

Fire Certification Program Revocation and Denial

Informational Guide for
Oregon Administrative Rules (OAR)
259-009-0059, 259-009-0120, 259-
009-125, and 259-009-130

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, 259-009-0120, 259-009-0125, 259-009-0130 (previously 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. After approval by the FPC and Board on Public Safety Standards and Training (Board), as well as the going through the public comment process, the rule was adopted permanently on January 1, 2016.

Through the implementation of the new rule language and processes, FPC members and DPSST staff realized further updates to the definition of discharge for cause were needed. By law, once a determination has been made that a fire service professional has been discharged for cause for certification purposes, he or she remains ineligible to hold fire service certifications permanently. This means that individuals who are discharged for non-criminal behavior are potentially



subjected to the same punishment as those who are convicted of an egregious Class A felony, even though their behavior that led to the discharge is not criminal in nature. Additionally, the way in which some of these discharges for cause were being handled were essentially prescribing what could arguably equate to moral fitness standards to certified fire service professionals even though the current statutes that govern fire certifications do not grant the Board the authority to establish moral fitness standards for fire service professionals. In recognition of these disparities, DPSST staff prepared proposed rule language that again updates the definition of discharge for cause for the purposes of certification. The proposed language was presented to and approved by the FPC and Board. After a public comment period in which no comments were received, the updated discharge for cause rule was adopted permanently on October 18, 2017.

DPSST staff created this Revocation and Denial Informational Guide to assist the Oregon fire service in the understanding of the updates to 259-009-0059, 259-009-0120, 259-009-0125, 259-009-0130. 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

Oregon Revised Statutes (ORS) 181A.640 requires that DPSST deny or revoke the certification of a fire service professional upon finding that a person has been discharged for cause from employment as a fire service professional. OAR 259-009-0120 provides the Board's definition of discharge for cause as it relates to the fire service professional's certification(s). The OAR for discharge for cause language requires that the behavior that led to the discharge occur while the individual is acting in their official capacity as a fire service professional. The language does not require that the individual who is reported to DPSST as being discharged from their agency be charged criminally, but does give the FPC and the Board an avenue to ensure that the certifications of fire service professionals who engage in this type of egregious behavior are permanently revoked.

The OAR discharge for cause language identifies categories of particularly egregious conduct that could also be considered criminal in nature. Those categories are as follows:

- **Interference in a Fire Investigation:** Includes the creation or use of falsified evidence, reports or records, and includes false testimony;
- **Theft or Fraud:** Includes theft of services or property, embezzlement, misuse of resources, or falsification of contracts, reports or records;
- **Intimidation:** Includes wrongfully compelling an individual to abstain from doing, or to do, any act which the individual has a legal right to do or abstain from doing;
- **Corruption:** Includes the abuse of a fire service professional's authority for personal gain, to gain advantage for a public or private safety agency or to attempt or succeed in depriving another person or persons of their legal rights;
- **Neglect of Duty:** Includes the intentional or reckless failure to perform any mandatory duty as required by law; knowingly performing an act which the fire service professional or instructor knows to be forbidden by law to perform, behavior that endangers the health and safety of the employee or others;
- **Cheating:** Includes actual, intended, or attempted deception or dishonest action by a fire service professional or an instructor in relation to the administration or documentation of any training, testing or certification;
- **Mistreatment Due to Bias:** Includes withholding or denying services, intentionally harassing, or causing physical injury to another person because of the actors' perception of that person's race, color, national origin, religion, sex, age, marital status, sexual orientation, medical condition or disability;
- Sexual abuse; or
- Use of illegal drugs.

DPSST staff will review the information relating to the discharge. If any of the listed categories are met, the fire service professional therefore meets the Board-established standard for discharge for cause their certifications will be revoked administratively. The FPC will receive an informational update only. By law, once a determination has been made that a fire service professional has been discharged for cause for certification purposes, he or she remains ineligible to hold fire service certifications permanently.

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 within the last seven years;
- 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) Fire Service professionals must be at least 18 years of age to be eligible for certification.
- (2) Training used to meet the requirements for a fire service professional certification must have been completed after the fire service professional has reached the age of 16.
- (3) 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.

(4) 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.

(5) 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.

Statutory/Other Authority: ORS 181A.355 & ORS 181A.410

Statutes/Other Implemented: ORS 181A.355 & ORS 181A.410

History:

DPSST 15-2016, f. & cert. ef. 9-22-16

DPSST 21-2015, f. 12-22-15, cert. ef. 1-1-16

DPSST 13-2015, f. & cert. ef. 6-23-15

DPSST 37-2014, f. & cert. ef. 12-31-14

DPSST 22-2013, f. & cert. ef. 10-3-13

DPSST 7-2009, f. & cert. ef. 7-13-09

DPSST 5-2006, f. & cert. ef. 5-3-06

DPSST 1-2006(Temp), f. & cert. ef. 1-23-06 thru 6-1-06

259-009-0120

Grounds for Denial or 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) 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;

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.

(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 conduct that falls within any of the following categories and that occurred while acting under the color of office:

(A) Interference in a Fire Investigation: Includes the creation or use of falsified evidence, reports or records, and includes false testimony;

(B) Theft or Fraud: Includes theft of services or property, embezzlement, misuse of resources, or falsification of contracts, reports or records;

(C) Intimidation: Includes wrongfully compelling an individual to abstain from doing, or to do, any act which the individual has a legal right to do or abstain from doing;

(D) Corruption: Includes the abuse of a fire service professional’s authority for personal gain, to gain advantage for a public or private safety agency or to attempt or succeed in depriving another person or persons of their legal rights;

(E) Neglect of Duty: Includes the intentional or reckless failure to perform any mandatory duty as required by law; knowingly performing an act which the fire service professional or instructor knows to be forbidden by law to perform, behavior that endangers the health and safety of the employee or others;

(F) Cheating: Includes actual, intended, or attempted deception or dishonest action by a fire service professional or an instructor in relation to the administration or documentation of any training, testing or certification;

(G) Mistreatment Due to Bias: Includes withholding or denying services, intentionally harassing, or causing physical injury to another person because of the actors’ perception of that person’s race, color, national origin, religion, sex, age, marital status, sexual orientation, medical condition or disability;

(H) Sexual abuse; or

(I) Use of illegal drugs.

