



Fire Certification Program Preliminary Public Comment Announcement For Revocation & Denial Rule Update

DPSST highly recommends you review this administrative rule in detail and become familiar with it.

Members of the Fire Policy Committee (FPC) and the Board on Public Safety Standards and Training (Board), in conjunction with Department of Public Safety Standards and Training (DPSST), have the responsibility to continually review current standards to ensure they remain relevant to the Oregon fire service.

The following is a guide to assist in the understanding of the proposed changes to the revocation and denial standard. The intent of the proposed changes to OAR is to create a process that is easier to understand while still capturing the commitment to professionalize the fire service industry in Oregon.

HISTORY OF REVOCATION & DENIAL

It is the responsibility of the Board to develop talented individuals into public safety providers who are ethically, physically and emotionally fit, culturally competent, well trained, highly skilled and responsive to the needs of their communities. In an effort to increase the professionalism of the Oregon fire service while continuing to respect its voluntary nature, a task force comprised of fire service professionals from across the state was convened in 2007. That group was responsible for developing and later implementing the current denial and revocation standard found in OAR 259-009-0070.

After a lengthy discussion by the FPC members at their meeting in August 2014, DPSST was directed to form a workgroup comprised of FPC members to review the standard and determine if changes would be appropriate.

The Denial and Revocation Advisory Workgroup met on 7/14, 9/22, and 12/04 and consisted of the following members:

Alan Ferschweiler
Dave Jones

Oregon State Fire Fighters Council
Oregon Fire District Directors' Association

Jamie Paul
Dan Petersen
Joe Seibert
Michael Silva

Forest Protection Agencies
Chief, Jackson County Fire District 3
FPC Chair, Non-Management Firefighter
Oregon Fire Marshals Association

The Workgroup began by reviewing and updating the original Core Values required of fire service professionals who apply for or hold DPSST fire certification(s). The following draft rule explains the intent and importance of the Core Values:

PROPOSED CHANGES TO OAR 259-009-0059

The following is the proposed language of OAR 259-009-0059. The additions to the rule are bolded and underlined, deletions are struck through.

259-009-0059

Minimum Standards for Certification as a Fire Service Professional or Instructor

- (1) No person may be certified as a Fire Service Professional who is not 18 years of age.*
- (2) Only training received after attaining the age of 16 will be applied for certification purposes.*
- (3) DPSST Fire Service Agency affiliation must be attained after the age of 16 via submission of a Personnel Agency Form **(PAF)**.*
- (4) Fingerprints. Any individual employed or utilized by a fire service agency that has never been fingerprinted for certification purposes or is identified in the Oregon LEDS system as a multi-source offender is required to be fingerprinted. Fingerprints must be submitted to the Department on a standard applicant fingerprint card or through a Department-approved vendor of electronic fingerprint capture services, with the appropriate processing fee.*
- (5) For the purposes of this standard, the Department, in consultation with the Fire Policy Committee and the Board, has defined core values that are integral to certification as a fire service professional. These values are:**
 - (a) Integrity. Integrity is defined as honesty, trustworthiness, truthfulness, accountability and ethical behavior; and**
 - (b) Professionalism. Professionalism is defined as accountability, exercising judgment and behavior expected of a fire service professional and conduct becoming a fire service professional.**

(65) Notification of Conviction:

(a) A **certified** 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 five business days of the conviction.

(b) When an agency receives notification of a conviction from a **certified** fire service professional, instructor, or another source, the agency must notify the Department within 30 calendar 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.

(c) If not employed or utilized by a fire service agency, a certified fire service professional who is convicted of a crime must notify the Department within five days.

