



Department of Public Safety Standards and  
Training

Denial and Revocation  
OAR 259-009-0070

## MEASURE 11 MANDATORY MINIMUM SENTENCING

Oregon voters approved Ballot Measure 11 in November 1994 to apply mandatory minimum prison sentences to certain crimes against persons committed on or after April 1, 1995, with no possibility for any reduction in sentence, such as for good behavior. The list of Ballot Measure 11 offenses currently includes the following:

- ORS 163.095 - **Attempted Aggravated Murder**
- ORS 163.115 - **Attempted Murder**
- ORS 163.115 - **Murder**
- ORS 163.118 - **Manslaughter I**
- ORS 163.125 - **Manslaughter II**
- ORS 163.175 - **Assault II**
- ORS 163.185 - **Assault I**
- ORS 163.225 - **Kidnapping II**
- ORS 163.235 - **Kidnapping I**
- ORS 163.365 - **Rape II**
- ORS 163.375 - **Rape I**
- ORS 163.395 - **Sodomy II**
- ORS 163.405 - **Sodomy I**
- ORS 163.408 - **Sexual Penetration II**
- ORS 163.411 - **Sexual Penetration I**
- ORS 163.427 - **Sexual Abuse I**
- ORS 163.670 - **Use of Child in Display of Sex Act**
- ORS 164.325 - **Arson I**
- ORS 164.405 - **Robbery II**
- ORS 164.415 - **Robbery I**
- ORS 167.017 - **Compelling Prostitution**

It has been modified by legislation several times:

House Bill 3439, passed June 1995, added Attempted Murder and Attempted Aggravated Murder. Senate Bill 1049, passed July 1997 and effective October 4, 1997, added Arson I (when a serious physical threat is involved), Compelling Prostitution, and Use of Child in Display of Sex Act; it also allowed for departures from the mandatory minimum sentence for some Assault II, Kidnapping II, and Robbery II convictions, including those already sentenced. House Bill 2494, passed August 1999, allowed for departures from the mandatory minimum sentence for some Manslaughter II convictions committed on or after October 23, 1999. House Bill 2379, passed July 2001, allowed for departures from the mandatory minimum sentence for some Rape II, Sodomy II, Sexual Penetration II, and Sexual Abuse I convictions committed on or after January 1, 2002. For more details on the current law, see [ORS 137.700, 137.707, 137.712](#).

