

**Fire Policy Committee
Minutes
August 27, 2010**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on August 27, 2010 at the Oregon Public Safety Academy in Salem, Oregon. Director Eriks Gabliks called the meeting to order at 9:04 a.m.

Attendees

Committee Members:

Joe Seibert, Non-Management Firefighter, Vice-Chair
Alan Ferschweiler, Oregon State Fire Fighters Council
Larry Goff, Oregon Fire District Directors Association
William Lafferty, Forest Protection Agencies
Rod Smith, Oregon Fire Instructors Association
Michelle Stevens, Oregon Fire Marshals Association
Jim Walker, Office of Oregon State Fire Marshal (Representing Randy Simpson)

Committee Members Absent:

Mark Prince, Oregon Fire Chiefs Association, Chair
John Klum, Portland Fire & Rescue
Johnny Mack, Community College Fire Programs
Randy Simpson, Oregon State Fire Marshal
Scott Stanton, Oregon Volunteer Firefighters Association

DPSST Staff:

Eriks Gabliks, Director
Julie Olsen-Fink, Fire Certification Supervisor
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Coordinator
Chad Goffin, Fire Certification Support Specialist
Marilyn Lorance, Standards & Certification Program Supervisor
Kristen Turley, Standards & Compliance Coordinator
Linsay Bassler, Compliance Coordinator

Guests:

Michael Kinkade, Forest Grove Fire & Rescue/OFIA



1. **Committee Vote on new Chair and Vice Chair**

- *Michelle Stevens moved to elect Mark Prince as Chair of the Fire Policy Committee. Rod Smith seconded the motion. The motion carried in a unanimous vote.*
- *Rod Smith moved to elect Joe Seibert as Vice Chair of the Fire Policy Committee. Larry Goff seconded the motion. The motion carried in a unanimous vote.*

2. **Minutes from May 21, 2010 meeting**

Rod Smith moved to approve the minutes from the May 21, 2010 Fire Policy Committee meeting. Michelle Stevens seconded the motion. The motion carried in a unanimous vote.

3. **Public Comment Received – Staff Recommendation**
Proposed Changes to OAR 259-009-0062(2)(1), NFPA Fire Officer

Presented by Julie Olsen-Fink

BACKGROUND:

The BPSST/DPSST National Fire Protection Association (NFPA) Fire Officer Task Force originally met on November 30, 2009 and concluded their work on December 18, 2009. The Task Force was assigned the duty of reviewing the currently adopted 2003 Edition of NFPA 1021 and determine if adopting the 2009 Edition would benefit the Oregon fire service. The task force determined the value of remaining consistent and current with NFPA standards at the national level.

FIRE POLICY COMMITTEE:

On February 19, 2010, the Fire Policy Committee met and reviewed staff's proposed amendments to OAR 259-009-0062 and voted to recommend to the Board that the proposed language be published as a proposed rule and as a permanent rule if no comments were received.

On June 1, 2010 the public comment period was open. During that period, a total of four public comments were received.

FINDING OF FACT:

1. On June 1, 2010 a Notice of Rulemaking was filed with the Secretary of State's office.
2. On June 22, 2010 the Notice of Proposed Rulemaking was published in the Secretary of State monthly publication.
3. During the month of June 2010, the Notice of Proposed rulemaking was posted on the Department of Public Safety Standards and Training's website.
4. The public comment period closed at 5:00 p.m. on June 21, 2010.

The Department provided notice of a proposed rulemaking hearing to:

- a. The Secretary of State office;
- b. Legislative Counsel;
- c. The agency interested parties' list; and
- d. The department's website

PUBLIC COMMENTS:

Public Comment #1A

Julie,

Thanks for coming into the fire officer 1 ttt (train the trainer).

I would like you to tank the fire officer until we complete the train t trainer course. The reason is several great ideas are coming out of the hand off course and the taskforce will need to consider these recommendations. I will ensure that a comprehensive list of issues is forwarded to you at the conclusion of this hand off.

Monte

Public Comment #1B

Julie,

This is a follow up to the email I wrote you last week regarding the public comment period for Fire Officer One (FO 1). This letter was written based on the collective input from the class that just took the Maryland Fire and Rescue Institute's (MRFI) NFPA Fire Officer One, Train-the-Trainer that recently occurred. I apologize for the lengthiness of this email, and as a note, Jamie Mason and George Jamison excused themselves from the discussion in order to avoid any conflict.)

As you are well aware, according to the Oregon State rules for instructor certification, if a student completes FO 1 training and holds an Instructor I certification, they can begin teaching this course. Although this method is the most effective for delivering education in the Oregon Fire Service, without a quality control method it can create a deviation from the standards with each generation of instructors.

With the advent of this new FO 1 curriculum available from MFRI, there are some increases to these concerns for course dilution. The MFRI representatives admit their FO 1 course must have a strict compliance to outside the classroom homework, and this homework is sometimes wrongly dismissed by a less than dedicated instructor within their own organization. Further, because this curriculum in some areas only meets the minimum Job Performance Requirements (JPRs) for NFPA FO 1; without quality control we will run the risk of not having a compliant class in portions of the state within very few generations of instructors.

One quality control that the students in our Train-the-Trainer class feel would add stability to the delivery process degradation, and thus keep the course on objective for many

generations, would be to require the students to take their final written test from a controlled test bank. This is the method that MFRI uses to ensure their course validity in Maryland. The Maryland instructors do not even get a chance to see the final test, as it is facilitated by a third party MFRI representative. It is because of this test security that they were not able to share the MFRI test bank with us in Oregon.