Stat. Auth.: ORS 181.610 & 181.640

Stats. Implemented: ORS 181.610 & 181.640

CROSSWALK COMPARISON

The following is a comparison of the current Revocation & Denial procedures versus the Workgroup’s proposed updates to OAR 259-009-0059 and 259-009-0070:

CURRENT	PROPOSED
The Workgroup began by reviewing and updating the original Core Values required of fire service professionals who apply for or hold DPSST fire certification(s).	
Core Values: <ul style="list-style-type: none">• Honesty –includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.• Professionalism - includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.• Justice – includes just treatment, the quality or characteristics of being just, impartial or fair.	Core Values: <ul style="list-style-type: none">• Integrity – defined as honesty, trustworthiness, truthfulness, accountability and ethical behavior.• Professionalism – defined as accountability, exercising judgement and behavior expected of a fire service professional and conduct becoming a fire service professional.
The Workgroup then reviewed the conduct that would lead to a Mandatory denial or revocation of fire service certification.	
Conviction of a Measure 11 Crime results in mandatory denial/revocation of all DPSST certifications, regardless of the length of time that has passed since the conviction. Measure 11	This standard is found in law. As such, there is no proposed change to this standard.

crimes include:

- **Attempted Aggravated Murder;**
- **Attempted Murder;**
- **Murder;**
- **Manslaughter in the First Degree;**
- **Manslaughter in the Second Degree;**
- **Aggravated Vehicular Homicide;**
- **Assault in the Second Degree;**
- **Assault in the First Degree;**
- **Kidnapping in the Second Degree;**
- **Kidnapping in the First Degree;**
- **Rape in the Second Degree;**
- **Rape in the First Degree;**
- **Sodomy in the Second Degree;**
- **Sodomy in the First Degree;**
- **Sexual Penetration in the Second Degree;**
- **Sexual Penetration in the First Degree;**
- **Sexual Abuse in the First Degree;**
- **Using a Child in a Display of Sexually Explicit Conduct;**
- **Arson in the First Degree (exceptions apply);**
- **Robbery in the Second Degree;**
- **Robbery in the First Degree;**
- **Compelling Prostitution.**

These are handled by DPSST staff. There is no Fire Policy Committee (FPC) or Board review.

The Workgroup continued its effort with a review of the Discharge for Cause of a fire service professional.

By law, discharge for cause from a fire service agency results in mandatory revocation of all DPSST certifications. For the purposes of certification, “discharge for cause” is defined as behavior that involves:

- **Dishonesty** – defined as untruthfulness, dishonesty by admission or omission, deception, misrepresentation or falsification.
- **Disregard for the Rights of Others** – defined as violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons and the fundamental duty to protect and serve the public.

By law, discharge for cause from a fire service agency results in mandatory revocation of all DPSST certifications. For the purposes of certification, “discharge for cause” is defined as behavior that involves:

- **Lack of Integrity - defined as dishonesty, untrustworthiness, untruthfulness, insincerity, lack of straightforwardness and accountability and unethical behavior.**
- **Unprofessionalism - defined as lack of accountability, exercising poor judgment and behavior not expected of or conduct unbecoming a fire service professional.**

- **Gross Misconduct** – defined as an act that creates a danger or risk to persons, property or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable fire service professional or instructor would observe in a similar circumstance.
- **Incompetence** – defined as a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct.
- **Misuse of Authority** – defined as abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another and abuse under the color of office.

Staff will conduct an initial review to determine if the conduct may violate the standard defined above. If yes, the case will be presented to the FPC for consideration. The FPC determines if the above standards have been violated and makes a recommendation to the Board to revoke or not revoke DPSST certifications.

When a certified fire service professional is reported to DPSST as being discharged for cause, staff reviews the conduct resulting in the discharge and makes a determination if the conduct violates any of the standards defined above. No FPC or Board review.

Finally, the workgroup reviewed conduct which MAY lead to a denial or revocation of fire certification.