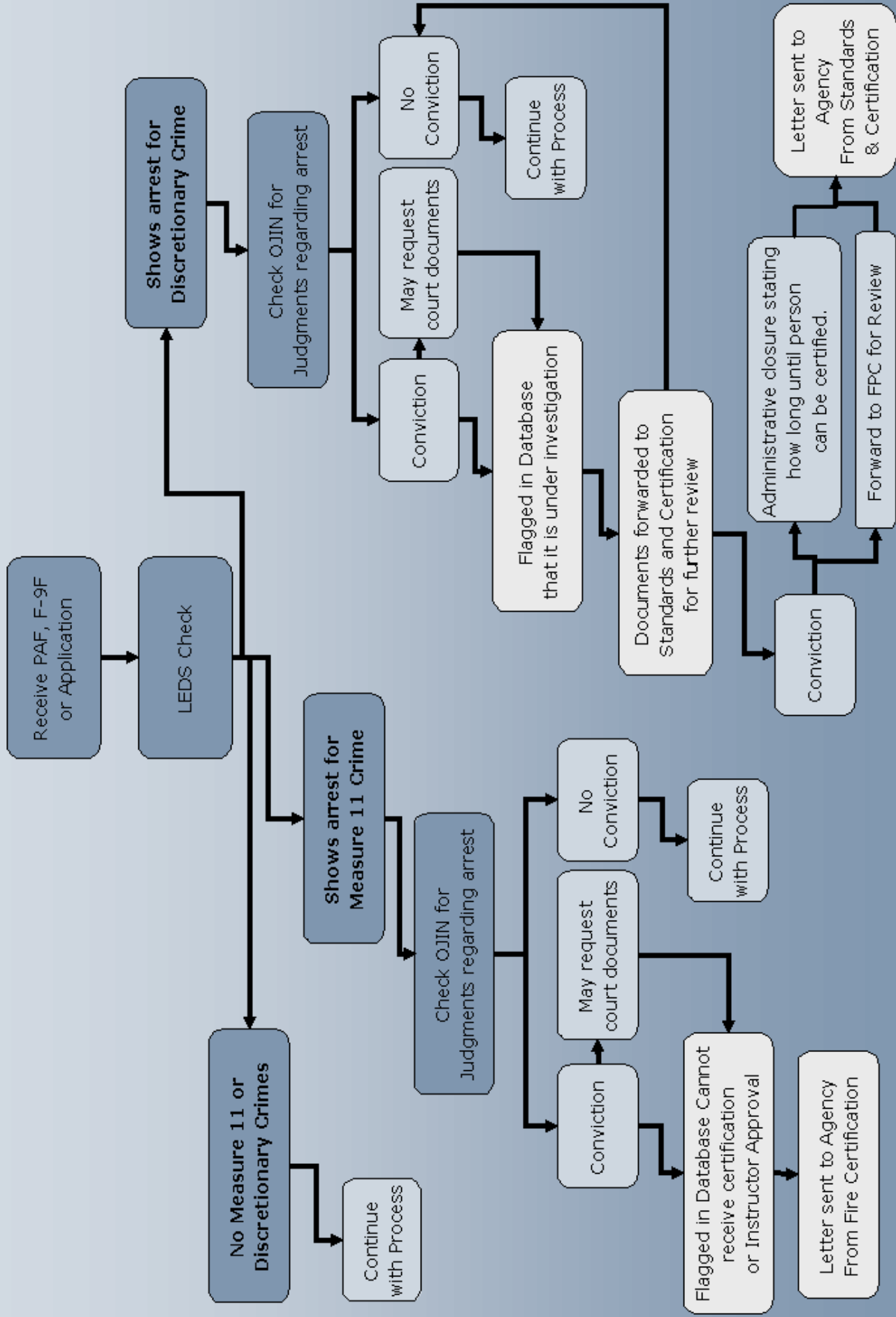
## DISCRETIONARY CRIMES

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,  
163.670 (Using Child in Display of Sexually Explicit Conduct) – 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,  
164.365 (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 Corps in the Second Degree) – Category II,  
166.087 (Abuse of Corps 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,  
166.660 (Unlawful Paramilitary Activity) – Category III,  
166.720 (Racketeering Activity Unlawful) – Category II,  
167.012 (Promoting Prostitution) – Category III,  
167.062 (Sodomasochistic 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,  
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,  
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

# DENIAL AND REVOCATION FLOW CHART



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

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

(2) 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 (9) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(6).

(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 for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in subsection (9) of this rule.

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

(a) 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 ORS 137.700.

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

(b) For purposes of this rule, "discharged for cause", means an employer initiated termination of employment for any of the following reasons:

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

(B) Disregard for the Rights of Others: Includes constitutional violations, respect for the rights of others, protecting the vulnerable and the fundamental duty to protect and serve;

(C) Gross Misconduct means 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: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor.

(E) Misuse of Authority: Includes abuse of public trust, obtaining a benefit or avoidance of detriment, and actions under the color of office.

(4) Discretionary Grounds for Denying or Revoking Certification 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:

- (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) The fire service professional or instructor has been convicted of a crime listed in subsection (6) of this rule.
- (b) The Department will not initiate revocation proceedings for a discretionary conviction against any certification that a fire service professional or instructor has been granted prior to the effective date of this rule.
- (c) The Department may initiate denial or revocation proceedings for a discretionary conviction that occurred prior to the effective date of this rule for any fire service professional or instructor who applies for a fire service certification not held prior to the effective date of this rule.
- (5) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:
- (a) Category I: Honesty. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: Justice. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.
- (6) 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: [Table not included. See ED. NOTE.]
- (7) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.
- (a) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct, the Fire Policy Committee and the Board will take into consideration any aggravating and mitigating circumstances as identified in section (9)(d) of this rule.
- (b) 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 (11) of this rule.
- (8) Scope of Revocation. Whenever the Department revokes the certification of any fire service professional or instructor, the revocation shall embrace all fire service certificates the Department has issued to that person.
- (9) Revocation and Denial Procedure.
- (a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that the person's certification be revoked or denied, it must submit in writing to the Department the reason for the requested revocation or denial and 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 the established standards for Oregon fire service professionals or instructors, 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 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 described in subsection (4), the case may be presented to the Board, through the Fire Policy Committee.

(D) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct, 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.

(d) Policy Committee and Board Review: The Fire Policy Committee and the Board may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying misconduct, including the following:

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

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

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

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

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

(F) Whether the conduct involved domestic violence;

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

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

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

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

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

(e) Initiation of Proceedings: Upon determination 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.

(f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the fire service professional or instructor.

(g) 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 with the Department a written request for a hearing.

(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 with the Department a written request for a hearing.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification.

(i) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(j) Proposed Order. The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(l) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a fire service professional or instructor fails to file exceptions and arguments in a timely manner.

(m) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking a fire service professional's or instructor's certification any time a fire service professional or instructor wishes to voluntarily terminate an administrative proceeding to revoke a certification, or voluntarily relinquish a certification under the terms and conditions outlined in the stipulated order.

(10) 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.

(11) Reapplication Process.

- (a) Any fire service professional or instructor who has had a certification denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may subsequently become eligible to reapply for certification under the provisions of subsection (11) of this rule.
- (b) Any fire service professional or instructor who has had a certification denied or revoked pursuant to section (4) of this rule 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;
  - (B) A written request for an eligibility determination has been submitted to the Department;
  - (C) 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;
  - (D) The fire service professional or instructor is employed or utilized by a fire service agency; and
  - (E) All requirements for certification have been met.
- (c) 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.
- (d) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances.
- (e) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may:
  - (A) Determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or
  - (B) 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.
    - (i) If the initial period of ineligibility for the individual was for a period less than the maximum period identified in (7) 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 after the maximum initial period of ineligibility identified in (7) 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.

[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

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08