In general terms here are our recommendations:

1. This test bank must remain secure, and yet the process for administering the test must be flexible enough to meet the needs of all agencies. One way to do this is through the facilitation of the test delivery through a regional DPSST representative in their own area or through the local Training Association.
2. The test questions must be valid, professionally generated from the current Fire Officer IFSTA manual and contain no agency specific questions. (These can be added by the agency)
3. The test must be drawn from a test bank so that multiple tests can be generated for the same class.
4. A state wide minimum passing score must be agreed on.
5. If a student fails the test, there must be a process for re-testing.
6. If the student repeatedly fails the test there should be a pre-determined required remediation training plan. This can be accomplished by breaking the test down by subjects or JPRs so the remedial training can focus on the subjects that are deficient.
7. The testing process must be a part of the course completion, and be reflected in the final DPSST Course roster as a Pass.

In the past, personnel who have received their FO 1 certification in Oregon have had to earn it. It meant you went far beyond occupying a seat in class and getting your name on the roster. Some of the classes needed to reach some of the NFPA JPRs could have been considered extra or overkill, but in the end an FO 1 in Oregon was a quality product 100% of the time. It is our desire to retain the quality FO 1 but blend the high standards with the newly found ease of getting a FO 1 certification. It is this desire alone that drives these comments.

Monte B Keady

Division Chief - Training/EMS
Klamath County Fire District No. 1
143 N Broad Street,
Klamath Falls OR 97601
541.885.2059 ext.109

Public Comment #2

June 21, 2010

I am providing public comment regarding amendment 259-009-0062 (i) provisions of the NFPA Standard 1021 Fire Officer. As the committee looks at the state's certification processes for Fire Office I feel that it is important that national standards are looked at and used. I am concerned that leaving college level course requirements does not follow the national standard. The reason that I have this belief and I may be slightly incorrect is that our agency had an entity lined up to teach the FO1 & FO2 program completely and we were told that it met the NFPA standard and the instructors were out of Washington. DPSST also told us that it met the requirements as well. Where we ended up have an issue is the fact that Oregon requires college courses to meet the state's requirements. Because of this we terminated the program as one would expect. What we found out afterwards though is that we could have taught the classes here had the students test in Washington and receive Washington certification, turn around and apply for the cert and they would have been accepted because Oregon recognizes Washington certifications. That to me is a problem and if we are looking at dropping part of the college requirements then we should drop them all.

I have also been told that if the new changes occur that a person will need to take the Fire Behavior and Combustions course as well as Pump Operator yet I have not been able to find that anywhere. It would be so much easier to have one program and one way to receive certification rather than multiple avenues. Plus if the college courses are dropped, I as an Instructor 1 and Fire Officer 1 could go ahead and provide certifiable training in house saving our government entity a significant amount of money in getting current and future fire officers trained. As the state fights with its budget, so do fire districts and departments and is it not only prudent stewards to help reduce cost if we are able to do so and get training that meets the national standard?

To have multiple avenues can potentially add confusion and difficulty for the fire service as a whole. To have both career and volunteer agencies supporting and certifying to FO1 would make for a better overall program and build trust between these different groups. Everyone being held to the same standard no matter where they work/volunteer would be very positive. As we have seen fire does not choose between the two and right now the only real thing that has been a hindrance for many volunteers is the college course work and that is not even part of the overall non-Oregon program. If that is dropped the state could phase out the Fire Ground Leader and have a single avenue for officer certifications.

I hope you take my points and ideas into account as this topic continues to be evaluated and altered. If you have any questions or need clarification on anything that I have said, feel free to contact me at (541) 688-1770.

Gregory L. Jack - Training Officer/Captain
Lane Rural Fire/Rescue
(541) 688-1770 x503

Public Comment #3

Julie,

The Fire Officer standard as proposed should allow for more consistency with the NFPA standards then was present before. The curriculum that is now available will help Oregon

Fire Agencies meet the requirements necessary to be sure the person in the right seat is qualified. I am looking forward to applying this new standard in our region.
Thanks for your work

Dan Petersen, Deputy Chief of Administration and Training
Medford Fire Department, 200 S. Ivy, Medford, OR 97504
Office: 541.774.2306 Cell: 541.778.4867
www.medfordfirerescue.com

For ease of review, only the relevant portion of the revised text is included. The following language includes recommended additions (**bold and underlined text**) and deletions (~~strikethrough text~~):

259-009-0062

Fire Service Personnel Certification

(i) The provisions of the NFPA Standard 1021, ~~2003~~ **2009** Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections ~~4.2~~ **4.1** through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: ~~Written Communications, Advanced Speech, Technical Writing/Business Writing,~~ Math, Physics, Chemistry, or **Fire Behavior and Combustion. Refer to the suggested course guide for detailed course, curriculum and training information.**

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section ~~5.2~~ **5.1** through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections ~~6.2~~ **6.1** through 6.7 of the Standard. ~~Amend section 6.1 to allow individuals certified as NFPA 1033 Fire Investigator, NFPA 1035 Public Fire and Life Safety Educator, or NFPA 1031 Fire Inspector III to apply for certification without attaining NFPA 1001 Fire Fighter II.~~

(i) All applicants for certification must complete a Department approved Task Book for NFPA Fire Officer III, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections ~~7.2~~ **7.1** through 7.7 of the Standard.

(i) All applicants for certification must complete a Department approved Task Book for NFPA Fire Officer IV, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

~~(i) 5-1.2 General Requisite Skill: the ability to effectively apply prerequisite knowledge.~~

~~(ii) 5-1.3 Existing Curricula—Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.~~

STAFF ANALYSIS:

Response: Public Comment #1A and 1B

The Task Force was assigned the duty of reviewing the currently adopted 2003 Edition of NFPA 1021 and determining if adopting the 2009 Edition would benefit the Oregon fire service. The task force determined the value of remaining consistent and current with NFPA standards at the national level. The task force did discuss curriculum issues, and decided there should be “options” as to how a candidate can achieve fire officer levels of certification.

