

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through XIV; the amendment)	PROPOSED ADOPTION,
of ARM 23.13.101, 23.13.201,)	AMENDMENT, TRANSFER AND
23.13.203, 23.13.204, 23.13.205,)	AMENDMENT, AND REPEAL
23.13.206, 23.13.207, 23.13.208,)	
23.13.209, 23.13.210, 23.13.211,)	
23.13.301, 23.13.304, 23.13.702,)	
23.13.703, 23.13.704, and 23.13.711;)	
the transfer and amendment of ARM)	
23.13.401, 23.13.501, 23.13.701,)	
23.13.710, and 23.13.712; and the)	
repeal of ARM 23.13.202 pertaining)	
to the certification of public safety)	
officers)	

TO: All Concerned Persons

1. On September 5, 2014, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Room 121 of the Karl Ohs Building, Montana Law Enforcement Academy, 2260 Sierra Road East, Helena, Montana, to consider the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

3. The new rules as proposed to be adopted provide as follows:

NEW RULE I EMPLOYMENT AND TRAINING OF RESERVE OFFICERS

(1) An agency that appoints a reserve officer pursuant to 7-32-213, MCA, must submit a completed employment status form to the director within ten days of appointing the reserve officer.

(2) The employing agency is responsible for training the reserve officer. The reserve officer must complete training as prescribed in this rule within two years of the reserve officer's initial appointment

(3) Training must, at a minimum, consist of the courses and hours listed in 7-32-214(1), MCA.

AUTH: 2-15-2029(2), MCA

IMP: 7-32-214, 44-4-401(2)(e), 44-4-403(1), MCA

REASON: The POST Council has responsibility for establishing employment and training requirements for "public safety officers," a term that includes reserve officers. This rule is reasonably necessary to let employing agencies know that they are responsible for training reserve officers they employ and what criteria fulfill the minimum training requirements. This proposed rule fulfills POST's responsibilities with respect to the employment and training of reserve officers, and implements POST Resolution 08-002, adopted August 21, 2008, which adopted these standards. The resolution can be found on the POST Council's web site at the following link: <https://doj.mt.gov/post/post-resolutions/>.

NEW RULE II FIREARMS PROFICIENCY STANDARDS (1) Each agency that employs a public safety officer who is authorized to carry firearms during the work assignment must:

(a) require the officer to complete successfully the firearms proficiency requirements provided in this rule at least once a year, for any manufacture and model of firearm customarily carried by that officer;

(b) designate a POST-certified agency firearms instructor to document annual firearms proficiency, which must include:

(i) date of qualification;

(ii) identification of the officer;

(iii) firearm manufacture and model;

(iv) results of qualifying; and

(v) course of fire used.

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records.

(2) The minimum standards for annual firearms proficiency are:

(a) Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;

(b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;

(c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;

(d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 100 yards;

(e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic.

(3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.

(4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.

AUTH: 2-15-2029(2), MCA

IMP: 7-32-303(2), 44-4-403(1), MCA

REASON: The council has statutory authority to establish training standards for public safety officers. This rule is reasonably necessary to set minimum proficiency standards for firearms and to require documentation for each officer's proficiency that must be available to POST. Firearms proficiency is an important element of officer training, promoting both efficiency in the enforcement of the law and safety for the public. This rule implements resolution 10-003, adopted April 15, 2010, which adopted similar standards. The resolution can be found on the POST Council's web site at the following link: <https://doj.mt.gov/post/post-resolutions/>. An administrative rule is required to make the policy enforceable.

NEW RULE III RECORD OF ALL POST COUNCIL MEETINGS (1) As required by Title 2, chapter 6, MCA, POST will maintain records of all meetings and make those records available for public inspection. The record consists of an audio recording and minutes of the proceedings. The audio recording is the official record of POST meetings.

AUTH: 2-15-2029(2), MCA
IMP: 2-3-212, 44-4-403(1), MCA

REASON: This rule is reasonably necessary to implement the requirements for keeping public records of POST's meetings. POST finds that audio recordings are the best method for maintaining records of meetings because recordings are relatively inexpensive, accurate, can be easily copied and shared for public inspection, and are well-suited for long-term storage.

NEW RULE IV FORMAL MAPA CONTESTED CASE PROCEEDINGS (1) A contested case involves a determination by POST that affects the rights or responsibilities of the respondent.

(2) Contested case proceedings may be commenced only after the requirements of ARM 23.13.704 have been met and an officer has requested a hearing.

(3) Formal proceedings for suspension or revocation are subject to MAPA, in addition to, where applicable, the Montana Rules of Civil Procedure, the Montana Uniform District Court Rules, the Montana Rules of Evidence, the Montana Rules of Professional Conduct, the Montana Code of Judicial Conduct, and these rules.

(4) A respondent's failure to respond, appear, or otherwise defend a notice of agency action of which the respondent has had notice, may result in the hearing examiner finding the officer in default and entering an order against the officer containing findings of fact, conclusions of law, and an opinion in accordance with MAPA, Montana Rules of Civil Procedure, and any other rule of law applicable.

(5) A party may be self-represented, or may, at the party's own expense, be represented by an attorney licensed to practice law in the state of Montana.

(6) Contested case counsel for POST will represent POST during the proceedings.

AUTH: 2-15-2029(2), 2-4-201, MCA
IMP: 2-4-201; Title 2, chapter 4, part 6; 44-4-403(3), MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE V ADOPTION OF ATTORNEY GENERAL'S MODEL RULES

(1) The POST Council adopts and incorporates by reference the Attorney General Model Rules ARM 1.3.216, 1.3.226, 1.3.227, 1.3.228, 1.3.229, 1.3.230, and 1.3.232 in effect. The model rules incorporated by reference can be found on the Secretary of State's web site at <http://sos.mt.gov/>. In applying the model rules, references to "the agency" should be interpreted to refer to "the POST Council."

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-201, 2-4-202, Title 2, chapter 4, part 6, 44-4-403(3), MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE VI CONTESTED CASES, DISCOVERY

(1) In all contested cases, discovery is available to the parties in accordance with Rules 26 through 37 of the Montana Rules of Civil Procedure. All references to "court" will be considered references to the hearing examiner or POST Council; all references to subpoena power will be considered references to ARM 1.3.230; all references to "trial" will be considered references to "hearing"; all references to "plaintiff" will be considered references to "a party"; all references to "clerk of court" will be considered references to the hearing examiner.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the hearing examiner, the adversely affected party may seek enforcement in district court under 2-4-701, MCA.

