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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 259  
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

**FILED**  
08/27/2021 9:45 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Clarifying amendments to the definition of discharge for cause relating to revocation of fire certifications.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2021 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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NEED FOR THE RULE(S):

Under ORS 181A.640 (4), DPSST must deny or revoke the certifications of a fire service professional who has been discharged for cause. OAR 259-009-0120 provides the Board's definition of discharge for cause as it relates to a fire service professional's certifications. DPSST is recommending that the Fire Policy Committee and the Board on Public Safety Standards and Training adopt two clarifying amendments to improve the rule's interpretation and legal defensibility of section (2)(d).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The Fire Policy Committee (FPC) and the Board on Public Safety Standards and Training (Board) meeting minutes are available on the Department of Public Safety Standards and Training website, [www.oregon.gov/dpsst](http://www.oregon.gov/dpsst). The DPSST staff memos prepared for each entity are available by submitting a records request to DPSST.

FISCAL AND ECONOMIC IMPACT:

There were no fiscal or economic impacts identified for this rule change.

This rule change amends the definition of discharge for cause for mandatory revocation.

The rule change does not change the potential fiscal and economic impacts that already exist. The preexisting potential fiscal and economic impacts for denial or revocation of certifications include administrative costs and legal fees for the Department and loss of potential income for a fire service professional who has certifications that have been denied or revoked and those certifications were associated with financial benefits for obtaining and maintaining Oregon fire

certifications.

The denial or revocation of a fire service professional's certifications does not prevent the person from seeking or obtaining employment or utilization by an Oregon fire service agency. Oregon fire service certifications are voluntary. Individuals are not required to obtain a certification and fire service agencies are not required to employ or utilize fire service professionals who have obtained certification. Each Oregon fire service agency maintains the discretion on whether or not to employ or utilize a fire service professional who has been denied or revoked for certification.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

There were no state agencies, members of the public, or units of local government, including fire service agencies, that were identified as likely to be economically affected by the rule changes because the associated costs for compliance are preexisting.

No fiscal or economic impacts were identified for members of the public.

The Department estimates that there are five or fewer Oregon fire service agencies that are private safety agencies that are subject to this rule and potentially considered small businesses. There were no changes for projected reporting, recordkeeping, professional services, equipment, supplies, labor, or other administrative activities identified for compliance with the proposed rule for the identified small businesses.

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Potentially affected entities were involved through their representation on the Fire Policy Committee and the Board on Public Safety Standards and Training. Small businesses, public and private safety agencies, state agencies, units of local government and the public are invited to submit written comments to the agency rules coordinator during the public comment period on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact on business.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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AMEND: 259-009-0120

RULE SUMMARY: OAR 259-009-0120 defines the grounds for denial or revocation of fire service professional certifications. This proposed rule includes the following recommended changes:

Section (2)(d) - replacing "under color of office" with plain language.

The rule states that "for cause" means intentional conduct performed under the color of office. DPSST interprets this as intentional conduct that the fire service professional engaged in while on-duty or performing the duties of a fire service professional. DPSST recommends replacing the phrase "under color of office" with plain language that identifies when conduct is considered a discharge for cause for the purposes of certification. This change is located in section (2)(d). The

proposed rule states "for cause" means engaging in intentional conduct while training, while on-duty or while performing the duties of a fire service professional.

Section (2)(d)(E) - correcting punctuation in the definition for Neglect of Duty.

The proposed rule corrects a punctuation error that has caused some confusion for interpretation.

CHANGES TO RULE:

259-009-0120

Grounds for Denial or Revocation ¶¶

(1) The Board recognizes the core values of integrity and professionalism as critical to upholding the public's trust in the certification of fire service professionals, protecting the public, and ensuring that the conduct of a certified fire service professional or an applicant does not reflect adversely on the fire service as a public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to certification as a fire service professional and a violation of the core values of integrity and professionalism.¶¶

(2) The Department must deny or revoke a fire service professional's certifications based upon a finding that:¶¶

(a) The fire service professional 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;¶¶

(b) The fire service professional has a conviction in any jurisdiction for any offense involving a bias or hate crime;¶¶

(c) The fire service professional is a sex offender pursuant to ORS 163A.005 (6); or¶¶

(d) The fire service professional has been discharged for cause from employment as a fire service professional. For the purposes of this rule, "for cause" means engaging in intentional conduct performed under the color of office while training, while on-duty or while performing the duties of a fire service professional that constitutes any of the following:¶¶

(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 that 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 an intentional or reckless failure to perform any mandatory duty as required by law, knowingly performing an act which the fire service professional knows to be forbidden by law to perform, or 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 in relation to the administration or documentation of any training, testing or certification;¶¶

(G) Discrimination: Discrimination includes a course of conduct or a single egregious act that evidences discrimination based on the fire service professional's perception of a person's race, color, national origin, sex, religion, age, disability or any other protected class as defined by state or federal law;¶¶

(H) Harassment, including Sexual Harassment: Includes unwanted, unwelcomed and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment for the victim;¶¶

(I) Abuse, including Sexual Abuse: Includes physical or mental maltreatment that results in mental, emotional, sexual or physical injury; or¶¶

(J) Use of illegal drugs.¶¶

(3) The Department may deny or revoke a fire service professional's certifications based upon a finding that:¶¶

(a) The fire service professional falsified any information submitted on the application for certification or on any

documents submitted to the Board or Department;¶¶

(b)(A) The fire service professional has a conviction for any offense, other than the mandatory grounds defined in section (2) of this rule, for which a maximum term of imprisonment of more than one year may be imposed under the law of the jurisdiction where the conviction occurred; and¶¶

(B) The conviction occurred while certified or within the 10 years prior to application for certification; or¶¶

(c)(A) The fire service professional has a conviction for any offense, other than the mandatory grounds defined in section (2) of this rule, for which a term of imprisonment of more than 30 days but not more than 364 days may be imposed under the law of the jurisdiction where the conviction occurred;¶¶

(B) The conviction occurred while certified or within the 5 years prior to application for certification; and¶¶

(C) The crime or the underlying conduct includes dishonesty or deceit, a sexual offense, a drug offense, discrimination, destruction of property, a crime against a public agency, illegal use or possession of a deadly weapon, or violence, abuse or neglect against a person or animal.¶¶

(4) The certification standards defined in administrative rule in effect on the date the Department or the Board determined that the fire service professional violated the standards for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted regardless of whether the certification standards have been subsequently amended or repealed.¶¶

(5) Any Board or Department action to deny or revoke a fire service professional's certifications will be administered in accordance with OAR 259-009-0115 through OAR 259-009-0130 and the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

Statutory/Other Authority: ORS 181A.410

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