Several of the concerns in this comment involve curriculum and testing processes that are not generally included within the text of the administrative rules but are addressed by DPSST staff. That authority and process is found in OAR 259-009-0085, reproduced

below. The testing process has historically been the responsibility of the Instructor and/or Authority Having Jurisdiction (AHJ).

259-009-0085

Certification of Courses and Classes

(1) The Department shall certify courses, and classes deemed adequate to effectively teach one or more approved fire subject(s) to fire service personnel.

(2) Certification shall be based on the evaluation of course curriculum or subjects for instruction.

(3) Facilities and equipment used for certified training shall be accessible to all interested and qualified individuals.

(4) The Department shall certify courses at the Content level. Courses certified at the content level require a student demonstration of acquired knowledge, skill, or ability. Agencies, organizations, or individuals requesting course certification at the content level shall submit an Application for Certification of Course (DPSST Form F-20), accompanied by clearly-defined NFPA standards for job performance requirements, curriculum, test questions or evaluation criteria, and evidence of instructor certification as provided in OAR 259-009-0080. Curriculum submitted to DPSST becomes the property of DPSST.

(5) The Department shall notify the requesting agency, organization or individual, in writing, of the denial or the granted level of course certification. If certification is granted, that notification shall be accompanied by Student Rosters.

(6) It is the responsibility of the requesting agency, organization, or individual, to:

(a) Oversee the preparation of curriculum and to insure its compliance with the requirements of the Department;

(b) Obtain a facility and instructor(s) to be used for the course, and insure their compliance with the requirement of the Department;

(c) Develop rules and regulations governing the operation of the facility and the conduct of the trainees;

(d) Administer the course;

(e) Maintain an accurate record of attendance; and

(f) Maintain all forms required by the Department, forwarding them within the stipulated time period.

(7) Once a course is certified, it remains certified for unlimited delivery for five years, unless there is a significant change in course content, number of hours or instructor(s); or

unless it is decertified by the Department as provided in section (9) of this rule. The Department shall be notified of significant changes.

(8) All course certification shall expire on December 31st of the fifth year after the initial certification. Agencies, organizations or individuals shall request recertification to continue a course for each additional five (5) years.

(9) The Department may decertify a course whenever that course is deemed inadequate. The course may be recertified by the Department when satisfactory proof has been presented to the Department that the deficiencies have been corrected.

(10) Fire service agencies may accredit their training programs as provided in OAR 259-009-0087.

Response: Public Comment #2

In review of public comment #2- the task force has recommended the NFPA 1021 Professional Standards for Fire Officer be adopted in order to remain current with the national standards. It was not their expressed intention to remove the college course requirements. Rather, it was their intent to provide alternatives as identified by the curriculum options to successfully obtain these levels of certification. The task force strongly believed the Oregon fire service would greatly benefit from having different options for certification.

If the Fire Policy Committee has questions or concerns about other elements of the public comment, DPSST staff will be pleased to provide additional information or clarification.

Public Comment #3

This public comment supports the proposed changes.

ACTION ITEM: Determine whether to recommend filing the previously proposed language for OAR 259-009-0062 with the Secretary of State as a permanent rule.

Jim Walker moved that the committee recommends filing the previously proposed language for OAR 259-009-0062 with the Secretary of State as a permanent rule. Bill Lafferty seconded the motion. The motion carried in a unanimous vote.

4. Public Comment Received – Staff Recommendation **Proposed Changes to OAR 259-009-0005 and 259-009-0062, Wildland Interface**

Presented by Julie Olsen-Fink

BACKGROUND:

The BPSST/DPSST Wildland Interface Task Force originally met on January 30, 2009 and successfully concluded their work on February 19, 2009. The Task Force was assigned the duty of reviewing the current National Wildfire Coordinating Group (NWCG) requirements for certification and comparing the changes in requirements

NWCG has made since the standards were adopted by Oregon for structural fire fighters in 1998. The Task Force recommended that the Oregon fire service remain current with NWCG standards to provide consistency and further recommended Oregon Administrative Rules (OAR) reflect these changes and be adopted as permanent rule.

The Fire Policy Committee (FPC) and Board on Public Safety Standards and Training previously reviewed and approved filing the proposed changes relating to NWCG Wildland Interface Standard with the Secretary of State's Office as proposed rules. The proposed rules were filed with the Secretary of State's Office and opened for public comment.

On November 20, 2009, the FPC met, and Deputy Chief Ryan Karjala, Sisters-Camp Sherman RFPD and the Chair of the task force, provided the FPC with an overview regarding the goals and objectives of the task force. The FPC discussed the public comments that had been received. Chief Karjala recommended members from the FPC and those who submitted public comment attend and participate in an additional meeting to gain greater shared understanding of the issues, concerns, and task force recommendations. The FPC supported this action and requested the task force to reconvene to further evaluate the scope of the public comments received and consider any additional changes.

On December 17, 2009 the task force reconvened with members of the FPC and those who had submitted public comment. The comments were addressed and a viable solution was agreed upon.

FIRE POLICY COMMITTEE:

On February 19, 2010, the Fire Policy Committee met and reviewed staff's proposed amendments to OAR 259-009-0005 and 259-009-0062. They also reviewed recommended additional changes proposed by a FPC member for greater consistency with task force recommendations. After incorporating the additional agreed-upon language changes, the FPC unanimously voted to recommend to the Board that the language be approved.¹

On June 1, 2010 a second public comment period was open. During that period, a total of (1) public comment was received regarding OAR 259-009-0005 and OAR 259-009-0062.