(3) If either party seeking discovery believes it has been prejudiced by a protective order issued by the hearing examiner under Rule 26(c), M.R.Civ.P., or, if either party refuses to make discovery, the aggrieved party may petition the district court for review of the hearing examiner's action under 2-4-701, MCA.

(4) Severe failures of discovery may also be sanctioned pursuant to M.R.Civ.P. 37 and the case law interpreting it. Sanctions under this subsection may be enforced by or appealed to district court pursuant to 2-4-701, MCA.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-104, 2-4-602, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE VII CONTESTED CASES – HEARING EXAMINERS

(1) The POST Council chair or the director may appoint a hearing examiner to conduct a hearing in a contested case, as allowed by 2-4-611, MCA.

(2) A hearing examiner appointed under 2-4-611, MCA and this rule may:

- (a) administer oaths or affirmations;
- (b) issue subpoenas;

- (c) provide for the taking of testimony and depositions;
 - (d) set the time and place for hearing;
 - (e) set motion and briefing schedules that comport with the Montana Rules of Civil Procedure and the Montana Uniform District Court Rules for filing, service, deadlines, and time calculation;
 - (f) by mutual consent of the parties, hold conferences to consider narrowing or simplifying the issues;
 - (g) rule on summary judgment motions, motions in limine, and other motions and, if motions are dispositive, make recommendations to the POST Council as if a hearing on the merits had occurred;
 - (h) allow, disallow, or limit expert testimony;
 - (i) recommend to the council dismissal of the case based on M.R.Civ.P. 41, default, or other reason;
 - (j) provide for and conduct the MAPA contested case process as a matter of discretion, within the bounds of the applicable law.
- (3) If a hearing examiner is appointed in a contested case proceeding, notice must be provided to the public safety officer with the notice of agency action or immediately after the officer requests a hearing pursuant to 44-4-403, MCA.
- (4) Pursuant to 2-4-611(4), MCA, the POST Council may disqualify a hearing examiner if a party shows by affidavit the existence of personal bias, lack of independence, disqualification by law, or other ground for disqualification.
- (5) If a hearing examiner recuses himself or herself for good cause, the director or POST Council may appoint a replacement.
- (6) For guidance on the POST Council's past actions on cases and penalties imposed, a hearing examiner may inspect POST's integrity report, available on POST's web site or from POST staff, and may examine any POST file not containing privileged, ex parte, or other protected or constitutionally private material.

AUTH: 2-4-201, 2-15-2029(2), MCA

IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403(3), MCA

REASON: See Reason following Proposed New Rule XII.

NEW RULE VIII CONTESTED CASE HEARING (1) The contested case hearing will be conducted before the POST Council or a hearing examiner, at the council's discretion.

(2) The director will set the venue for the hearing.

(3) At the contested case hearing, the respondent has the burden of proving by a preponderance of the evidence that there was no basis for the sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action.

(4) The director may be represented by contested case counsel during the contested case process.

(5) The hearing examiner must ensure that the respondent and counsel for POST are afforded the opportunity to respond and present evidence and argument on all issues involved.

(6) Absent a determination by the hearing examiner that the interests of justice require otherwise, the order of hearing is as follows:

- (a) opening statements by both parties;
- (b) presentation of evidence by the respondent;
- (c) cross examination by POST;
- (d) presentation of evidence by POST;
- (e) cross examination by the respondent; and
- (f) rebuttal testimony.

(7) All testimony must be given under oath or affirmation.

(8) Exhibits must be marked and must identify the party offering the exhibits. The exhibits will be preserved by the hearing examiner and then by POST as part of the record of the proceedings.

(9) The hearing examiner may hear closing arguments, request written argument, order a schedule for parties to submit a prehearing memorandum, a final prehearing order, proposed findings of fact and conclusions of law, or any other writings that might assist the hearing examiner.

(10) The hearing examiner may grant recesses or continue the hearing.

AUTH: 2-4-201, 2-15-2029(2), MCA

IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See Reason for proposed New Rule XII.

NEW RULE IX CONTESTED CASES, EVIDENCE (1) All evidence introduced in a contested case hearing will be received and evaluated in conformance with common law and statutory rules of evidence, including the Montana Rules of Evidence.

AUTH: 2-4-201, 2-15-2029(2), MCA

IMP: 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE X CONTESTED CASES, EX PARTE COMMUNICATIONS

(1) Pursuant to 2-4-613, MCA, ex parte communication by a party or a party's agent with the hearing examiner, the council, any individual member of the council, or any person authorized to participate in the decision of the contested case, is expressly prohibited unless otherwise authorized by law.

(2) An unauthorized ex parte communication may be treated as a default and may constitute a waiver of the party's rights to proceed.

(3) If an ex parte contact occurs, the person receiving the communication must state on the record the nature and content of the communication and a summary of its contents. The presiding officer or hearing examiner may, in the exercise of discretion, make any order that is appropriate.

AUTH: 2-4-201, 2-15-2029(2), MCA

IMP: 2-4-201, 2-4-202, 2-4-613, 44-4-403, MCA

REASON: See Reason following proposed New Rule XII.

NEW RULE XI CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE (1) Pursuant to 2-4-631(3), MCA, if the director or the council determines that public health, safety, or welfare requires emergency action, the director or council may immediately suspend a certification. The order must include findings justifying emergency action, and regular proceedings must be promptly initiated.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 2-4-631(3), 44-4-403, MCA

REASON: See Reason for proposed New Rule XII.

NEW RULE XII CONTESTED CASES, SETTLEMENT OR STIPULATION AND PROCESS FOR REVIEW BY THE POST COUNCIL (1) If, in the course of the MAPA contested case proceeding, the parties reach a stipulated agreement or settlement, the parties must:

- (a) put the agreement into writing, signed by the respondent or the respondent's legal representative and the director;
- (b) present the agreement to the POST Council for acceptance or rejection:
 - (i) if the council accepts the agreement by motion, then the agreement becomes the POST Council's final agency action;
 - (ii) if the council rejects the agreement, then the parties must provide the hearing examiner an excerpt of the official record of the POST meeting in which the council rejected the agreement. The contested case proceeds as though there had been no agreement.
- (2) By signing a stipulation or settlement agreement, all parties:
 - (a) indicate their understanding that all agreements reached during the contested case process are subject to the POST Council's approval and are not binding until the council has approved the agreement by seconded motion;
 - (b) waive their rights or privileges to raise any argument, objection, complaint, or attempt to disqualify or remove any POST Council member or hearing examiner based on that individual's having heard, discussed, or ruled on the agreement. By submitting an agreement to the hearing examiner and the council, all parties agree not to attempt to disqualify that hearing examiner or any member of the POST Council who considers the agreement or prevent them from ultimately hearing the case on the merits if the agreement is rejected.

