

## **Department of Public Safety Standards and Training Memo**

**Date:** October 22, 2020

**To:** Board on Public Safety Standards and Training

**From:** Jennifer Howald  
Rules Coordinator

**Discipline:** Fire

**Subject:** Proposed Rule Changes for OAR 259-009-0059, 259-009-0115, 259-009-0120, 259-009-0125 and 259-009-0130: Fire Service Professional Certification Denial and Revocation Standards and Processes

### **BACKGROUND:**

The Board is responsible for setting the minimum standards for training and certification for fire service professionals. To ensure that the standards adopted by the Board remain relevant and applicable to the Oregon fire service profession, standards are reviewed regularly. While there have been some rule changes to address specific denial and revocation issues, the standards and processes for denial and revocation of fire service professional certifications have not been reviewed in their entirety since 2014.

In February, the Fire Policy Committee (FPC) approved formation of a workgroup to complete a current review of the denial and revocation standards and processes. The FPC Denial/Revocation Workgroup met on June 9, 2020. In addition to the general overall review, the Workgroup considered Department recommendations addressing regulatory changes that have occurred as a result of recent administrative rulings and changes implemented in other disciplines. The Workgroup's review and discussions resulted in the following recommended changes.

### **WORKGROUP RECOMMENDATIONS:**

#### Grounds for Denial or Revocation

- Add registration as a sex offender to the mandatory grounds for denial or revocation.

Under the current rules, registration as a sex offender is a discretionary review trigger. This recommendation means registration as a sex offender would always require denial or revocation. As mandatory grounds, staff would process these cases administratively. Once the person is no longer required to register as a sex offender, they would be eligible to apply for certification.

- Review employment separations where the fire service professional resigned under allegations of misconduct that would otherwise have been a discharge for cause.

This recommendation would have added a trigger for discretionary review of separations where the fire service professional resigns before they can be fired. DPSST would only open a case for FPC review when the employing agency's records demonstrated that the fire service professional engaged in misconduct that was under investigation or pending investigation at the time of separation and the misconduct meets the definition for conduct that constitutes a discharge for cause.

DPSST Staff Update: After additional review of the Board's statutory authority, staff determined that this recommendation could not move forward at this time. The statutory authority for denial and revocation of fire service professional certifications is limited to convictions, discharge for cause and falsification of documents submitted to the Board or the Department.

- Limit discretionary review of felony convictions to felony convictions that occur within 10 years prior to application for certification or while certified.

Under current rule, all discretionary felony convictions that occurred after January 15, 2008, are triggers for review. Adding the 10-year timeframe to the felony conviction trigger recognizes the passage of time as mitigation to the misconduct.

If a fire service professional applies for certification with a felony conviction that occurred more than 10 years before the application, the conviction would not be a trigger for review – the conviction would not be considered a violation of the certification standards.

- Limit discretionary review of misdemeanor convictions to convictions that occur within 5 years prior to application for certification or while certified, *AND* amend how misdemeanor convictions are defined as discretionary grounds for denial/revocation.

Under current rule, misdemeanor convictions are reviewed upon receipt of an application if any of the following circumstances apply: the person was imprisoned within the last 5 years, the person is on court-ordered supervision, or the person has unpaid restitution, court fines, or fees.

This recommendation results in review of all misdemeanor convictions if the fire service professional is currently certified or the conviction occurred within the 5 years prior to the application for certification.

Additionally, instead of using the circumstances that follow the conviction to define a violation of the certification standards, the recommendation defines types of misconduct that trigger review. As recommended, DPSST will open a case for FPC review when a misdemeanor conviction includes – by nature of the crime or the underlying conduct in the case – any of the following elements:

- dishonesty or deceit,
- a sexual offense,
- a drug offense,
- 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.

If a fire service professional applies for certification with a misdemeanor conviction that occurred more than 5 years before the application, the conviction would not be a trigger for review – the conviction would not be considered a violation of the certification standards.

Note: The rule language continues to limit review of misdemeanor convictions to convictions that are punishable with imprisonment longer than 30 days and not more than 364 days. In Oregon, these are class A and B misdemeanors.