FINDING OF FACT:

1. On June 1, 2010 a Notice of Rulemaking was filed with the Secretary of State's office.
2. On June 22, 2010 the Notice of Proposed Rulemaking was published in the Secretary of State monthly publication.

¹ 11 of 11 Committee members were present

3. During the month of June 2010, the Notice of Proposed rulemaking was posted on the Department of Public Safety Standards and Training's website.
4. On June 22, 2010 the public comment period closed.

The Department provided notice of a proposed rulemaking hearing to:

- a. The Secretary of State office;
- b. Legislative Counsel;
- c. The agency interested parties' list; and
- d. The department's website

PUBLIC COMMENT:

259-009-0005

259-009-0062

Julie,

In both the definitions and responsibilities the 'Task Force' identification has been deleted and I ask why? In my 30 years at AFD we have been members of a Task Force numerous times and seldom deployed as a Strike Team. With the language proposed it does not afford this ability. The current NWCG Taskbook has Strike Teams and Task Force all in the same book requiring only 4 additional checks for TFLD related to the TF configuration. These are important and directly relate to what we normally do on deployments.

Current proposed language...

(48)“Wildland Interface Strike Team/~~Task Force~~ Leader Engine” means a person who is responsible to act in an ICS position and is responsible for the direct supervision of an engine strike team.

o) Wildland Interface Strike Team/Leader Engine.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team/Leader Engine must be certified as Wildland Interface Engine Boss prior to applying for Wildland Interface Strike Team/Leader Engine and must document training in all of the following areas at the time of application:

Since this is what we do, shouldn't it state more to...

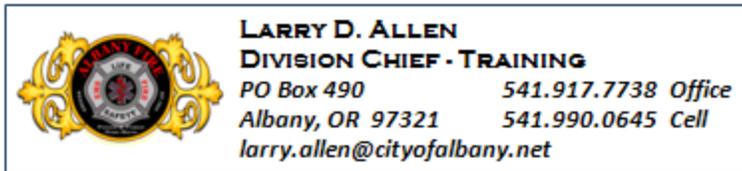
(48)“Wildland Interface Strike Team Leader Engine/~~Task Force~~ Leader” means a person who is responsible to act in an ICS position and is responsible for the direct supervision of an engine strike team **or structural task force (as defined by OSFM).**

o) Wildland Interface Strike Team/Leader Engine/~~Task Force~~ Leader.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team/Leader Engine/Task Force Leader must be certified as Wildland Interface Engine Boss prior to applying for Wildland Interface Strike Team/Leader Engine/Task Force Leader and must document training in all of the following areas at the time of application:

Thanks you for the consideration



Following is the text of the proposed changes to OAR 259-009-0005 and 259-009-0062. For convenience, only the relevant sections of the rules have been included. Rules subject to numbering changes only have not been included. Proposed deletions are shown in ~~strikethrough text~~. Proposed additions are shown in **bold and underlined text**:

259-009-0005

Definitions

(1) "Authority having jurisdiction" ~~shall~~ means the Department of Public Safety Standards and Training.

(22) "NFPA Fire Fighter I" means a member of a fire service agency who has met the HLevel I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(23) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent HLevel job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(24) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the HLevel I job performance requirements of NFPA Standard 1031.

(25) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the HLevel II job performance requirements of NFPA standard 1031.

(44) "Wildland Interface Fire Fighter" means a person at the first level of progression who demonstrated the knowledge and skills necessary to function safely as a member

of a Wildland fire suppression crew whose principal function is fire suppression. This position has direct supervision.

(45) “Wildland Interface Crew Boss” means a person who is in supervisory position in charge of 16 to 21 fire fighters and is responsible for their performance, safety, and welfare.

(45) (46) “Wildland Interface Engine Boss” means a person who is in supervisory position who has demonstrated the skills and depth of knowledge necessary to function under general supervision while operating a piece of apparatus such as an engine.

(47) “Wildland Interface Strike Team Leader Crew” means a person who is responsible to act in a ICS position and is responsible for the direct supervision of a crew strike team.

(46) (48) “Wildland Interface Strike Team/Task Force Leader Engine” means a person who is responsible to act in an ICS position and is responsible for the direct supervision of an engine strike team.

(49) “Wildland Interface Structural Group Supervisor” means a person who is responsible to act in an ICS position responsible for supervising equipment and personnel assigned to a group. Groups are composed of resources assembled to perform a special function not necessarily within a single geographic division. Groups, when activated, are located between branches and resources in the operations section. Reports to a Branch Director or Operations Section Chief.

(47) (50) Wildland Interface Division/Group Supervisor” means a person who is responsible to act in an ICS position responsible for commanding and managing resources on a particular geographic area of a wildland fire Reports to a Branch Director or Operations Section Chief.

259-009-0062

Fire Service Personnel Certification

* * *

(2) The following standards for fire service personnel are hereby adopted by reference:

* * *

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall **must** first be certified as an NFPA Fire Fighter II.

(C) An applicant **applying for Fire Ground Leader** ~~would need to~~ **must** document training in ~~at least seven~~ **all** of the following areas:

- (i) Building Construction: Non-Combustible.
- (ii) Building Construction: Combustible;
- (iii) Incident Safety Officer or Fire Fighter Safety;
- (iv) Managing Water Supplies Operations;
- (v) MCTO – Preparation or PICO;
- (vi) MCTO – Decision Making;
- (vii) MCTO - - Tactics or STICO;
- (viii) Incident Command System;
- (vix) Fire Investigation.

(D) A task book ~~shall~~ **must** be completed before certification is awarded.

~~(I) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September, 2003).~~

(A) This is an NWCG standard that includes NWCG Wildland Fire Fighter Type I and Type II.