AUTH: 2-4-201, 2-15-2029(2), MCA
IMP: 44-4-403, MCA

REASON: NEW RULES IV through XII are reasonably necessary to set forth the procedural rules that govern POST contested case proceedings and to clarify the roles of the parties, the hearing examiner, POST, and others. Based on past experience, the absence of administrative rules governing POST contested cases has resulted in confusion regarding how proceedings are initiated, what rules apply

(MAPA, rules of evidence, Attorney General model rules, etc.), what authority a hearing examiner possesses, what authority POST continues to exercise during a contested case, and other matters. These new rules attempt to address this confusion. These rules are necessary to establish that POST contested cases are formal matters that, procedurally, closely parallel state district court proceedings. Similarly, incorporation of evidentiary rules and discovery rules serve to further clarify the process for fact-finding within the case proceeding. These rules attempt to provide parties a fair process for resolving disputes and, at the same time, eliminate the uncertainty and unnecessary disputes over process that occurred in the past.

NEW RULE XIII NOTICE TO THE PUBLIC OF POST COUNCIL ACTIONS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, POST will afford reasonable opportunity for public participation. Reasonable opportunity for public participation may be afforded by:

(a) any of the agency actions allowed pursuant to 2-3-104, MCA; or
(b) a notice of the proposed agency action published in the register in accordance with template 102a (www.armtemplates.com). POST may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

(3) Public comment on any public matter within the jurisdiction of POST must be allowed at any public meeting under 2-3-103(1)(b), 2-3-202, and 2-3-203, MCA, defining "public matter" and "meeting" and stating the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

AUTH: 2-4-201, 2-15-2029(2), MCA

IMP: 2-3-103, 2-3-104, 2-3-203, 44-4-403, MCA

REASON: Section 2-3-103, MCA, requires each agency to adopt by rule procedures "for permitting and encouraging the public to participate." This proposed rule adopts Attorney General Model Rule ARM 1.3.102, with minor grammatical changes.

NEW RULE XIV PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS (1) Except as provided in (2), the standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field.

(2) The standards set forth in (1) do not apply to reserve officers.

(3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers.

AUTH: 2-15-2029(2), MCA
IMP: 7-32-303, 44-4-403(1), MCA

REASON: The council proposes to adopt this new rule to add needed clarity for readers as to the source of requirements for education and training for public safety officers and the obligation by employing agencies to notify the POST Council in case of a change in status of a public safety officer. Section 7-32-303(5), MCA, states the circumstances under which an experienced peace officer can achieve certification through equivalency. POST believes this opportunity should be extended to public safety officers, with the exception of reserve officers, and this rule accomplishes this goal. This rule also extends the requirement in 7-32-303(4), MCA that an employing agency notify POST within ten days after hiring a peace officer to all public safety officers. Section 7-32-303(4), MCA currently requires ten-day notice for hiring and termination of peace officers. This requirement allows POST to keep track of officers who are terminated for poor conduct or misconduct, and helps prevent these officers from obtaining employment with another Montana agency. The proposed rule extends this protection to all public safety officers. It also allows POST to track continuous employment by officers for purposes of implementing 7-32-303(5), MCA. Because POST and employing agencies currently use the ten-day notification process for peace officers, adopting this requirement is a convenient method that allows POST to be informed of the employing agencies with public safety officers.

4. The rules as proposed to be amended provide as follows, new material underlined and deleted material interlined:

23.13.101 ORGANIZATION AND GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS ~~(1) The Montana Public Safety Officer Standards and Training Council (council), as created by 2-15-2029, MCA, is a quasi-judicial council allocated to the Department of Justice for administrative purposes only.~~

~~(2) The council membership is defined in 44-4-402, MCA.~~

~~(3) As used in ARM 23.13.101 through 23.13.712, the definitions set forth in 44-4-401, MCA, apply.~~

(1) The organization and function of the Public Safety Officers Standards and Training Council ("POST" or "POST Council") are described in ARM 23.1.101(1)(d), (2)(k), and (4).

(2) POST will maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders must be available for public inspection on request. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

AUTH: 2-15-2029, MCA
IMP: 2-4-201(1), 2-4-623(6), 2-15-2029, MCA

REASON: A description of the agency's organization and purpose is required by 2-4-201, MCA. Section (1) shortens the existing rule and eliminates unnecessary duplication. An index of agency decisions is required by 2-4-623(6), MCA. Section

(2) is necessary to address this requirement, and follows the provisions of Model Rule ARM 1.3.233. Prior to this amendment, POST did not have a rule addressing the requirements of 2-4-623(6), MCA, which requires each agency to index decisions in contested cases and make the decisions available to the public. This proposed amendment fills that gap in POST's rules and brings the rules into compliance with statute.

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) ~~Public~~ All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, including but not limited to 44-4-404, MCA, as defined in 44-4-401, MCA, all public safety officers shall must:

(a) be a citizen of the United States or may be a registered alien if unsworn;
(b) be at least 18 years of age;
(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary;

(e) be a high school graduate or have ~~passed the general education development test and have~~ been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

(f) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative; ~~and~~

(g) be in good standing with any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state;

~~(g)~~ (h) possess a valid driver's license if driving a vehicle will be part of the officer's duties;

(i) take an oath containing the code of ethics and abide by the code of ethics contained in ARM 23.13.203; and

(j) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:

(i) a review of the Code of Ethics ARM 23.13.203 and Grounds for Sanction, Suspension, and Revocation ARM 23.13.702;

(ii) review of the annual POST integrity report;

(iii) discussion involving core values of each employing agency which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;

(iv) review of agency policy and procedure regarding ethical and moral codes of conduct;

(v) discussion of the similarities and differences between agency and POST consequences for actions that violate policy or rule.