If a certified fire service professional has been convicted of a crime other than a Measure 11 crime, staff refers to the list of criminal convictions and timelines found in OAR. If the crime is listed as a discretionary conviction and it falls within the timeframe required for review, the case is presented to the FPC for review. The conduct is reviewed along with aggravating and mitigating circumstances and compared to the core values of honesty, professionalism and justice. The FPC makes a recommendation to the Board to deny/revoke DPSST fire certification and how long the individual will be ineligible to reapply for DPSST certification.

When staff becomes aware of a criminal conviction involving a certified fire service professional or applicant for fire certification, staff will review the elements of the conviction to determine if:

- **The conviction occurred after January 15, 2008;**
- **The conviction is for a felony;**
- **The elements of the crime are sexual in nature or require the individual to register as a sex offender;**
- **The conviction is for a crime against a public agency;**
- **The individual has been convicted of five or more crimes in the past five years; or**
- **The conviction is of a Class A or Class B misdemeanor AND:**
 - **Resulted in incarceration for any period of time in the last five years;**
 - **The individual is currently on**

- some form of court ordered supervision; or
- The individual has unpaid restitution or fees resulting from the conviction.

If any of the listed elements are met, the case is presented to the FPC for review. The FPC will review the conduct surrounding the conviction, any aggravating or mitigating circumstances, and make a determination whether to recommend proceeding with denial or revocation. If the FPC decides to recommend denial or revocation to the Board, the FPC will also determine how long an individual will be ineligible to reapply for certification (between 30 days and seven years) and whether or not any additional conditions must be satisfied prior to an individual being allowed to reapply for certification.

The falsification of any document submitted to DPSST is presented to the FPC. The FPC reviews the totality of the circumstances and makes a recommendation to the Board to deny/revoke or not deny/revoke.

There is no proposed change to this standard.

* Minutes of the Workgroup meetings can be obtained by contacting DPSST.

DPSST INTERNAL PROCESS

The initiation of a denial or revocation proceeding against a DPSST-certified fire service professional will remain largely the same should the proposed changes be adopted. In essence, upon becoming aware of any criminal conviction by an applicant for fire service certification or a certified fire service professional, DPSST will open a professional standards case and determine the next steps as described in OAR.

PUBLIC COMMENT INFORMATION

*** The proposed changes to OAR 259-009-0059 and OAR 259-009-0070 **WILL BE OPENING FOR PUBLIC COMMENT AUGUST 1-22, 2015.**

All public comments can be directed to DPSST Rules Coordinator Sharon Huck at sharon.huck@state.or.us.

PROPOSED CHANGES TO OAR 259-009-0070

The following is the proposed language of OAR 259-009-0070. The additions to the rule are bolded and underlined, deletions are struck through.

259-009-0070

Denial/Revocation

(1) *It is the responsibility of the Board to set the standards, and ~~of~~ **for** the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards will be upheld at all times, unless the Board determines that the safety of the public or respect of the profession is compromised.*

(2) *Definitions. For purposes of this rule, the following definitions will apply:*

(a) *“Denial” or “Deny” means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in ~~(47)~~ of this rule.*

(b) *“Discretionary Conviction” means a conviction identified in OAR 259-009-0070(4).*

(c) *“Discretionary Disqualifying Misconduct” means misconduct identified in OAR 259-009-0070(4).*

(d) *“Revocation” or “Revoke” means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section ~~(47)~~ of this rule.*

~~(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:~~

~~(3a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:~~

~~(aA) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in 137.700. Those crimes are:~~

~~163.095 Attempted **or Conspiracy to Commit** Aggravated Murder;~~

~~163.115 **Murder**, Attempted Murder, **or Conspiracy to Commit Murder**;~~

~~163.115 Murder;~~

~~163.118 Manslaughter in the First Degree;~~

~~163.125 Manslaughter in the Second Degree;~~

~~163.149 Aggravated Vehicular Homicide;~~

163.175 Assault in the Second Degree;

163.185 Assault in the First Degree;

163.225 Kidnapping in the Second Degree;

163.235 Kidnapping in the First Degree;

163.365 Rape in the Second Degree;

163.375 Rape in the First Degree;

163.395 Sodomy in the Second Degree;

163.405 Sodomy in the First Degree;

163.408 Sexual Penetration in the Second Degree;

163.411 Sexual Penetration in the First Degree;

163.427 Sexual Abuse in the First Degree;

163.670 Using a Child in a Display of Sexually Explicit Conduct;

164.325 Arson in the First Degree **(when offense represents a threat of serious physical injury)**; ~~(See exception under OAR 259-009-0070(4))~~;