(B) An individual applying for Wildland Interface Fire Fighter must document training in all of the following areas at the time of application:

(i) S-130 Fire Fighter Training (includes L-180);

(ii) S-190 Wildland Fire Behavior;

(iii) S-131 Firefighter Type I;

(iv) I-100 Introduction to ICS; and

(v) Completion of the NWCG FFT1 Task Book;

(m) Wildland Interface Engine Boss.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Engine Boss must be certified as Wildland Interface Fire Fighter prior to applying for Wildland Interface Engine Boss and must document training in all of the following areas at the time of application:

(i) 1-200 Basic Incident Command;

(ii) S-230 or S-231 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the Task Book for NWCG Single Resource Boss Engine.

(n) Wildland Interface Crew Boss

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Crew Boss must be certified as Wild Interface Fire Fighter prior to applying for Wildland Interface Crew Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the Task Book for NWCG Single Resource Boss Crew.

(o) Wildland Interface Strike Team/Leader Engine.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team/Leader Engine must be certified as Wildland Interface Engine Boss prior to applying for Wildland Interface Strike Team/Leader Engine and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the WUI;

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Intermediate ICS; and

(iv) Completion of the Task Book for NWCG Strike Team/Leader Engine.

(p) Wildland Interface Strike Team/Task Force Leader Crew.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team/Leader Crew must be certified as Wildland Interface Crew Boss prior to applying for Wildland Interface Strike Team/Leader Crew and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the WUI;

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Intermediate ICS; and

(iv) Completion of the Task Book for NWCG Strike Team Leader Crew Task Book.

(q) Wildland Interface Structural Group Supervisor.

(A) This is an Oregon standard.

(B) An individual applying for Wildland Interface Structural Group Supervisor must be certified as Wildland Interface Strike Team/Leader Engine prior to applying for certification as Wildland Structural Interface/Group Supervisor and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

(iii) Completion of the Task Book for NWCG Group Supervisor.

(r) Wildland Interface Division/Group Supervisor.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Division/Group Supervisor must be certified as Wildland Interface Strike Team/Leader Engine and a Wildland Interface Strike Team Leader Crew prior to applying for certification as Wildland Interface Division/Group Supervisor and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

(iii) Completion of the Task Book for NWCG Division/Group Supervisor.

STAFF ANALYSIS:

It was the intention of the Wildland Interface Task Force to remain as consistent as possible with the NWCG standards in an effort to meet the various needs of the Oregon fire service. Members of the FPC attended the last task force meeting to discuss and

address similar questions as noted in the public comment. As a result of their discussion and deliberation, the following levels of certification were approved as being the most appropriate for the Oregon fire service.

- WILDLAND INTERFACE FIRE FIGHTER
- WILDLAND INTERFACE ENGINE BOSS
- WILDLAND INTERFACE CREW BOSS
- WILDLAND INTERFACE STRIKE TEAM LEADER ENGINE
- WILDLAND INTERFACE STRIKE TEAM LEADER CREW
- WILDLAND INTERFACE STRUCTURAL GROUP SUPERVISOR
- WILDLAND INTERFACE DIVISION/GROUP SUPERVISOR

The task force believed the above levels of certification were applicable to the majority of the Oregon fire service.

ACTION ITEM: Determine whether to recommend filing the previously proposed language for OAR 259-009-0005 and 259-009-0062 with the Secretary of State as a permanent rule.

Jim Walker moved that the committee recommends filing the previously proposed language for OAR 259-009-0005 and OAR 259-009-0062 with the Secretary of State as a permanent rule. Larry Goff seconded the motion. The motion carried in a unanimous vote.

5. **Proposed Administrative Rules – Denial and Revocation**
OAR 259-009-0070(4)(b) Modifying Core Values Definitions

Presented by Marilyn Lorange

BACKGROUND:

At the Fire Policy Committee (FPC) meeting of May 21, 2010, FPC members discussed the core values for fire service professionals, as defined in OAR 259-009-0070(4)(b). They identified duplicate language in the definitions that made it difficult to distinguish among the values, and requested that staff prepare proposed rule language to incorporate the recommended changes they identified to address their concern.

PROPOSED RULE LANGUAGE:

The following proposed language contains recommended deletions in ~~strike through text~~:

259-009-0070(4)

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification.

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

(b) For purposes of this rule, the Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(A) Category I: Honesty. Honesty includes ~~fairness and~~ straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(C) Category III: Justice. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair; ~~integrity and honesty.~~

ACTION ITEM I: Determine whether to recommend filing the proposed language for OAR 259-009-0070(4) with the Secretary of State as proposed rule.

ACTION ITEM II: Determine whether to recommend filing the proposed language for OAR 259-009-0070(4) with the Secretary of State as permanent rule if no comments are received.

ACTION ITEM III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses. *No fiscal impact by consensus.*

Michelle Stevens moved to recommend to the Board to file the proposed language for OAR 259-009-0070(4) 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.

6. **Revocation/Denial Case Review for Adam C. Bailey DPSST #4533**

Presented by Kristen Turley

ISSUE:

Prior to the July 22, 2010, meeting of the Board on Public Safety Standards and Training (BPSST) David Schutt asked to pull BAILEY's file from the consent agenda. On July 22, 2010, the Board met and after a lengthy discussion of the facts of the case voted to return BAILEY's case to the FPC for reconsideration. Due to the length of the discussion, staff has provided a CD for the FPC's reference.

FPC RECOMMENDATION TO BOARD:

On May 21, 2010, the Fire Policy Committee (FPC) met and after reviewing the facts of the case, *unanimously* voted to recommend that BAILEY's conduct does not rise to the level to warrant denial and revocation of BAILEY's certifications, based on his discretionary disqualifying conviction.