### Case Review Processes

- Defer review of discretionary convictions when all of a fire service professional's certifications are lapsed.

This recommendation applies only to discretionary convictions. When all of a fire service professional's certifications are lapsed, DPSST will not take action to

open and review a case unless the fire service professional submits an application for certification or a certification reinstatement form.

- Include an opportunity for the fire service professional to provide mitigation to the FPC through in-person, verbal statements.

Verbal statements must be provided in person by the fire service professional or their representative. Verbal statements are limited to 5 minutes. Verbal mitigation is optional and does not replace the opportunity for submitting written information. A person may submit both.

The opportunity for verbal mitigation is not interactive and would be limited to the statements provided by the fire service professional or their representative. There would be no question and answer between committee members and the speaker. There would be no follow up discussion or rebuttal from the speaker regarding the committee's discussions.

Notes: Submission of mitigation, written or verbal, is optional. It would not be considered aggravation if the fire service professional did not submit mitigation. Staff do not fact check the mitigation that is submitted.

- Integrate the core values of professionalism and integrity into the rule as the nexus for denial or revocation.

This recommendation means that the FPC will no longer need to state a finding that the fire service professional violated the core values as a part of the case review process. As a nexus statement in rule, it becomes understood that if the fire service professional engaged in conduct that constitutes grounds for denial or revocation then they have violated the core values.

- Remove the list of predetermined circumstances that may be considered as aggravation or mitigation.

Current rule provides a list of circumstances as guidance to the FPC on circumstances that may be considered factors in determining whether to deny or revoke certification. The list is not all-inclusive and the circumstances listed do not apply in every case.

This recommendation removes the list and replaces it with a general interpretation of what aggravating and mitigating circumstances are and how they affect denial and revocation recommendations.

- Eliminate the 30-day to seven-year ineligibility period.

Under current rule, when certifications are denied or revoked for discretionary grounds the FPC recommends a timeframe that the fire service professional is ineligible to reapply for certification. The current period of ineligibility ranges from a minimum of 30 days up to a maximum of seven years.

This recommendation removes the ineligibility period. Instead, a fire service professional may submit an application for certification after at least one year has passed since the Board approved the denial or revocation.

When the application is submitted, DPSST will review the application and the standards in place at the time of the application. If the conviction is still considered a trigger for discretionary review, DPSST will open a case for FPC review. The FPC will review the conviction and any additional mitigation, which will always include the passage of additional time, to determine if there is still an impact to certification as a fire service professional. With each review, the FPC would be able to recommend denial if there is still an adverse impact to fire certification.

Eventually, the passage of time would mean that the conviction would no longer require review. Once the felony conviction was older than 10 years or the misdemeanor conviction was older than 5 years, it would no longer be considered grounds for denial and would not require any additional FPC review when the fire service professional submits an application for certification.

### Other Recommendations

- Adopt guidelines for surrendering certifications.

This recommendation closes a technical loophole and prevents a fire service professional from surrendering their certifications to avoid revocation.

If a fire service professional asks DPSST to accept surrender of certifications and they are the subject of a pending case, investigation or complaint, DPSST may require the person to stipulate to a revocation of the certifications. When a fire service professional stipulates to a revocation they become permanently ineligible for certification.

- Amend requirements for reporting convictions to have the fire service professional contact DPSST directly when they are convicted of a crime.

Under current rule, if a certified fire service professional is convicted of a crime, they are required to notify their fire service agency within five business days of the conviction. The fire service agency is then required to notify DPSST within 30 business days. If the certified fire service professional is not currently affiliated with a fire service agency, they are required to notify DPSST of the conviction within five business days.

This recommendation simplifies the reporting process by requiring a certified fire service professional to report the conviction directly to DPSST regardless of their affiliation status.

Fire service professionals would still need to report the conviction to their employer following any employment-related policies for reporting convictions, arrests, or other law enforcement actions.

Note: A failure to report a conviction may be considered an aggravating circumstance in a professional standards case, but would not result in a denial or revocation on its own.

- Remove references to instructor certification from the denial/revocation standards.

This recommendation recognizes that the DPSST instructor certifications for course instruction are separate and distinct from fire service professional certifications.