(3) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of (2)(i) and (2)(j). The employing agency must maintain records of the administration of the oath and the continuing education hours acquired to satisfy (2)(i) and (2)(j). Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: The POST Council has adopted a policy, POST Resolution 11-001, requiring in-service training for certified public safety officers. The resolution can be found on the POST Council's web site at the following link:

<https://doj.mt.gov/post/post-resolutions/>. This amendment implements that policy as rule, making it enforceable through a disciplinary action. However, based on past experience, the council believed that the number of in-service hours should be reduced from 40 hours to 20 hours, and this amendment reflects that judgment. The change to (2)(e) is necessary because the Office of the Superintendent of Public Instruction no longer recognizes the GED test. New (2)(g) requires an officer to remain in good standing with all agencies of other states that have certified or licensed the officer. This amendment prevents an officer from losing certification in another state and then being certified in Montana. New (2)(i) clarifies the existing rule that the code of ethics applies to officers who were certified before the code was originally adopted as rule in 2008. This change is needed to prevent a double standard and to clarify that ethics do not vary based on an officer's hire date; an officer who deviates from the code of ethics has violated the ethics code regardless of when the offending officer was hired. New (2)(j) clarifies that the in-service training must include specified ethics topics.

New (3) is necessary to remove any confusion over which agency must maintain records, and it clarifies that the employing agency is responsible for maintaining records of the administration of the oath containing the code of ethics and the completion of in-service training required by (2)(i) and (2)(j). The amendments also make minor changes in grammar for clarity.

~~23.13.203 CODE OF ETHICS (1) Regulations governing certification of public safety officers requires that a code of ethics shall be administered as an oath.~~

~~(1) All public safety officers who have been hired or employed by any agency or entity in Montana, or who have been certified by POST, or who have attended an MLEA basic class must be administered an oath regarding the code of ethics contained herein.~~

~~(2) The procedure for administration of the code of ethics is as follows:~~

~~(a) each applicant for certification officer will attest to this code of ethics and the oath shall be administered by the head of the public safety agency for which they~~

~~serve officer's employing authority, or by the Montana Law Enforcement Academy (academy) MLEA administrator or designee, or by the POST director or POST staff;~~

(b) ~~the applicant officer and the administrator individual~~ administering the oath will sign ~~two copies of~~ the public safety code of ethics; and

(c) ~~at least one copy will be retained by the applicant officer or the officer's employing authority and the other copy will be retained in the applicant's academy student file, which will be made~~ available for inspection by ~~the council~~ POST staff at any reasonable time.

(3) All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule, even if it was not previously administered to them as an oath. Continued employment as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for suspension, sanction, or revocation of any POST certificate.

~~(3)~~ (4) The oath of the public safety officers' code of ethics is:

(a) "My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged-;

(b) "I ~~shall~~ will perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct-;

(c) "I will enforce or apply all laws and regulations appropriately, courteously, and responsibly-;

(d) "I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person-;

(e) "Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise-;

(f) "I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and ~~shall~~ will disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties-;

(g) "I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice-;

(h) "I will be responsible for my professional development and will take reasonable ~~opportunities~~ steps to improve my level of knowledge and competence-;

(i) "I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 7-32-303(2), 44-4-403(1)(a), MCA

REASON: The proposed amendment is necessary to clarify that the code of ethics applies to all officers, regardless of when they were hired or certified. This

amendment also makes minor changes in procedure to promote efficiency and in language and format to promote clarity.

23.13.204 PURPOSE OF CERTIFICATES (1) Certificates are awarded by the council for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, administrative, and other certificates are established for the purpose of promoting ethical behavior, professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council ~~shall have~~ has the power to recall, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence as determined by the council.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 7-32-303(7), 44-4-403(1)(a), MCA

REASON: The proposed amendments are necessary to clarify the broad purposes served by POST Council certificates and the standard of proof for sanctions. POST finds that adding a standard of proof is necessary to promote fairness to the officers the POST Council has certified.

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal agency, state, tribal entity, county, municipality, city, or town, as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers ~~shall~~ must complete the required basic training as set by the council.

(3) All public safety officers must shall attest that they subscribe to the code of ethics as prescribed in ARM 23.13.203. Acceptance of POST certification is an agreement to abide by and adopt the code of ethics and refrain from the behaviors outlined in ARM 23.13.702.

(4) Prior to issuance of any certificate, the public safety officer ~~shall~~ must have completed the designated combinations of education, training, and experience as computed by the credit hour system established ~~annually~~ by the council.

(5) To maintain certification the officer must:

(a) abide by all laws and rules of Montana, including those set forth herein;

(b) maintain ethical conduct by upholding and abiding by the code of ethics set forth in ARM 23.13.203 and refrain from engaging in any behavior that constitutes a ground for sanction, suspension, or revocation under ARM 23.13.702;

(c) maintain the continuing education and training requirements set forth by the council and ARM 23.13.201(2)(j).

~~(5)~~ (6) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies ~~shall~~ will be determined by the council, and requires notice of application for credit.

(7) In calculating the training hours for an intermediate, advanced, or supervisory certificate, no more than 25% of the required training hours will be allowed from any college or military training credits and no more than 15% will be allowed from in-service training.

(a) The POST Council is not responsible for maintaining records of in-service training hours acquired to satisfy the requirements of this rule. The employing agency must maintain records of in-service training hours acquired to satisfy this rule and provide those records with the application for intermediate or advanced certificates.

(8) In calculating the training hours for an intermediate, advanced, or supervisory certificate, military training will be accepted hour for hour only with a written explanation of how the training relates to civilian law enforcement and other supporting documents requested by the director.

(9) In calculating the training hours for an intermediate, advanced, or supervisory certificate, college education will be credited for individual class work only. Credit will be given using the formula of ten hours for one semester credit hour and six hours for one quarter credit hour, and must be accompanied by a written explanation of how the higher education course relates to public safety officer work and supporting documents including a transcript.

~~(6)~~ (10) Applicable discipline-specific experience in any public safety agency will be considered by the council when determining the minimum standards for certification of each discipline.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: Amendments to (1) through (5) are necessary to clarify that the code of ethics applies to all officers, regardless of hire date. The amendments in (6) make minor changes in wording for clarity. The proposed amendments in (7) through (10) set out the manner in which the council accounts for training hours for purposes of certification. These amendments implement Resolution 08-001, adopted August 21, 2008, and Resolution 10-001, adopted February 14, 2011. The resolutions can be found on the POST Council's web site at the following link:

<https://doj.mt.gov/post/post-resolutions/>. The resolutions are reasonably necessary to provide criteria for local agencies and notice to officers of how POST calculates training hours. The new rule language is needed to make those policies enforceable.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the following are required for the award of the basic certificate:

(a) Public safety officers hired after the effective date of this regulation ~~shall~~ must have completed:

(i) the probationary period prescribed by law or by the current employing agency, but in any case have a minimum of one year discipline-specific employment experience with the current employing agency; and

(ii) the basic course or the equivalency as defined by the council; ~~and~~

~~(iii) application for the basic certificate.~~

(b) Public safety officers hired before the effective date of this regulation ~~shall~~ must have:

(i) completed the probationary period prescribed by the employing agency, and ~~shall have~~ served a minimum of one year with the present employing agency;

(ii) completed the basic course at the ~~academy~~ MLEA, or an equivalency as defined by the council; or

(iii) remains the same.