- In substance, the FPC adopted the Staff Report and associated documents as the record on which their recommendation was based.
- The FPC determined that BAILEY's conduct did not violate any of the core values.
- The FPC identified as mitigating circumstances the letters of support, the fact that he has custody of one of the children, the arrest was initiated by an upset ex-wife and his conduct was "felony stupid," but not necessarily a minimum standards violation.
- The FPC determined that BAILEY's conduct does not rise to the level that warrants revocation and denial of his certifications.

BOARD DISCUSSION:

Please refer to attached CD for Board's discussion.

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to BAILEY:

On March 1, 2005, BAILEY was hired by Toledo Fire Department.²

On July 5, 2007, BAILEY was granted a Wildland Interface Fire Fighter certification.³

On December 20, 2007, BAILEY was granted NFPA Fire Fighter I certification.⁴

On or about December 3, 2009, BAILEY applied for the NFPA Fire Instructor certification.⁵

A routine records check was completed on BAILEY and the following information was obtained:

LEDS identified BAILEY as a convicted Felon with an FBI number, and a multi source offender requiring fingerprints. A letter was sent to the agency and BAILEY requesting a fingerprint card.⁶ The results received from Oregon State Police did not identify any out-of-state disqualifying convictions.

BAILEY was arrested for six counts of First Degree Rape, six counts of First Degree Sodomy, two counts of First Degree Sexual Abuse and six counts of Second Degree Sex

² Ex A1

³ Ex A1

⁴ Ex A1

⁵ Ex A2

⁶ Ex A3

*Abuse on August 30, 1996.⁷ BAILEY was convicted of six counts of Second Degree Sex Abuse and three counts of Third Degree Sex Abuse on April 22, 1997. As a result of these convictions BAILEY was required to register as a sexual offender with the Oregon State Police Sex Offender Unit. Based on the date of the convictions, these are not discretionary disqualifying convictions, for purposes of certification. On or about March 30, 2007, BAILEY was arrested for Criminal Mistreatment.⁸ He was subsequently convicted of Third Degree Assault and Attempt to Commit Third Degree Assault on May 2, 2008. **Third Degree Assault is a discretionary disqualifying crime, for purposes of certification.**⁹*

This conviction was compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On February 24, 2010, TURLEY mailed BAILEY a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent regular mail. As a policy, DPSST also provides a Stipulated Order Revoking and Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.¹⁰

On or about March 29, 2010, TURLEY received a letter from BAILEY along with letters of support for the FPC's consideration.¹¹

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

DISCRETIONARY DISQUALIFYING CONDUCT:

1. The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are identified in OAR 259-009-0070(4)(b):

⁷ Ex A7

⁸ Ex A9

⁹ Ex A10

¹⁰ Ex A4

¹¹ Ex A11

(A) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(C) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

2. Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the crimes identified in OAR 259-009-0070(4)(c) has violated the core values of the fire service profession and may not be fit to receive or hold certification:

Staff Explanation: The above rule creates a presumption is that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke and/or deny BAILEY's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that BAILEY's conduct *does/does not* rise to the level to warrant revocation and denial of his certification(s), and therefore recommends to the Board that BAILEY's certifications be *revoked and denied/not revoked and denied*.

Part Two (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of time to be determined.

Rod Smith moved that the committee adopts the staff report as the record on which their recommendations are based. Michelle Stevens seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Third Degree Assault is a discretionary disqualifying crime, for purposes of certification.
- b. The conduct ***does not*** violate the core value of honesty.
- c. The conduct ***does*** violate the core value of professionalism.
- d. The conduct ***does not*** violate the core value of justice.

By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.

- The committee identified as mitigating circumstances his letters of support. They also considered the fact that BAILEY appeared to be going through a contentious divorce that seemed to exacerbate the situation.
- The committee identified as an aggravating circumstance his current requirement to register as a sex offender, related to the core value of professionalism.

*Bill Lafferty moved that the committee finds that BAILEY's conduct ***does rise to the level to warrant revocation and denial of his certification(s)***, and therefore recommends to the Board that BAILEY's certifications ***be revoked and denied***. Jim Walker seconded the motion. The motion carried with a six to one vote.*

Alan Ferschweiler moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be May 2012. Michelle Stevens seconded the motion. The motion carried unanimously.

7. Revocation/Denial Case Review for Paul F. Yegge DPSST #17985

Presented by Kristen Turley

ISSUE:

Should Paul YEGGE's eligibility to apply for fire certifications be restored under OAR 259-009-0070(9)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to YEGGE:

On November 15, 2001, YEGGE was hired by the Fair Oaks RFPD.¹²

On March 28, 2003, YEGGE was granted a NFPA Fire Fighter I certification.¹³

On April 10, 2009, YEGGE applied for the NFPA Fire Instructor certification.¹⁴

¹² Ex A1

¹³ Ex A1

¹⁴ Ex A2

A routine records check showed YEGGE was convicted of Tampering with Drug Records (Class C Felony), a discretionary disqualifying crime, for purposes of certification.

*On or about March 19, 2007, YEGGE was arrested for Possession of a Controlled Substance and Tampering with Drug Records. On August 27, 2007, YEGGE was arraigned and the case was placed on hold pending an indictment. The case was dismissed on July 25, 2008, for failure to obtain a timely indictment. YEGGE was subsequently indicted on August 7, 2008, for the same charges and on a third count of Possession of a Controlled Substance that occurred on March 27, 2007. On February 6, 2009, YEGGE was convicted of Tampering with Drug Records. **This is a discretionary disqualifying crime, for purposes of certification.**¹⁵*

These convictions were compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter required review by the Fire Policy Committee (FPC).