(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.

(3) 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 (2), 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) If an application for certification is submitted and the fire service professional has a conviction 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.

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

(a) The Department may take action on any conviction identified in section (3) 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 by the Department.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640 & ORS 181A.650

History:

DPSST 61-2018, renumbered from 259-009-0070, filed 08/01/2018, effective 08/02/2018

DPSST 60-2018, amend filed 07/31/2018, effective 08/01/2018

DPSST 16-2017, amend filed 10/18/2017, effective 10/18/2017
DPSST 13-2016, f. & cert. ef. 9-22-16
DPSST 8-2013, f. & cert. ef. 3-26-13
DPSST 4-2005, f. & cert. ef. 5-24-05
BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0125

Cases Submitted to the Board through the Fire Policy Committee

- (1) If the Department determines that a fire service professional or instructor may have engaged in discretionary misconduct listed in OAR 259-009-0120 (3), the Department may submit a case to the Board, through the Fire Policy Committee.
- (2) The Fire Policy Committee will review a case for the purpose of recommending to the Board whether or not there is a reasonable basis to deny or revoke certifications and to recommend a period of ineligibility.
- (3) Prior to presentation to the Board, through the 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.
- (4) The Fire Policy Committee and Board may also 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;
 - (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 adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;

(i) 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

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

(5) Where there is a reasonable basis to deny or revoke a fire service professional or an instructor, the Board and the Fire Policy Committee must:

(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 to the eligibility to reapply for fire service certifications is restored.

(c) Any application for certification submitted by an individual whose certifications have been denied or revoked for mandatory grounds as defined in OAR 259-009-0120(2) will be denied pursuant to OAR 259-009-0130.

(6) The Board will review the case, aggravation and mitigation, and the Fire Policy Committee's recommendations to determine whether or not to approve all or part of the Fire Policy Committee's recommendations.

(a) Upon initial consideration, the Board may either approve the recommendation in its entirety or defer a decision and return the recommendation to the Fire Policy Committee.

(b) The Board may approve the Fire Policy Committee's recommendation by a majority vote of the members present. Where the Fire Policy Committee's recommendation is to deny or revoke certification, the Notice of Intent issued under OAR 259-009-0130 will remain in effect.

(c) The Board, by a majority vote of the members present, may defer its decision and return the recommendation with instructions to the Fire Policy Committee to reconsider the recommendation. The Board may also instruct the Department to obtain further information and revise the case for a second review and recommendation by the Fire Policy Committee. The Board may return a recommendation only once.

(A) The Fire Policy Committee must reconsider its recommendation, along with the Board's instructions and any new information the Department submits to the Fire Policy Committee.

(B) The Fire Policy Committee will submit a revised or renewed recommendation to the Board.

(d) The Board will review the revised or renewed recommendation to decide whether to approve all or part of the recommendation. The Board may approve the recommendation by a majority vote of the members present and may disapprove the recommendation by a two-thirds vote of the

total voting members. A failure to achieve a two-thirds vote to disapprove a recommendation will result in the approval of the recommendation.

(A) When the Board disapproves a recommendation that proposes denial or revocation of certification, the Board will instruct the Department to withdraw the Notice of Intent issued under OAR 259-009-0130.

(B) When the Board disapproves a recommendation that proposes no action be taken to deny or revoke certification, the Board must make its own determination as to whether the fire service professional or instructor has engaged in conduct that violates the discretionary grounds for denial or revocation of certification, consider aggravation and mitigation and determine the ineligibility period.

(C) The Board may identify their own findings or adopt all or any part of the Fire Policy Committee's findings as the basis for the determination.

(D) If the Board proposes to take action that is adverse to a fire service professional or instructor, the Department will issue a contested case notice pursuant to OAR 259-009-0130. Where the Board does not propose adverse action, the issued Notice of Intent will be withdrawn and the case will be closed.

(7) Scope of Revocation. When the Department denies or revokes the certification of any fire service professional or instructor for mandatory or discretionary grounds as defined in OAR 259-009-0120, the revocation will encompass all fire service certifications the Department has issued to that person.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640 & ORS 181A.650

History:

DPSST 62-2018, minor correction filed 08/02/2018, effective 08/02/2018

DPSST 60-2018, adopt filed 07/31/2018, effective 08/01/2018

259-009-0130

Issuance of Notice of Intent, Request for Hearing and Contested Case Procedures

(1) Initiation of Proceedings: Upon determination by the Board, through the Fire Policy Committee, that the certifications of a fire service professional or instructor should be denied or revoked after considering the totality of the case, the Department will prepare a contested case notice and serve it on the fire service professional or instructor.

(2) 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 Procedure adopted under OAR 259-005-0015.

(b) In discretionary cases heard by the Fire Policy Committee, the contested case notice will be served on the fire service professional or instructor prior to Board review.

(3) 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.

(4) 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 the Fire Policy Committee, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(5) 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.

(6) 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 the Fire Policy Committee must be considered and approved by the Fire Policy Committee before a final order can be issued.

(7) 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.

(8) 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.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640, ORS 181A.650 & ORS 183.341

History:

DPSST 60-2018, adopt filed 07/31/2018, effective 08/01/2018