164.405 Robbery in the Second Degree;

164.415 Robbery in the First Degree;

167.017 Compelling Prostitution.

~~(b)~~ The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

~~(c)~~ For purposes of this rule, “discharged for cause”, means an employer initiated termination of employment for ~~any~~ of the following reasons: ~~after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.~~

(A) Lack of Integrity: Lack of integrity is defined as dishonesty, untrustworthiness, untruthfulness, lack of accountability and unethical behavior; or

(B) Unprofessionalism. Unprofessionalism is defined as lack of accountability, exercising poor judgment and behavior not expected of or conduct unbecoming a fire service professional.

(d) The Department may stay any action against the certification of a fire service professional or instructor who has been reported as being discharged for cause until a final employment determination has been made.

(e) The Department will administratively close any case in which an arbitrator issues an opinion indicating that the discharge of a fire service professional or instructor is not supported by the underlying facts.

~~(A) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;~~

~~(B) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public;~~

~~(C) Gross Misconduct: An act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable fire service professional or instructor would observe in a similar circumstance;~~

~~(D) Incompetence: A demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct;~~

~~(E) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.~~

~~(4) Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:~~

~~(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:~~

~~(aA) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;~~

~~(bB) **Notwithstanding section (3),** ~~the fire service professional or instructor has been convicted of an offense listed in subsection (4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction,~~ **the elements of which violate the core values as defined in OAR 259-009-0059; and**~~

~~(A) **The conviction is for a crime classified as a felony;**~~

~~(B) **The elements of the crime for which the fire service professional or instructor is convicted are sexual in nature or require active registration as a sex offender;**~~

(C) The crime for which the fire service professional or instructor is convicted is against a public agency;

(D) The conviction constitutes the fifth or more criminal conviction by the fire service professional or instructor within the last five years; or

(E) The conviction is for a crime classified as a Class A or Class B misdemeanor; and

(i) The conviction resulted in a period of incarceration for any period of time within the last five years;

(ii) The fire service professional or instructor is currently on a form of court-ordered supervision; or

(iii) The fire service professional or instructor has unpaid restitution, court fines or fees resulting from the conviction.

~~(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 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.~~

~~(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:~~

~~25.785(3) (False Submission Social Security Number) — Category I;~~

~~92.337 (Furnishing False Information or Making a False Representation) — Category I;~~

