

The following revised language for OAR 259-009-0070 contains recommended additions (**bold and underlined**) and deletions (strikethrough text).

## **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. **Those crimes are:**

**163.095 Attempted Aggravated Murder;**

**163.115 Attempted Murder**

**163.115 Murder**

**163.118 Manslaughter in the First Degree;**

**163.125 Manslaughter in the Second Degree;**

**163.149 Aggravated Vehicular Homicide;**

**163.175 Assault in the Second Degree;**

**163.185 Assault in the First Degree;**

**163.225 Kidnapping in the Second Degree;**

**163.235 Kidnapping in the First Degree;**

**163.365 Rape in the Second Degree;**

**163.375 Rape in the First Degree;**

**163.395 Sodomy in the Second Degree;**

**163.405 Sodomy in the First Degree;**

**163.408 Sexual Penetration in the Second Degree;**

**163.411 Sexual Penetration in the First Degree;**

**163.427 Sexual Abuse in the First Degree;**

**163.670 Using a Child in a Display of Sexually Explicit Conduct**

**164.325 Arson in the First Degree (See exception under OAR 259-009-0070(4));**

**164.405 Robbery in the Second Degree;**

**164.415 Robbery in the First Degree;**

**167.017 Compelling Prostitution**

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

(b) For purposes of this rule, "discharged for cause", means an employer initiated termination of employment for any of the following reasons **after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.**

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

(B) **(ii)** Disregard for the Rights of Others: Includes **violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.** ~~constitutional violations, respect for the rights of others, protecting the vulnerable and the fundamental duty to protect and serve;~~

(C) **(iii)** 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) **(iv)** Incompetence: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor.

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

**Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification**

(4) Discretionary **disqualifying misconduct as** Grounds for Denying or Revoking Certification**(s)** 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~~ **an offense** listed in subsection ~~(6)~~ **(4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.**

(b) **For purposes of this rule, 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 characteristics of being just, impartial, or fair; integrity and honesty.**

**(c) 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:**

**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,**

**164.325 (Arson in the First Degree – If not a conviction under ORS 137.700) – 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

Any crime that requires the fire service professional or instructor to register as a sex offender.

**An “attempt” to commit a crime listed in ORS 137.700 or in any other jurisdiction that, if committed in this state would constitute an attempt to commit a crime listed in ORS 137.700 (and identified in OAR 259-009-0070(3)).**

~~(b)~~**(d)** 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.

~~(e)~~**(e)** 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.

**(f) If a fire service professional or instructor held certification on or before January 15, 2008 and applies for a new certification, the Department will proceed as follows:**

**(A) No action will be taken on a discretionary conviction that occurred prior to January 15, 2003.**

**(B) The Department will not initiate revocation proceedings based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.**

**(C) The Department may initiate denial of a new certification based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.**

**(g) If a fire service professional or instructor held certification on January 15, 2008 and applies for or obtains certification after that date, the Department may initiate denial or revocation of all certifications held based on a discretionary disqualifying conviction that occurred prior to January 15, 2008.**

**(h) If a fire service professional or instructor is convicted of a discretionary disqualifying crime on or after January 15, 2008, the Department may initiate a denial or revocation of all certification(s) upon learning of the conviction.**

~~(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.]~~

### **Initial Minimum Periods of Ineligibility**

~~(7)~~**(5)** Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct **identified in section (4)**, 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 **listed in section (4) of this rule**, the Fire Policy Committee and the Board will take into consideration any aggravating ~~and~~ **or** mitigating **factors subject to the provisions of** ~~circumstances as identified in section (9)(d)~~ **(8)** of this rule.

**(b) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.**

**(c) The initial minimum period of ineligibility will be included in any Final Order of the Department.**

~~(b)~~**(d)** 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)~~ **(10)** of this rule.

### **Procedure for Denial or Revocation of a Certificate**

~~(8)~~**(6)** Scope of Revocation. **Except as provided in (4) above,** ~~Whenever~~ **when** the Department **denies or** revokes the certification of any fire service professional or instructor **under the provisions of OAR 259-009-0070,** the revocation ~~shall embrace~~ **will encompass** all fire service certificates the Department has issued to that person.

~~(9)~~**(7)** ~~Revocation and Denial~~ **and Revocation** Procedure.

(a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that ~~the person's~~ **a fire service professional's or instructor'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 **from the employer** 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~~ **listed** 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.**

**(E) In misconduct cases in which there has been an arbitrator's opinion related to the fire service professional's or instructor's employment, the Department will proceed as follows:**

**(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.**

**(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.**

**(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.**

(d) Policy Committee and Board Review: **In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the** ~~The Fire Policy Committee and the Board may~~ **will** consider mitigating and aggravating circumstances ~~in making a decision to deny or revoke certification based on discretionary disqualifying misconduct,~~ including, **but not limited to** the following:

(A) When the **mis**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, **the length of incarceration** for how long;

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

(D) Whether the fire service professional or instructor was **has ever been** on parole or probation, and if **If** so, when the **date on which the** parole or probation **period expired or is set to expire** ended;

(E) Whether the fire service professional or instructor has **more than one conviction** been convicted of the same conduct more than once, and if so, 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 involved dishonesty, fraud, deceit, or misrepresentation;

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

(J) Whether the conduct adversely reflects on **the fitness of the** 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.

**(L) What the fire service professional's or instructor's physical or emotional condition was at the time of the conduct.**

(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 **OAR 137-003-0001** of 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 **pursuant to OAR 137-003-0645**.

(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 **in accordance with OAR 137-003-0515**.

(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 **the certification of** a fire service professional's or ~~instructor's certification any time a fire service professional or instructor wishes to voluntarily~~ **upon the person's voluntary agreement to** terminate an administrative proceeding to revoke a certification, or **to voluntarily** relinquish a certification under the terms and conditions outlined in the stipulated order.

#### **Appeals, Reapplication, and Eligibility Determinations**

~~(10)~~ **(8)** Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and ~~e~~**O**rders of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final ~~e~~**O**rders of the ~~d~~**D**epartment.

~~(11)~~ **(9)** Reapplication Process.

(a) Any fire service professional or instructor whose ~~se~~ ~~has had~~ a certification **has been** denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may ~~subsequently become eligible to reapply for certification~~ **within the applicable timeframes described in** ~~under the provisions of subsection (11)~~ **(4) and (5)** of this rule.

(b) Any fire service professional or instructor whose ~~se~~ ~~has had~~ a certification **has been** denied or revoked ~~pursuant to section (4) of this rule~~ **based on discretionary disqualifying misconduct** 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;

**(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) 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 the maximum initial period of ineligibility identified in (5) 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.**

(B) A written request for an eligibility determination has been submitted to the Department;

~~(C)~~ ~~The~~ ~~and 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;

**(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.**

**(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (8)(d) of this rule.**

**(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or 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.**

~~(D)~~ ~~(C)~~ The fire service professional or instructor is employed or utilized by a fire service agency; and

~~(E)~~ **(D)** 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