(c) Public safety officers with out-of-state ~~experience and training~~ or who have been formerly employed by a designated federal agency, state, tribal entity, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) ~~shall~~ must have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training ~~and~~ or service time is determined by the council as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the ~~academy~~ MLEA. The council will require those who fail an equivalency program to successfully complete the basic course at the academy; and

(iii) whose training ~~and~~ or service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course; ~~and~~

~~(iv) shall have been employed as a public safety officer for a minimum of one year within the last five years prior to employment in Montana.~~

(d) remains the same.

(e) The council may grant a one-time extension to the one year time requirement for public safety officers upon the written application of the public safety officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) through (g) remain the same.

(2) An officer meeting the qualifications outlined above will be issued a basic POST certificate. POST will consider the completion of the above requirements to constitute the officer's application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment clarifies that POST considers an officer's completion of the training and experience requirements an implied request for a certificate, and POST will issue a certificate once the requirements are satisfied. This amendment is reasonably necessary to address past abuses from officers who exploited a loophole in the rules to attempt to avoid disciplinary action. For example, prior to this amendment, an officer could avoid a POST certificate simply by not applying for a certificate. Then, if the officer engaged in conduct that could result in disciplinary action, the officer could argue that POST had no authority because the officer had no certificate to suspend or revoke. This amendment forecloses this tactic. Additionally, this amendment is necessary to clarify the probationary period for a basic certificate, makes the rule consistent with 7-32-303(5)(c), MCA, and makes minor grammatical changes for clarity.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER

INTERMEDIATE CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and is satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) ~~shall~~ must possess the discipline-specific basic certificate; and

(c) ~~shall~~ must have four years discipline-specific experience and 200 job-related POST-approved training hours.

(2) Officers who believe they are eligible for an intermediate certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines as a matter of discretion that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director, the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an intermediate certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and basic certificate of the officer seeking intermediate certificate must be "discipline-specific," i.e., must be in the same discipline for which the intermediate certificate is sought.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED

CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the advanced certificate:

(a) ~~shall~~ must possess the discipline-specific intermediate certificate; and

(b) ~~shall~~ must have eight years' discipline-specific experience and 400 job-related POST-approved training hours.

(2) Officers who believe they are eligible for an advanced certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an advanced certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and intermediate certificate of the officer seeking advanced certificate must be "discipline-specific," i.e., must be in the same discipline for which the advanced certificate is sought.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER

SUPERVISORY CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the supervisory certificate:

(a) ~~shall~~ must possess the discipline-specific intermediate certificate;

(b) ~~shall~~ must have successfully completed a 40 32-hour POST-approved management course; and

(c) ~~shall~~ must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(2) A first-level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities, ~~and most commonly is the rank of sergeant.~~

(3) Officers who believe they are eligible for a supervisory certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of a supervisory certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and intermediate certificate of the officer seeking supervisory certificate must be "discipline-specific," i.e., must be in the same discipline for which the supervisory certificate is sought. Additionally, to avoid confusion, this amendment removes the reference to "commonly affected rank" because this language could be read as a limitation, which was not the intention.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the command certificate:

- (a) ~~shall~~ must possess the discipline-specific supervisory certificate;
- (b) ~~shall~~ must have completed a professional development course or courses cumulating a minimum of 200 hours or more of POST-approved, supervisory, management or leadership topic matter; and
- (c) ~~shall~~ must have served satisfactorily at the command or mid-management level currently and for one year prior to the date of appointment, as attested to by the head of the employing agency.

(2) Officers who believe they are eligible for a command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of a command certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and supervisory certificate of the officer seeking command certificate must be "discipline-specific," i.e., must be in the same discipline for which the command certificate is sought.

23.13.211 REQUIREMENTS FOR PUBLIC SAFETY OFFICER

ADMINISTRATIVE CERTIFICATE (1) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the administrative certificate:

(a) ~~shall~~ must possess the discipline-specific advanced and command certificate; and

(b) ~~shall~~ must have served satisfactorily at the administrative or management level of the employing agency currently and for a period of one year prior to the date of application.

(2) remains the same.

(3) Officers who believe they are eligible for an administrative certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an administrative certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. In addition to clarifying the process, this amendment also clarifies that the experience and advanced and command certificates of the officer seeking the administrative certificate must be "discipline-specific," i.e., must be in the same discipline for which the administrative certificate is sought.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) ~~For the purposes of ARM 23.13.302,~~

~~23.13.304, and 23.13.401, the following definitions apply:~~

~~(a) "field training" is instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment;~~

~~(b) "in-service training" is training provided within a law enforcement and/or public safety agency that is utilized to review and develop skills and knowledge, and is primarily unique to specific agency needs;~~

~~(c) "POST approved training" is training reviewed and approved by the council and includes, but may not be limited to basic, regional, and professional courses; and~~

~~(d) "roll call training" is instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.~~

~~(2) The council is responsible for the approval of all public safety officer training programs:~~

~~(a) It shall be the responsibility of the sponsoring agency to follow the required reporting procedures and monitor the standards for training, trainee attendance, and performance as set by the council; and~~

~~(b) Attendance records, where applicable tests and test scores for all POST approved training courses shall be retained by the council.~~

~~(1) The director may approve any request for POST training credit or course content accreditation. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.~~

~~(3) (2) The course requirements for POST approved training include To obtain the status of POST-approved training, training courses must:~~

~~(a) meeting meet the requirements contained in (2), the requirements for trainee attendance and performance, and the instructor requirements contained in these rules;~~

~~(b) being be based upon generally recognized best practices;~~

~~(c) comporting comport with Montana laws and court decisions; and~~

~~(d) being be at least two hours or more in length. ;~~

~~(e) be advertised and open to all public safety agencies; and~~

~~(f) contain course content that has been reviewed and approved by the director, either before or after the training occurs, through the procedures set forth in (3).~~

~~(3) To receive POST training credit, employing agencies or any person or entity seeking course credit for POST-certified officers must submit to the director:~~

~~(a) application for accreditation;~~

~~(b) instructor certification or training record and an instructor biography;~~

~~(c) material showing course content, including a syllabus and/or lesson plan and student handouts.~~