~~162.015 (Bribe Giving) — Category III;~~

~~162.025 (Bribe Receiving) — Category III;~~

~~162.065 (Perjury) — Category I;~~

~~162.117 (Public Investment Fraud) — Category I;~~

~~162.155 (Escape in the Second Degree) — Category II;~~
~~162.165 (Escape in the First Degree) — Category II;~~
~~162.185 (Supplying Contraband) — Category II;~~
~~162.205 (Failure to Appear in the First Degree) — Category II;~~
~~162.265 (Bribing a Witness) — Category III;~~
~~162.275 (Bribe Receiving by a Witness) — Category III;~~
~~162.285 (Tampering with a Witness) — Category III;~~
~~162.305 (Tampering with Public Records) — Category III;~~
~~162.325 (Hindering Prosecution) — Category III;~~
~~162.355 (Simulating Legal Process) — Category III;~~
~~162.365 (Criminal Impersonation) — Category I;~~
~~162.367 (Criminal Impersonation of a Peace Officer) — Category I;~~
~~162.415 (Official Misconduct in the First Degree) — Category II;~~
~~163.145 (Criminally Negligent Homicide) — Category III;~~
~~163.160 (Assault in the Fourth Degree) — Category III;~~
~~163.165 (Assault in the Third Degree) — Category III;~~
~~163.205 (Criminal Mistreatment in the First Degree) — Category III;~~
~~163.207 (Female Genital Mutilation) — Category III;~~
~~163.208 (Assaulting a Public Safety Officer) — Category III;~~
~~163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree)
— Category II;~~
~~163.245 (Custodial Interference in the Second Degree) — Category III;~~
~~163.257 (Custodial Interference in the First Degree) — Category III;~~
~~163.275 (Coercion) — Category III;~~
~~163.355 (Rape in the Third Degree) — Category III;~~
~~163.425 (Sexual Abuse in the Second Degree) — Category III;~~
~~163.465 (Public Indecency) — Category III;~~

~~163.515 (Bigamy) — Category III;~~
~~163.525 (Incest) — Category III;~~
~~163.535 (Abandonment of a Child) — Category III;~~
~~163.537 (Buying or Selling a Person Under 18 years of age) — Category III;~~
~~163.547 (Child Neglect in the First Degree) — Category III;~~
~~163.555 (Criminal Non-Support) — Category III;~~
~~163.684 (Encouraging Child Sexual Abuse in the First Degree) — Category III;~~
~~163.686 (Encouraging Child Sexual Abuse in the Second Degree) — Category III;~~
~~163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;~~
~~163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;~~
~~163.732 (Stalking) — Category III;~~
~~163.750 (Violating Court's Stalking Protective Order) — Category III;~~
~~164.045 (Theft in the Second Degree) — Category I;~~
~~164.055 (Theft in the First Degree) — Category I;~~
~~164.057 (Aggravated Theft in the First Degree) — Category I;~~
~~164.075 (Theft by Extortion) — Category I;~~
~~164.125 (Theft of Services: by Deception) — Category I;~~
~~164.135 (Unauthorized Use of a Vehicle) — Category I;~~
~~164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) — Category I;~~
~~164.170 (Laundering a Monetary Instrument) — Category I;~~
~~164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) — Category I;~~
~~164.215 (Burglary in the Second Degree) — Category III;~~
~~164.225 (Burglary in the First Degree) — Category III;~~
~~164.235 (Possession of a Burglary Tool or Theft Device) — Category III;~~
~~164.315 (Arson in the Second Degree) — Category II;~~

~~164.325 (Arson in the First Degree — If not a conviction under ORS 137.700) — Category II;~~

~~164.365 (Criminal Mischief in the First Degree) — Category III;~~

~~164.377 (Computer Crime) — Category III;~~

~~164.395 (Robbery in the Third Degree) — Category III;~~

~~164.868 (Unlawful Labeling of a Sound Recording) — Category III;~~

~~164.869 (Unlawful Recording of a Live Performance) — Category III;~~

~~164.872 (Unlawful Labeling of a Videotape Recording) — Category III;~~

~~164.885 (Endangering Aircraft) — Category II;~~

~~164.889 (Interference with Agricultural Research) — Category III;~~

~~165.013 (Forgery in the First Degree) — Category I;~~

~~165.022 (Criminal Possession of a Forged Instrument in the First Degree) — Category I;~~

~~165.032 (Criminal Possession of a Forgery Device) — Category I;~~

~~165.055 (Fraudulent Use of a Credit Card: Felony Only) — Category I;~~

~~165.065 (Negotiating a Bad Check) — Category I;~~

~~165.070 (Possessing Fraudulent Communications Device) — Category I;~~

~~165.074 (Unlawful Factoring of Payment Card Transaction) — Category I;~~

~~165.085 (Sports Bribery) — Category III;~~

~~165.090 (Sports Bribe Receiving) — Category III;~~

~~165.579 (Cellular Counterfeiting in the Second Degree) — Category III;~~

~~165.581 (Cellular Counterfeiting in the First Degree) — Category III;~~

~~165.692 (Making False Claim for Health Care Payment) — Category I;~~

~~165.800 (Identity Theft) — Category I;~~

~~165.810 (Unlawful Possession of a Personal Identification Device) — Category I;~~