Instructors are required to be certified to deliver training courses certified by DPSST. This ensures the instructor has the qualifications established by either the NFPA or NWCG for the specific training being delivered. This instructor certification process does not result in issuance of a fire service professional certification.

DPSST does issue fire service professional certifications such as the Fire and Emergency Services Instructor I, II and III, Live Fire Instructor and Live Fire Instructor in Charge. These certifications remain subject to denial/revocation because they are fire service professional certifications.

#### **ADDITIONAL DEPARTMENT RECOMMENDATIONS:**

During the July 23, 2020, meeting, the Board reviewed a citizen request for changes to the denial and revocation standards for law enforcement officers that would require mandatory denial or revocation of certification if the law enforcement officer were determined to be a member of a hate group. The Board expressed interest in applying this requirement to the Oregon fire service certification standards.

The statutory authority for denial and revocation of fire service professional certifications is limited to convictions, discharge for cause and falsification of documents submitted to the Board or the Department. Under this statutory authority, the Board would not be able to adopt a standard for denial or revocation of fire certifications when a fire service professional is a member of a hate group.

After additional review, the Department identified the following opportunities to address discriminatory conduct within the fire certification denial and revocation standards and under the existing statutory authority.

- Add convictions for a bias or hate crime to the mandatory grounds for denial or revocation.
- Amend the definition of discharge for cause to include intentional conduct performed under the color of office that constitutes discrimination against a protected class.
- Amend the criteria that require review of a discretionary misdemeanor conviction to include convictions where the crime or the underlying conduct includes discrimination.

## PROPOSED RULE LANGUAGE:

The following proposed rule language provides the supporting rule amendments for the Workgroup and Department recommendations. (Amending OAR 259-009-0059, 259-009-0120, 259-009-0125 and 259-009-0130. Adopting OAR 259-009-0115.)

### ➤ **OAR 259-009-0059 Minimum Standards for Certification as a Fire Service Professional**

Note: Recommended additions noted with **bold and underlined text** and deletions noted with ~~strikethrough text~~. (Sections (1)-(5) were unchanged and omitted for ease of review.)

**(6) Notification of Conviction. A certified fire service professional who is convicted of a crime must notify the Department within 10 calendar days of the conviction. Notification 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.**

~~(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 business 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 business days.~~

~~(7) 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.~~

#### ➤ **OAR 259-009-0115 Surrendering Certifications**

Note: Adoption of a new rule. New rule language provided as plain text for ease of review.

(1) A fire service professional may request that the Department accept the surrender of their fire service professional certifications. The request must be submitted in writing.

(2) The fire service professional will remain certified until the Department accepts the surrender.

(3) In considering whether to accept the surrender, the Department may request further information from the present or prior employer pursuant to ORS 181A.670, or conduct its own investigation, to determine if any minimum standards for certification have been violated. If the Department finds a violation of the grounds for revocation as defined in OAR 259-009-0120, the Department may proceed with initiation and review of a professional standards case pursuant to OAR 259-009-0125.

(4) If the fire service professional has been issued a Notice of Intent pursuant to OAR 259-009-0130 or is the subject of a pending complaint, Department investigation or professional standards case, the Department may accept the surrender through a stipulated order revoking certification.

(5) An individual with fire service professional certifications revoked pursuant to this rule is permanently ineligible for certification as a fire service professional.

#### ➤ **OAR 259-009-0120 Grounds for Denial or Revocation**

Note: New rule language provided as plain text for ease of review. Current rule text follows and noted as ~~striketrough text~~.

(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 intentional conduct performed under the color of office 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 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 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 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 which 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, discrimination, a drug offense, 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.

~~(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.~~

~~(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) 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 which results in mental, emotional, sexual or physical injury; or

~~(J) 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 or instructor has a conviction for a crime designated under the law where the conviction occurred as punishable with a term of imprisonment of more than 30 days but not more than 364 days; and~~

~~(i) The conviction resulted in a period of imprisonment 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.~~

➤ **259-009-0125 Denial/Revocation - Initiation and Review of a Professional Standards Case**

Note: New rule language provided as plain text for ease of review. Current rule text follows and noted as ~~strikethrough text~~.

