wall:

At approximately 9:15 p.m. on March 3, 1970, the Thurston-Waltermville Rural Fire Protection District was summoned to a single family structure on fire on Upper Camp Creek Road. Upon the arrival fire units encountered a fully involved structure fire. Firefighter Ben K. Coburn was one of the members who responded to the incident. While fighting fire and manning a 2 ½ inch hose line he suddenly collapsed at the scene. He failed to respond to resuscitation efforts on scene and was pronounced deceased at McKenzie-Willamette Hospital.

Firefighter Coburn was a member of the Thurston-Waltermville Rural Fire Protection District since it was formed in 1959. He was a Navy veteran of World War II and active in a number of other community groups and organizations in Waltermville including the Boy Scouts and Grange. He was employed as a furnace repairman by the Skillern Oil Company in Eugene. He was survived by his wife. Two sons and two daughters.

The death meets the criteria for the Oregon Fallen fire Fighters Memorial.

Staff recommends the FPC determines whether Firefighter Ben K. Coburn's name will be included on the Fallen Fire Fighters Memorial Wall to be included in the September 17, 2009 ceremony.

Randy Simpson made a motion to put onto the memorial wall the name submitted for inclusion from DPSST staff. Rod Smith seconded the motion. The motion carried in a unanimous vote.

10. Round Table

Eriks Gabliks updated the group on state budget information.

Jim Whelan welcomed the new FPC members.

Julie Olsen-Fink reported that the Wildland Interface Task Force is moving forward successfully and making some moderate changes. There is one more meeting planned for next week on 2/27/09 and that should conclude the task force. The Fire Inspector, Fire Investigator and Fire Marshal Task Force completed two of the standards at their first meeting. The next meeting on 3/25/09 should complete the Fire Marshal standard and conclude the task force at the time. Fire Officer will be the next task force to roll out.

Bonnie Salle-Narvaez thanked everyone for their comments and clarifications to help make the rules more efficient.

The next FPC meeting is scheduled for 3/2/09.
Meeting adjourned at 12:20 p.m.