~~165.813 (Unlawful Possession of Fictitious Identification) — Category I;~~

~~166.005 (Treason) — Category II;~~

~~166.015 (Riot) — Category II;~~

~~166.085 (Abuse of Corpse in the Second Degree) — Category II;~~
~~166.087 (Abuse of Corpse in the First Degree) — Category II;~~
~~166.155 (Intimidation in the Second Degree) — Category III;~~
~~166.165 (Intimidation in the First Degree) — Category III;~~
~~166.220 (Unlawful Use of Weapon) — Category II;~~
~~166.270 (Possession of Weapons by Certain Felons: Felony only) — Category II;~~
~~166.275 (Possession of Weapons by Inmates of Institutions) — Category II;~~
~~166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) — Category II;~~
~~166.382 (Possession of Destructive Device Prohibited) — Category II;~~
~~166.384 (Unlawful Manufacture of Destructive Device) — Category II;~~
~~166.429 (Firearms Used in Felony) — Category II;~~
~~166.438 (Transfer of Firearms at Gun Shows: Felony Only) — Category II;~~
~~166.450 (Obliteration or Change of Identification Number on Firearms) — Category II;~~
~~166.642 (Felon in Possession of Body Armor) — Category II;~~
~~166.643 (Unlawful Possession of Body Armor) — Category II;~~
~~166.649 (Throwing an Object Off an Overpass in the Second Degree) — Category III;~~
~~166.651 (Throwing an Object Off an Overpass in the First Degree) — Category III;~~
~~166.660 (Unlawful Paramilitary Activity) — Category III;~~
~~166.720 (Racketeering Activity Unlawful) — Category II;~~
~~167.012 (Promoting Prostitution) — Category III;~~
~~167.062 (Sadomasochistic Abuse or Sexual Conduct in Live Show: Felony Only) — Category III;~~
~~167.164 (Possession of Gray Machine) — Category I;~~
~~167.212 (Tampering with Drug Records) — Category I;~~
~~167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) — Category III;~~
~~167.322 (Aggravated Animal Abuse in the First Degree) — Category III;~~

~~167.339 (Assaulting Law Enforcement Animal) — Category III;~~

~~305.815 (False Return, Statement or Document) — Category I;~~

~~411.630 (Unlawfully Obtaining Public Assistance) — Category I;~~

~~411.675 (Submitting Wrongful Claim for Payment) — Category I;~~

~~411.840 (Unlawfully Obtaining or Disposing of Supplemental Nutrition Assistance) — Category I;~~

~~433.010(1) (Willfully Causing the Spread of Communicable Disease) — Category II;~~

~~475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) — Category II;~~

~~475.846 (Unlawful Manufacture of Heroin) — Category II;~~

~~475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) — Category III;~~

~~475.850 (Unlawful Delivery of Heroin) — Category II;~~

~~475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) — Category III;~~

~~475.854 (Unlawful Possession of Heroin) — Category II;~~

~~475.856 (Unlawful Manufacture of Marijuana) — Category II;~~

~~475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) — Category III;~~

~~475.860 (Unlawful Delivery of Marijuana: Felony only) — Category II;~~

~~475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) — Category III;~~

~~475.864 (Unlawful Possession of Marijuana: Felony only) — Category II;~~

~~475.866 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy)) — Category II;~~

~~475.868 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) — Category III;~~

~~475.870 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy)) — Category II;~~

~~475.872 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) — Category II;~~