On June 22, 2009, TURLEY mailed YEGGE a certified letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent both certified and regular mail. As a policy, DPSST also provides a Stipulated Order Revoking and Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.¹⁶

On or about July 10, 2009, TURLEY received the certified mail return receipt "Unclaimed" from YEGGE. The letter sent regular mail was not returned. On July 22, 2009, YEGGE's attorney responded in writing on his behalf.¹⁷

On September 15, 2009, the Fire Policy Committee (FPC) met and after reviewing the facts of the case, *unanimously* voted to recommend that YEGGE's conduct does rise to the level to warrant denial and revocation of YEGGE's certifications, based on his discretionary disqualifying conviction.

- In substance, the FPC adopted the Staff Report and associated documents as the record on which their recommendation was based.
- The FPC determined that YEGGE's conduct violated the core values of honesty and professionalism.
- The FPC identified as mitigating circumstances the letters of support and that his use of prescriptions was to treat chronic pain and he was trying to save money.
- The FPC identified as an aggravating circumstance the fact that his attempt to fill a duplicate prescription was intentional. They also noted that he attempted to run the second purchase through insurance and expressed concern over the number of pills taken in a short period of time.

¹⁵ Ex A5-A6

¹⁶ Ex A9

¹⁷ Ex A10

- The FPC determined that YEGGE's conduct rises to the level that warrants revocation and denial of his certifications and that the initial minimum period of ineligibility to re-apply for certification would be sixty (60) days.

On October 29, 2009, DPSST issued YEGGE a Notice of Intent to Deny and Revoke Certifications and Opportunity to be Heard. On November 30, 2009, YEGGE made a timely request for a hearing and then subsequently withdrew that request.

On March 15, 2010, DPSST issued to YEGGE a Default Final Order Denying and Revoking Certifications.

On May 27 2010, YEGGE submitted an NFPA Fire Instructor Application. DPSST staff contacted YEGGE and provided him information via email regarding the eligibility determination process outlined in OAR.

On July 8, 2010, YEGGE submitted a request for eligibility determination under OAR 259-009-0070 along with support documentation.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

DISCRETIONARY DISQUALIFYING CONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that *must* be reviewed by the FPC.

OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(a) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(c) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(4)(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

ORS 167.212 Tampering with drug records.

OAR 259-009-0070(9) details the reapplication process:

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in (4) and (5) of this rule.

(b) Any fire service professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until the maximum initial period of ineligibility identified in (5) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

OAR 259-009-0070(7)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether YEGGE's eligibility to apply for fire certifications should be restored by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances relevant to their eligibility recommendation.
3. By vote, the Fire Policy Committee finds that YEGGE's eligibility to apply for fire certifications *be restored/not be restored* and recommends such to the Board.

Rod Smith moved that the committee adopts the staff report as the record on which their recommendations are based. Jim Walker seconded the motion. The motion carried unanimously.

By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.

- The committee identified as mitigating circumstances that YEGGE's sixty (60) days ineligibility period has passed and during that time he has maintained his position as Fire Chief, the fact that he has complied with all of the court ordered requirements and he no longer has a need for the previously prescribed medication.

Jim Walker moved that the committee recommends to the Board that the eligibility to apply for fire certifications be restored. Bill Lafferty seconded the motion. The motion carried unanimously.

8. Revocation/Denial Case Review for Troy W. Cunningham DPSST #27490

Presented by Kristen Turley

ISSUE:

Should Troy CUNNINGHAM's NFPA Driver/Apparatus Operator certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to CUNNINGHAM:

On August 1, 2009, CUNNINGHAM was hired by Jefferson Rural Fire Protection District.¹⁸

On or about April 23, 2010, CUNNINGHAM applied for the NFPA Driver/Apparatus Operator certification.¹⁹

A routine records check was completed on CUNNINGHAM and the following information was obtained:

*On February 8, 2009, CUNNINGHAM was arrested for Second Degree Assault.²⁰ On March 19, 2009, CUNNINGHAM was convicted of Fourth Degree Assault.²¹ Based on the information provided in OJIN, CUNNINGHAM successfully complied with the terms of the court.²² **Fourth Degree Assault is a discretionary disqualifying crime, for purposes of certification.***

This conviction was compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On June 7, 2010, TURLEY mailed CUNNINGHAM a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent regular & certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.²³

CUNNINGHAM did not provide any mitigating circumstances for the Committee's consideration.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

¹⁸ Ex A1

¹⁹ Ex A2

²⁰ Ex A8

²¹ Ex A6 & A9

²² Ex A6-7

²³ Ex A3

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(4)(c) provides that, pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the *[listed]* crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

OAR 259-009-0070(5) provides that upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

OAR 259-009-0070(7)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

- (A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);
- (B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

- (C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;
- (D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;
- (E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;
- (F) Whether the conduct involved domestic violence;
- (G) Whether the fire service professional or instructor self reported the conduct;
- (H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;
- (I) Whether the conduct was prejudicial to the administration of justice;
- (J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and
- (K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to *deny* CUNNINGHAM's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that CUNNINGHAM's conduct *does/does not* rise to the level to warrant *denial* of his certification(s), and therefore recommends to the Board that CUNNINGHAM's certifications be *denied/not denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on

discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of time to be determined.

Jim Walker moved that the committee adopts the staff report as the record on which their recommendations are based. Larry Goff seconded the motion. The motion carried unanimously. For the record Alan Ferschweiler indicated he had a possible conflict of interest due to being employed by Jefferson RFPD in the 90's, but does not know this person.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Fourth Degree Assault is a discretionary disqualifying crime, for purposes of certification.
- b. The conduct **does** violate the core value of honesty.
- c. The conduct **does** violate the core value of professionalism.
- d. The conduct **does** violate the core value of justice.

By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.