(1) When the Department receives information from any source that a certified fire service professional or an applicant may not meet the established standards for fire service professional certification, the Department will review the information to determine if substantial evidence exists to support denial or revocation of certifications under the statutory and administrative rule requirements for fire service professional certification.

(2) The Department will not open a case on a conviction or conduct that was previously reviewed by the Department or the Fire Policy Committee and the Board and determined not to violate the standards for fire service professional certifications or resulted in no action to deny or revoke certification using the administrative rules in effect at the time of the review.

(a) Nothing in this rule precludes the Department from opening a case upon discovery of additional mandatory or discretionary grounds for denial or revocation.

(b) Nothing in this rule precludes the Department or the Fire Policy Committee and the Board from considering previous misconduct or criminal behavior as an aggravating circumstance in a separate discretionary case review.

(3) In professional standards cases where the Department determines that the conduct being reviewed violates the certification standards established by the Board as mandatory grounds for denial or revocation as defined in OAR 259-009-0120(2), the Department will administratively process the denial or revocation.

(4) In professional standards cases based on a discharge for cause, the Department may stay any action on the fire service professional's certifications until a final employment arbitration determination has been made. The Department will administratively close cases in which an arbitrator's opinion finds that the underlying facts did not support the allegations of misconduct.

(5) The Department will defer review of discretionary convictions, as defined in OAR 259-009-0120(3), when all of the fire service professional's certifications are lapsed. Upon receipt of an application for certification or a request for reinstatement, the Department will proceed with the review process.

(6) When the Department submits a discretionary professional standards case to the Fire Policy Committee, the Department will notify the fire service professional. The notification will include the deadlines for the fire service professional to provide evidence of factors that may support mitigation. A fire service professional may provide mitigation evidence by one or both of the following:

(a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for Fire Policy Committee and Board consideration.

(b) Arranging with the Department to attend a Fire Policy Committee meeting and present a verbal statement. The verbal statement is limited to a maximum of five minutes and must be presented in person by the fire service professional or their representative.

(7) Fire Policy Committee Review of Discretionary Professional Standards Cases.

(a) In professional standards cases where the Department determines that the conduct being reviewed violates the certification standards established by the Board as discretionary grounds for denial or revocation as defined in OAR 259-009-0120(3), the



Department will submit its findings to the Fire Policy Committee for disposition. The Fire Policy Committee's disposition will be submitted as a recommendation to the Board for approval.

(b) The Fire Policy Committee will review the professional standards case to:

(A) Affirm, modify or negate the Department-identified violations;

(B) Identify aggravating and mitigating circumstances unique to the professional standards case; and

(C) Determine how the violations and aggravating or mitigating circumstances impact the fire service professional's certification.

(c) Aggravating and mitigating circumstances are conditions, factors or actions that increase or decrease the total impact that the conviction has on certification as a fire service professional.

(A) Aggravating circumstances generally increase the severity of the impact the conviction has on certification and may, in addition to the conviction, be grounds to deny or revoke certification. Circumstances that may be considered aggravating include, but are not limited to, the degree of the conviction, prior misconduct or criminal behavior, lack of accountability, number of persons involved in the underlying conduct, number of separate incidents, passage of time from date of incident or incidents, or any other circumstance the Department or the Fire Policy Committee consider aggravating given the specific issues in the case.

(B) Mitigating circumstances do not excuse or justify the conduct, but generally decrease the severity of the impact the conviction has on certification. Circumstances that may be considered mitigating include, but are not limited to, written letters of support, truthfulness, cooperation during the incident or investigation, or any other circumstance the Department or the Fire Policy Committee consider mitigating given the specific issues in the case.

(8) Board Review of a Professional Standards Case. 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.

(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 no action be taken to deny or revoke certification, the Board must make its own determination as to whether the fire service professional has engaged in conduct that violates the discretionary grounds for denial or revocation of certifications and consider aggravation and mitigation.

(B) 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.

(C) If the Board review results in a determination to deny or revoke fire service professional certifications, the Department will issue a Notice of Intent pursuant to OAR 259-009-0130. Where the Board review results in no action to deny or revoke fire service professional certifications, the issued Notice of Intent will be withdrawn and the professional standards case will be closed.