~~(4) Approval requirements for training courses presented or sponsored by public safety agencies are:~~

~~(a) any public safety agency requesting approval of the training course must meet the accreditation requirements as mandated by POST prior to the commencement of a training course; and~~

~~(b) each course must be advertised and open to all public safety agencies.~~

~~(4) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to follow the required reporting procedures set forth in these rules and as set by the director and monitor the standards for training, trainee attendance, and performance as set by the council.~~

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(b), MCA

REASON: More public safety officer training is being offered by private vendors, and the manner in which individual public safety agencies authorize and approve training differs from agency to agency. The POST Council finds that rules that describe how it approves training programs and applications for accreditation will promote consistency for training vendors and agencies, while at the same time help

ensure that officers receive the appropriate training. Accordingly, this proposed rule amendment is necessary to promote fairness for officers and agencies while clarifying the POST Council's responsibilities and providing clear guidelines for POST staff. The definitions in ARM 23.13.301(1) have been transferred to the general definition rule, ARM 23.13.102, so that they will be applicable to all of the POST Council's rules.

23.13.304 THE BASIC COURSES (1) The amount of training for which credit will be granted in any basic public safety officer's course ~~shall~~ will be prescribed by the council.

(2) Students in any basic public safety officers' course ~~shall be~~ are required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council ~~shall annually~~ will review and approve the curriculum for all basic public safety officers' courses by examining and approving performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(a) All lesson plans submitted to the POST Council for accreditation must contain, at a minimum:

(i) the title of the lesson plan;

(ii) the training goal of the lesson plan;

(iii) application level performance objectives;

(iv) the method of evaluation;

(v) the student materials and handouts;

(vi) course content references.

(4) The council may approve changes from the course content established at the last ~~annual~~ review upon written application from the MLEA administrator ~~of the academy~~ providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(b), MCA

REASON: This amendment is necessary to set forth the criteria for basic training courses. The goal of including these criteria is to help vendors and agencies know what their lesson plans must include, thus facilitating POST-approval of their courses. The amendment implements Resolution 09-002, adopted on April 16, 2009, in order to make the policy enforceable. The resolution can be found on the POST Council's web site at the following link: <https://doj.mt.gov/post/post-resolutions/>. It also deletes the requirement for annual review by the POST Council of the basic curriculum, and makes minor changes in grammar.

23.13.702 GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The ~~executive director or the council shall~~ will consider ~~and rule on any complaint~~ legitimate allegation made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of material any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(b) a physical or mental condition that substantially limits the person's officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable accommodation;

(c) addiction to or the unlawful use of or addiction to any controlled substances or other drug(s) that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable treatment;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) the commission conviction of a felony, or an offense which would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;

(f) conviction of any offense involving unlawful sexual conduct or unlawful physical violence;

(~~f~~) (g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

(~~g~~) (h) willful violation of the code of ethics set forth in these rules ARM 23.13.203;

(~~h~~) (i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;

(~~i~~) (j) failure to meet the minimum standards for employment as a public safety or peace officer set forth in these rules or Montana law;

(~~j~~) (k) failure to meet the minimum training requirements provided in or continuing education and training requirements for a public safety or peace officer required by Montana law and these rules; or

(~~k~~) (l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the agency's employing authority's or officer's reputations, or to the public's confidence in the profession;

(m) operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer as defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of Montana law regulating the conduct of public safety officers;

(n) the use of excessive or unjustified force in conjunction with official duties;
or

(o) the sanction, suspension, or revocation of any license or certification equivalent to a POST certification imposed by a board or committee equivalent to POST in any other state.

(3) Conviction of any felony, an offense which would be a felony if committed in this state, or of an offense for which the person could have been imprisoned in a

~~federal or state penitentiary will be cause for an automatic referral to the council for revocation of an officer's certification.~~

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(c), MCA

REASON: This amendment is reasonably necessary to clarify that sanctions are related to behaviors that negatively affect an officer's abilities or that negatively affect the public's confidence in public safety officers. This amendment, along with others, including the amendments to the code of ethics, reflects POST's finding that officers must hold themselves and their profession to high standards. POST also finds that officers deserve to know what is expected of them. POST's goals in expressly clarifying the existing grounds for sanctions and including additional grounds for sanctions, are to provide guidance to officers, to promote fairness for officers who have been accused of wrongdoing, and to provide guidance to the council so that its decisions will bear meaningful appellate review. Additionally, there are grammatical changes to promote clarity.

~~23.13.703 PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR~~

~~(1) Any complaint made against a public safety officer that alleges grounds for sanction, suspension, or revocation that is not made by the director or the governmental unit employing the officer shall be made initially to the appropriate governmental unit by the complainant.~~

~~(2) The appropriate governmental unit shall issue a written ruling on the initial complaint. A copy of the initial complaint and the governmental unit's written ruling shall be forwarded to the director.~~

~~(3) If a complainant wishes to pursue their complaint with the council, the complaint must be in writing and provide at least the following information:~~

~~(a) name, address, and telephone number of the complainant (the director may keep this information confidential for good cause shown);~~

~~(b) name and place of employment of the person complained against; and~~

~~(c) a full and complete description of the incident.~~

~~(4) Complaints made by or filed with the director shall be investigated by the director and/or their designee.~~

~~(5) Following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following:~~

~~(a) file a formal complaint with the council on their own behalf;~~

~~(b) send a written letter of inquiry to the subject of the complaint, explaining the allegation of violation and requesting an explanation or statement of intent to cure the violation;~~

~~(c) issue an appropriate sanction, enter into a stipulation or memorandum of understanding with the officer or his counsel, or otherwise informally resolve the complaint;~~

~~(d) accept the voluntary surrender of a certificate issued by the council; or~~

~~(e) for good cause, recommend closure of the investigation of a complaint.~~

~~(6) In all cases that are not forwarded to the council for formal proceedings, the director shall, when the case is closed, file a written report setting forth the circumstances and resolution of the case.~~

(1) The POST Council will create, maintain, and adopt in public meetings a "flow chart" policy and procedure for processing and responding to allegations. The flow chart policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.

(2) Any allegation made against a public safety officer that states potential grounds for sanction, suspension, or revocation of POST certification must be made initially to the employing authority of the officer in question by the individual making the allegation, unless the employing authority is making the allegation.

(3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the employing authority of the allegation. This requirement does not apply if the allegation has been made against the highest ranking officer in the agency, who would otherwise constitute the employing authority, and there is some reason to believe that the investigation or public safety would be put in danger by such a notification.