- The committee identified as an aggravating circumstance his repeated untruthfulness with the police; he only told the truth when he was told that his friends had confessed. They further noted that no supporting documentation was provided for their consideration.

Jim Walker moved that the committee finds that CUNNINGHAM's conduct does rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that CUNNINGHAM's certifications be denied. Rod Smith seconded the motion. The motion carried unanimously.

Larry Goff moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be three (3) years from the date of final order issued. Michelle Stevens seconded the motion. The motion carried unanimously.

9. Revocation/Denial Case Review for Jamus Quintana DPSST #28458

Presented by Kristen Turley

ISSUE:

Should Jamus QUINTANA's NFPA Fire Fighter certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to QUINTANA:

On September 8, 2009, QUINTANA was hired by Jackson County Fire District No 3.²⁴

On or about May 14, 2010, QUINTANA applied for the NFPA Fire Fighter certification.²⁵

A routine records check was completed on QUINTANA and the following information was obtained:

*On September 12, 2002, QUINTANA was arrested for two counts of First Degree Burglary and two counts of Second Degree Theft.²⁶ On March 17, 2003, QUINTANA was convicted of one count of Second Degree Theft.²⁷ Based on the information provided in OJIN, QUINTANA successfully complied with the terms of the court.²⁸ **Second Degree Theft is a discretionary disqualifying crime, for purposes of certification.***

*On July 13, 2002, QUINTANA was arrested for First Degree Theft and Unlawful Entry of a Motor Vehicle.²⁹ On August 19, 2004, QUINTANA was convicted of First Degree Theft.³⁰ Based on the information provided in OJIN, QUINTANA successfully complied with the terms of the court.³¹ **First Degree Theft is a discretionary disqualifying crime, for purposes of certification.***

This conviction was compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On June 7, 2010, TURLEY mailed QUINTANA a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent regular & certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.³²

On July 7, 2010, QUINTANA provided information for the Committee's consideration.³³

²⁴ Ex A1

²⁵ Ex A2

²⁶ Ex A11

²⁷ Ex A9 & A12

²⁸ Ex A9-10

²⁹ Ex A13 & A15

³⁰ Ex A13 & A16

³¹ Ex A13-14

³² Ex A3

³³ Ex A17

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(4)(c) provides that, pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the *[listed]* crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

OAR 259-009-0070(5) provides that upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will

determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

OAR 259-009-0070(7)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to *deny* QUINTANA's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.

- c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Fire Policy Committee finds that QUINTANA's conduct *does/does not* rise to the level to warrant **denial** of his certification(s), and therefore recommends to the Board that QUINTANA's certifications be **denied/not denied**.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of time to be determined.

Jim Walker moved that the committee adopts the staff report as the record on which their recommendations are based. Rod Smith seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
First Degree Theft is a discretionary disqualifying crime, for purposes of certification.
- b. The conduct **does** violate the core value of honesty.
- c. The conduct **does** violate the core value of professionalism.
- d. The conduct **does** violate the core value of justice.

By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.

- The committee identified as mitigating circumstances the information he submitted, the length of time since his convictions, and his NREMT Certification.
- The committee identified as an aggravating circumstance his repeated thefts during a short period of time.

Jim Walker moved that the committee finds that QUINTANA's conduct does rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that QUINTANA's certifications be denied. Bill Lafferty seconded the motion. The motion carried with a six to one vote.

Jim Walker moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be one (1) year from the date of final order issued. Larry Goff seconded the motion. The motion carried unanimously.

10. Round Table/Staff Update

Director Eriks Gabliks discussed DPSST updates:

- 28 students graduated from the first Fire Fighter I Academy last month. The next academy will be in the Spring of 2011.
- Fire Training Programs have been very active. The skid truck is actively used for driver training. May Day training continues to be delivered by our staff, as does the Live Fire and Flammable Liquids trailers that we have.
- DPSST is in the process of discussing and offering two Fire Officer I Academies. One two week session at DPSST in the fall, with a two week break, and then offer one in the Eugene/Springfield area.
- Yesterday DPSST signed an agreement with the Office of Emergency Management. They will be giving us \$250,000 to deliver two full series of the Incident Management Team training classes to meet the new DHS/FEMA standard for the all-hazard which will include incident command, safety, logistics, etc. Our goal is to deliver both classes by June of 2011. The classes will be offered free of charge. One series will be here at the academy and the other in the tri-county area.
- DPSST will be hosting the OFIA 2011 Fire Fighter Safety and Survival Symposium here at the academy next year.
- There are a number of task forces getting ready to move forward: NFPA Airport Fire Fighter, NFPA Juvenile Firesetter, NFPA Public Information Officer, and NFPA Technical Rescuer.
- The E-Forms project is moving forward. Phase 2 has been signed off and Fire Certification is ready to beta test with a few agencies.
- Oregon Fallen Fire Fighter Memorial is September 16th at 1:00 p.m. here at DPSST. This year the name of the Coquille Fire Fighter, approved by FPC thru the historical recognition process, will be added. The guest speaker is Chief Taylor Robertson from Sisters-Camp Sherman RFPD.
- DPSST is currently not affected by the budget reductions going forward (at this date in time.) We are not a general fund agency so the Fire Insurance Premium Tax (FIPT) which funds the Fire Certification and Training Programs has not been affected. It is not known if the Legislature will be taking a reduction out of those programs. We have been asked to submit a 10% reduction as part of our next biennium budget for fire programs. Criminal Justice Programs have been asked to submit a 25% reduction in 5% increments.

The suggestion was made to change the FPC meetings from Fridays to another day. Bring calendars to the next meeting to set dates for the following year.

Rod Smith expressed his thanks and appreciation for his time serving on the FPC.

Next scheduled meeting is 11/19/10.

Meeting adjourned at 11:30 a.m.