~~475.874 (Unlawful Possession of 3,4-Methylenedioxymethamphetamine (Ecstasy)) — Category II;~~

~~475.876 (Unlawful Manufacture of Cocaine) — Category II;~~

~~475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) — Category III;~~

~~475.880 (Unlawful Delivery of Cocaine) — Category II;~~

~~475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) — Category III;~~

~~475.884 (Unlawful Possession of Cocaine) — Category II;~~

~~475.886 (Unlawful Manufacture of Methamphetamine) — Category II;~~

~~475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) — Category III;~~

~~475.890 (Unlawful Delivery of Methamphetamine) — Category II;~~

~~475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) — Category III;~~

~~475.894 (Unlawful Possession of Methamphetamine) — Category II;~~

~~475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) — Category III;~~

~~475.908 (Causing Another Person to Ingest a Controlled Substance) — Category III;~~

~~475.910 (Application of Controlled Substance to the Body of Another Person) — Category III;~~

~~475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) — Category II;~~

~~475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) — Category II;~~

~~475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) — Category II;~~

~~475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) — Category II;~~

~~476.150 (Entry and Inspection of Premises; Interfering or Preventing Entry) — Category II;~~

~~476.380 (Burning without a Permit) — Category II;~~

~~476.510 to 476.610 (Violations of the Emergency Conflagration Act) — Category II;~~

~~532.140 (Branding or Marking Forest Products and Booming Equipment with the Intent to Injure or Defraud) — Category I;~~

~~632.470 (False Representation as to Raising, Production or Packing, Class A Misdemeanor) — Category I;~~

~~632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products, Class A Misdemeanor) — Category I;~~

~~659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) — Category I;~~

~~688.120 (Fraudulent Representation) — Category I;~~

~~689.995(3) (Willfully Furnishing False Information) — Category I;~~

~~689.995(4) (Making or Causing to be Made Any False Representations) — Category I;~~

~~731.260 (False or Misleading Filings) — Category I;~~

~~759.360(2) and (3) (False Statements or False Representation) — Category I;~~

~~811.182 (Criminal Driving While Suspended or Revoked) — Category II;~~

~~811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) — Category II;~~

~~811.705 (Failure to Perform Duties of a Driver to Person Injured) — Category II;~~

~~813.010 (DUII: Felony Only) — Category II.~~

~~(A) Any crime that requires the fire service professional or instructor to register as a sex offender;~~

~~(B) “Attempt,” “Solicitation,” or “Conspiracy” to commit any crime identified in OAR 259-009-0070(3), in any jurisdiction;~~

~~(C) “Attempt,” “Solicitation,” or “Conspiracy” to commit any crime identified in OAR 259-009-0070(4), resulting in a conviction of a felony or Class A misdemeanor, in any jurisdiction.~~

~~(5) Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct.~~

~~(a) The Department may take action on any **discretionary** conviction ~~constituting discretionary disqualifying misconduct~~ identified in section (4) of this rule that occurred after January 15, 2008;~~

~~(b) Convictions that occurred seven years or more prior to the date of review may be appropriate for summary staff disposition or administrative closure.~~

~~**(c) Upon determination that a fire service professional or instructor may have been discharged for cause as defined in section (3) or has engaged in discretionary misconduct listed in section (4), the case may be presented to the Board, through the Fire Policy Committee.**~~

(A) Prior to presentation to the Board or Fire Policy Committee, the Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's consideration.

(B) In making a decision to authorize initiation of proceedings under subsection (g) of this rule the Fire Policy Committee and Board may consider mitigating and aggravating circumstances including, but not limited to, the following:

(i) When the misconduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor;

(ii) Whether the fire service professional or instructor served time in prison or jail and the length of incarceration;

(iii) Whether restitution was ordered and if the fire service professional or instructor met all obligations;

(iv) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date the parole or probation period expired or will expire;

(v) Whether the fire service professional or instructor has more than one conviction and over what period of time;

(vi) Whether the misconduct involved domestic violence;

(vii) Whether the fire service professional or instructor self-reported the misconduct;

(viii) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;

(ix) 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; and

(x) The fire service professional's or instructor's physical or emotional condition at the time of the conduct.