(4) After being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, preferably in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director.

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation.

(a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.

(b) The allegation must provide at least the following information:

(i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;

(ii) the name and place of employment of the officer;

(iii) a complete description of the incident;

(iv) the remedy sought, including a recommendation for a sanction, suspension, or revocation of the officer's POST certification;

(c) A person or entity making an allegation is encouraged to use the allegation form available from POST staff.

(6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the employing authority.

(7) After an allegation has been received or has been initiated by the director, the director, in consultation with contested case counsel for POST, will correspond with the respondent in writing.

(a) All such correspondence must be copied to the employing authority, unless the exception noted in (3) applies.

(b) The flow chart and accompanying policy provided in (1), will outline the number and nature of these letters.

(c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the director and contested case counsel to gather more information, and allow the parties to reach an informal resolution.

(8) After an allegation is made by or filed with the director, the director, contested case counsel for POST, the POST compliance officer and investigator, or other POST staff or designees will investigate the complaint.

(9) Following the review and investigation of an allegation, communication with the respondent, communication with the employing authority, and consultation with counsel for POST, the director may take any appropriate action, including but not limited to the following:

(a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council;

(b) accept the voluntary surrender of a certificate;

(c) make one of the following findings:

(i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations made or the investigation conclusively proved that the act or acts complained of did not occur.

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s) made.

(d) issue the appropriate sanction, suspension, or revocation of a certificate;

(e) if a sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA;

(f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.

(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for revocation and suspension pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the

hearing examiner must grant a stay based on an application by the director or counsel for POST.

(11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's employing authority must also be maintained in the officer's POST file.

AUTH: 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: This amendment is reasonably necessary to implement the POST Council's new process for handling complaints against certified officers. An explanation of the need for the new process follows Proposed New Rule XII above. This rule replaces the existing rule and describes the new process. The procedures set forth in this rule provide fundamental due process to officers against whom allegations have been made while providing POST a workable means of processing its workload. The procedures in this rule precede the process described in proposed amended ARM 23.13.704.

23.13.704 COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION REQUESTS FOR A FORMAL CONTESTED CASE HEARING UNDER MAPA FOLLOWING SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION BY THE DIRECTOR

~~(1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, the designation of a presiding officer, and the issuance of a written order to show cause, and notice of opportunity for hearing.~~

~~(2) Formal proceedings for suspension or revocation are subject to the Montana Administrative Procedure Act, and must be conducted pursuant to that act.~~

~~(3) In formal proceedings, the respondent must file an answer, or be in default. The answer shall contain at least a statement of grounds of opposition to each allegation of the complaint which the respondent opposes.~~

~~(4) Service shall be made in a manner consistent with Montana law.~~

~~(5) If a review of the conduct of a person holding a certificate subject to revocation or suspension under these rules is pending before any court, council, tribunal, or agency, the director may, in their discretion, stay any proceedings for revocation and suspension pending before the council.~~

~~(6) In the event the respondent fails to answer, appear, or otherwise defend a complaint against them of which the respondent had notice, the presiding officer may enter an order containing findings of fact, conclusions of law, and an opinion in accordance with the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, and/or any other rule of law applicable.~~

~~(7) Any party may represent themselves, or may at their own expense be represented by an attorney licensed to practice law in the state.~~

~~(8) A representative from the office of the Attorney General may present the case of the complainant.~~

~~(9) The presiding officer may utilize a legal advisor to assist in conducting the hearing. If the presiding officer's legal advisor is employed by the office of the Attorney General, their contact with the representative from the office of the Attorney General who presents the case of the petitioner shall be restricted to that permitted by law.~~

~~(10) Unless required for disposition of ex parte matters authorized by law, after issuance of notice of hearing, the presiding officer may not communicate with any party or their representative in connection with any issue of fact or law in such case, except upon notice and opportunity for all parties to participate.~~

(1) If the director sanctions, suspends, or revokes an officer's POST certification pursuant to ARM 23.13.703(9) and the officer receives a notice of agency action, then the officer has the right to request a formal contested case proceeding under MAPA, to include a hearing, pursuant to 44-4-403(3), MCA.

(2) The proceedings and hearing can only be initiated by a request from the officer whose certificate was sanctioned, suspended, or revoked, and not by any other person or entity.

(3) To request a hearing, the officer must follow the instructions contained in the "notice of agency action" and notify the appropriate individual or the director that the officer requests a hearing within 30 days of the officer receiving the notice of agency action.

(4) Failure to notify and request a hearing within 30 days of receiving the notice of agency action will constitute a waiver of the right to a hearing.

AUTH: 2-15-2029, MCA

IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: This amendment is reasonably necessary to implement the POST Council's new policy for handling requests for contested case hearings. A full explanation of the need for the new process follows Proposed New Rule XIV above. The goals of the new policy are to provide more due process to officers seeking contested case hearings and also to clarify the applicable process. If an officer requests a hearing under this part, the hearing process is established in MAPA and in the Attorney General Model Rules to be adopted in Proposed New Rule V above.

23.13.711 CONTESTED CASES, RECORD OF PROCEEDINGS ~~(1) The record shall consist of the items enumerated in 2-4-614, MCA, and an audio recording of oral proceedings shall be the official record of the proceedings.~~

(1) The hearing examiner in the contested case proceeding is responsible for maintaining the official record of the contested case until its conclusion. The record must include:

(a) all pleadings, motions, and rulings;

(b) all evidence, either written or oral, received, or considered by the presiding officer;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings on objections;

(e) proposed findings and exceptions; and

(f) any decision, opinion, or report, and any proposed findings of fact, conclusions of law, and proposed order, entered by the hearing examiner, which must be in writing.

(2) The hearing examiner must number the docket and maintain it like the docket of a court of record.

(3) At the request of any party, all or part of the hearing proceedings must be transcribed. The cost of transcription is the responsibility of the requesting party.

AUTH: 2-15-2029, MCA

IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: MAPA requires maintenance of the record of contested case proceedings. This proposed rule amendment would govern the record of proceedings before POST. The new process supplants the existing rule, which is too brief to be very helpful. The amended rule adopts Attorney General's Model Rule ARM 1.3.220. Section (2) is new and obligates the hearing examiner or presiding officer to maintain the record as though in the office of a clerk of the district court. Following this practice will ensure that the record is complete for appellate review.

5. The rules as proposed to be transferred and amended provide as follows, new matter underlined, deleted matter interlined:

23.13.401 (23.13.212) INSTRUCTOR CERTIFICATION REQUIREMENTS

(1) remains the same.