(9) Scope of Revocation. When the Department denies or revokes fire service professional certifications pursuant to OAR 259-009-0115 through OAR 259-009-0130, the denial or revocation will encompass all fire service professional certifications subject to OAR chapter 259 division 9.

(10) A fire service professional whose certifications have been denied or revoked for discretionary grounds, as defined in OAR 259-009-0120(3), may apply for certification after a minimum of one year has passed since the Board's approval of the denial or revocation.

(11) Applications for certification submitted by a fire service professional whose certifications have been denied or revoked will be denied pursuant to OAR 259-009-0130 when:

(a) The certifications were denied or revoked for mandatory grounds as defined in OAR 259-009-0120(2); or

(b) The certifications were denied or revoked for discretionary grounds as defined in OAR 259-009-0120(3) and the one-year period following Board approval of the denial or revocation has not passed.

#### ~~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.~~

#### ➤ **259-009-0130 Issuance of Notice of Intent, Request for Hearing and Contested Case Procedures**

Note: Recommended additions noted with **bold and underlined text** and deletions noted with ~~strikethrough text~~.

These changes are included as technical revisions and do not include any changes to standards and processes.

~~(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.~~ **Upon a determination to proceed with a denial or revocation, the Department will prepare and serve a Notice of Intent on the fire service professional.**

**(2) For discretionary professional standards cases when the Fire Policy Committee recommends denial or revocation of fire service professional certifications, the Department will serve the Notice of Intent on the fire service professional prior to the Board's review.** ~~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~~ 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~~ 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.~~ **If the Department does not receive a timely request for a hearing, the Notice of Intent will become a Final Order denying or revoking 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.~~ **For discretionary professional standards cases reviewed by the Fire Policy Committee, if the Department does not receive a timely request for a hearing the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672 upon approval by the Board.**

(5) Hearing Request: ~~If a timely request for a hearing is received, the Department.~~ **If the Department receives a timely request for a hearing, it** 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~~ **When 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 p~~**Proposed o**~~Order issued by an Administrative Law Judge in a case that was originally heard~~ **reviewed** by the Fire Policy Committee **and the Board** must be considered and approved by the Fire Policy Committee **and the Board** before a ~~f~~**Final o**~~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.~~

## **PROPOSED ADMINISTRATIVE RULE FISCAL & ECONOMIC IMPACT STATEMENT:**

These statements were submitted to the Secretary of State's Office when the rule changes were filed as a proposed rule for public comment.

### **1. Overall Fiscal and Economic Impacts.**

There are no fiscal impacts identified for this rule amendment. The rule change amends fire service professional certification denial and revocation standards and processes.



The rule change does not change the potential fiscal and economic impacts that already exist. The ongoing 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.

2. Identify Costs for Compliance with the Rule Change. Identify any state agencies, units of local government and members of the public likely to be economically affected by the rules:

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.

Effect on Small Business:

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 or costs for compliance with the proposed rule identified for small businesses with regard to reporting, recordkeeping, professional services, equipment, supplies, labor or increased administration activities.

## **FIRE POLICY COMMITTEE RECOMMENDATION:**

On August 26, 2020, the Fire Policy Committee (FPC) reviewed the Denial/Revocation Workgroup recommendations, Department recommendations and proposed rule changes to OAR Chapter 259 Division 9. The FPC voted unanimously to recommend that the Board adopt the recommended changes to the denial and revocations standards and process for fire service professionals and approve filing the proposed rule changes for OAR Chapter 259 Division 9 as permanent rules. By consensus, the FPC approved the fiscal impact statements included in the memo.

## **DPSST STAFF UPDATE:**

These proposed rule changes were filed with the Secretary of State after Policy Committee review. The opportunity for public comment ends September 21, 2020. As this memo was prepared prior to the end of the public comment period, if the Department receives public comment that impacts the substantive intent of the rule change, this item will be removed from the consent agenda for additional consideration.

## **ACTION ITEM:**

Review and affirm the recommendation of the Fire Policy Committee.

[Amending OAR 259-009-0059, 259-009-0120, 259-009-0125 and 259-009-0130.  
Adopting OAR 259-009-0115.]