(d) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary misconduct identified in section (4), the Fire Policy Committee and Board will:

(A) Determine how long the affected fire service professional or instructor will be ineligible to reapply for fire service certification. The period of ineligibility may range from 30 days to seven years; and

(B) Determine additional conditions, if any, which must be satisfied prior the eligibility to reapply for fire service certifications is restored.

(e) A person is not eligible to reapply for training or certification if the person had certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(f) The period of ineligibility and any additional conditions will be included in any Final Order of the Department.

~~(6) Initial Minimum Periods of Ineligibility:~~

~~(a) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct identified in section (4), 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 seven years.~~

~~(b) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct listed in section (4) of this rule, the Fire Policy Committee and the Board will take into consideration any aggravating or mitigating factors subject to the provisions of section (7) of this rule.~~

~~(c) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.~~

~~(d) The initial minimum period of ineligibility will be included in any Final Order of the Department.~~

~~(e) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (9) of this rule.~~

~~(7) Denial and Revocation Procedure:~~

~~(a) Agency Initiated Review: When an agency utilizing a fire service professional or instructor requests that their certification be revoked or denied, the agency must submit the reason for the requested revocation or denial to the Department, in writing, including all factual information supporting the request.~~

~~(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional's or instructor's certification be revoked or denied.~~

~~(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may not meet established Oregon fire service standards, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.~~

~~(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.~~

~~(B) If the reason for the request does meet statutory and administrative rule requirements, but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.~~

~~(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct listed in section (4), the case may be presented to the Board, through the Fire Policy Committee.~~

~~(D) The Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's review.~~

~~(E) In misconduct cases where there has been an arbitrator's opinion related to the fire service professional's or instructor's employment, the Department will proceed as follows:~~

~~(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.~~

~~(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.~~

~~(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.~~

~~(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (f) of this rule, based on discretionary disqualifying misconduct, the Fire Policy Committee and Board may consider mitigating and aggravating circumstances including, but not limited to the following:~~

~~(A) When the misconduct 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 or jail and the length of incarceration;~~

~~(C) Whether restitution was ordered and if the fire service professional or instructor met all obligations;~~

~~(D) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date the parole or probation period expired or will expire;~~

~~(E) Whether the fire service professional or instructor has more than one conviction and over what period of time;~~

~~(F) Whether the misconduct involved domestic violence;~~

~~(G) Whether the fire service professional or instructor self-reported the misconduct;~~

~~(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 the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;~~

~~(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; and~~

~~(L) What the fire service professional's or instructor's physical or emotional condition was at the time of the conduct.~~

~~(ge) Scope of Revocation. When the Department denies or revokes the certification of any fire service professional or instructor under the provisions of OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person **on or after January 15, 2003.**~~

~~(hf) Initiation of Proceedings: Upon determination by the policy committee **that the certifications of a fire service professional or instructor should be denied or revoked after considering the totality of the case**, that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the fire service professional or instructor.~~

~~(ig) Contested Case Notice:~~

~~(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.~~

~~(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the fire service professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.~~

~~(jh) Response Time:~~

~~(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.~~

~~(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.~~

(ki) *Default Orders:*

(A) If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0672.

(B) If a timely request for a hearing is not received in cases heard by a policy committee, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(lj) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(mk) *Proposed and Final Orders:*

(A) In cases where a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provision of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(nl) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

(oq) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

~~**(9) Reapplication Process and Eligibility Determinations:**~~

~~*(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 section (6) 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 (6) 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 (6) 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 fire service 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.~~

~~[ED. NOTE: Tables referenced are available from the agency.]~~

~~Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341~~

~~Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664~~