

# Fire Certification Program Revocation and Denial

Informational Guide for  
Oregon Administrative Rules (OAR)  
259-009-0059 and 259-009-0070

Fire Certification Program  
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After a lengthy discussion by the Fire Policy Committee (FPC) members at their meeting in August 2014, the Department of Public Safety Standards and Training (DPSST) was directed to form a workgroup comprised of FPC members to review Oregon Administrative Rules (OAR) 259-009-0059 and 259-009-0070 relating to revocation and denial of a fire service professional to determine if updates would be appropriate. The Denial and Revocation Advisory Workgroup met several times to develop changes to OAR that are easier to understand while still capturing the commitment to professionalize the fire service industry in Oregon. Their proposed changes would update the core values, discharge for cause definitions, and DPSST's processes for discretionary convictions.

On June 29, 2015, after approval by the FPC and the Board on Public Safety Standards and Training (Board), the proposed changes to OAR opened for public comment from August 1 to August 23, 2015. One public comment and a clarifying question were received. DPSST staff took these issues into consideration and prepared an analysis and recommendations to present to the FPC. After reviewing the public comment and the staff analysis and recommendations, the FPC unanimously voted to accept the staff recommendations. On October 22, 2015, Board affirmed the FPC's recommendation. The rule once again opened for public comment from December 1 to December 22, 2015. No comments were received and the rule was adopted permanently on January 1, 2016.

DPSST staff created this Revocation and Denial Informational Guide to assist the Oregon fire service in the understanding of the updates to OAR 259-009-0059 and 259-009-0070. The following guide highlights the criminal convictions that may lead to the revocation and/or denial of a fire service professional's DPSST certifications.



## **Mandatory Convictions for Denying or Revoking Certification of a Fire Service Professional or Instructor**

The following are Measure 11 Crimes which result in the mandatory denial/revocation of all DPSSST certifications, regardless of length of time that has passed since the conviction:

- 163.095 Attempted or Conspiracy to Commit Aggravated Murder;
- 163.115 Murder, Attempted Murder, or Conspiracy to Commit 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);
- 164.405 Robbery in the Second Degree;
- 164.415 Robbery in the First Degree;
- 167.017 Compelling Prostitution.

If a fire service professional has been convicted of a Measure 11 crime, their certifications will be denied and/or revoked administratively and the Fire Policy Committee (FPC) will receive an informational update only.

## **Discharge for Cause of a Fire Service Professional**

Discharge for Cause is initiated by checking the “Discharge – Behavior” check box on the Personnel/Agency Form (PAF). By law, discharge for cause from a fire service agency results in mandatory revocation of all DPSST certifications. For the purpose 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.

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.

## **Criminal Conduct which MAY Lead to Denial or Revocation of Fire Certification(s)**

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.

## Permanent OAR Language

### 259-009-0059

#### Minimum Standards for Certification as a Fire Service Professional

- (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.
- (6) Notification of Conviction:
  - (a) A certified fire service professional or instructor who is convicted of a crime while employed or utilized 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 181A.355 & 181A.410

Stats. Implemented: ORS 181A.355 & 181A.410

**259-009-0070**  
**Denial/Revocation**

(1) It is the responsibility of the Board to set the standards, and 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 (4) 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 (4) of this rule.

(3) 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:

(a) 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;
- 163.118 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;
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- 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);  
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 the following reasons:

(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.

(4) 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:

(a) 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;

(b) Notwithstanding section (3), the fire service professional or instructor has been convicted of an offense punishable as a crime 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.

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

- (a) The Department may take action on any discretionary conviction 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.
- (g) Scope of Revocation. When the Department denies or revokes the certification of any fire service professional or instructor under OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.
- (h) 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, a contested case notice will be prepared and served on the fire service professional or instructor.
- (i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) 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.

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

Stat. Auth.: ORS 181A.410, 183.341

Stats. Implemented: ORS 181A.410