(2) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline. To qualify as a primary instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) and (b) remain the same.

(c) must have successfully completed a 40-hour minimum instructor development course or equivalent approved by the ~~council~~ director;

(d) remains the same.

(e) must submit the specific lesson plan that is at least two hours in length, and which includes performance objectives, instructional strategies, and complete course content.

(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) and (b) remain the same.

(c) must have an endorsement from a ~~professional instructor~~ and the POST director, or designee, attesting to the applicant's competencies; and

(d) remains the same.

(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the

person shall apply to the council on a form approved by the council, and shall meet the following requirements:

(a) must be employed by a public safety agency as a full-time training and development specialist or equivalent; ~~and~~

(b) must have endorsement from the POST director or designee and agency administrator; and

(c) meet all of the requirements necessary to qualify as a master instructor as required by (3).

(5) The council will certify approved primary and master instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor ~~shall~~ will be listed in an official register of the council, and for each primary and master instructor, each subject that instructor is certified to teach ~~shall~~ will be noted in ~~said~~ the register.

(6) remains the same.

(7) After four years of continuous certification, ~~master~~ all instructors may be recertified for a four-year period.

(8) remains the same.

~~(9) Applications for instructor certification and renewal shall be reviewed by the council. Action on the application shall be made at the council's first regularly scheduled meeting following the review of the application.~~

(9) Officers who believe they are eligible for any instructor certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

~~(10) Whenever the council denies an application, renewal of certification, or recalls, suspends, or revokes an existing certification, the council will notify the applicant or holder within 15 days from the date of the council's action. Persons so notified will have 30 days from the date of receipt of notification to file with the council a written appeal of the denial or recall, suspension, or revocation. An informal hearing of the appeal will be held at the next regularly scheduled meeting of the council. During the period of the appeal, the certificate shall be suspended, and all findings and decisions will be pursuant to ARM 23.13.712.~~

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an instructor certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. Additionally, to make the rules easier to navigate and more user-friendly, all the certification requirements are being moved to subchapter 2 of the POST rules. Accordingly, it is necessary to

move this rule from subchapter 4 to subchapter 2. The amendment to this rule will also provide clarity and consistency by establishing the time limit for lesson plans, clarifying the roles of the "director" and the council as they pertain to instructor training courses, and removing language that conflicted with certification and disciplinary procedures.

23.13.501 (23.13.213) REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION (1) remains the same.

(2) The council ~~shall~~ will issue incident command certificates designated by:
(a) emergency response specialty; and
(b) area of expertise denoted as any of the ICS command staff positions or any of the general staff positions of planning, logistics, or finance.

(3) In addition to ARM 23.13.203 and 23.13.205, applicants for an award of a designated incident command certificate:

- (a) ~~shall~~ must possess an intermediate certificate;
- (b) ~~shall~~ must have completed an approved ICS course;
- (c) ~~shall~~ must have completed the required hours of additional training and testing for the command or general staff position for which certification is being sought;
- (d) ~~shall~~ must be trained within a specialized area of emergency response;
- (e) ~~shall~~ must have successfully served in a command or general staff capacity as attested to on an application by the applicant's agency administrator; and
- (f) ~~shall~~ must be eligible to respond as overhead support for mutual aid requests outside of the applicant's jurisdiction, as attested to on an application by the applicant's agency administrator.

(4) Officers who believe they are eligible for an incident command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 2-15-209, 44-4-403(1)(a), MCA

REASON: This amendment is reasonably necessary to inform officers who seek this certificate of the procedural requirements. The present rule says nothing about the process for securing the award of an incident command certificate, and POST finds that setting out the process in an administrative rule promotes transparency and makes the process fairer for officers who seek this certificate. Additionally, to make the rules easier to navigate and more user-friendly, all the certification requirements are being moved to subchapter 2 of the POST rules. Accordingly, it is necessary to move this rule from subchapter 5 to subchapter 2. These amendments

will also promote consistency in the rules by making the procedures for incident command certification the same as for other certifications.

23.13.701 (23.13.102) DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Allegation" means:

(a) a statement or accusation of misconduct made against a public safety officer to POST staff or the council by anyone;

(b) a statement or accusation of misconduct against a public safety officer made by the POST executive director acting upon any credible knowledge, information, or belief;

(c) the document or statement, prior to the notice of agency action, that initiates the informal revocation, suspension, or sanction proceeding against an officer.

~~(2) "Complainant" means:~~

~~(a) any person or entity making a complaint against a public safety officer to the council; or~~

~~b) the POST executive director acting upon any credible knowledge, information, or belief.~~

~~(4) (2) "Certification" or "certificate" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.~~

(3) "Contested case" means:

(a) a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules; or

(b) a proceeding initiated by a request for a hearing from the officer after the officer has received a notice of agency action imposing sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.

~~(3) (4) "Council" or "POST Council" or "POST" means the full 13-member public safety officer standards and training council as created by 2-15-2029, MCA.~~

~~(4) (5) "Director" or "executive director" means the executive director of the public safety officer standards and training council, as established by these rules.~~

~~(5) "Formal Proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.~~

(6) "Employing authority," "employing agency," or "Governmental governmental unit" means any governmental entity which that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

(7) "Field training" means instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment.

(8) "Hearing examiner" means the chair or the council's designated representative, who regulates the course of a contested case proceeding or other

hearing held by the council, pursuant to 2-4-611, MCA and these rules. Powers of a presiding officer are the same as those of a hearing examiner.

(9) "In-service training" means training provided within a law enforcement and/or public safety agency to review and develop skills and knowledge for the specific agency's needs.

~~(7)~~ (10) "Informal proceedings" means proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding a proceeding that occurs before a MAPA contested case proceeding and includes but is not limited to: correspondence between POST and the officer accused of misconduct and his employing authority; investigation by POST; stipulation or settlement negotiations or agreement; or a sanction, suspension, or revocation imposed through a notice of agency action.

(11) "MAPA" means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(12) "Misconduct" means any action or conduct that could potentially result in sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM 23.13.203.

(13) "MLEA" or "Academy" means the Montana Law Enforcement Academy.

(14) "Notice of agency action" means the document that:

(a) gives an officer the notice required under 2-4-601, MCA;

(b) informs the officer of the suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

(c) initiates the 30-day time period in which an officer may request a hearing and thus initiate a contested case proceeding under MAPA.

(15) "Party" means one side, or its representative, in an informal or contested case proceeding, usually the respondent and/or POST.

(16) "POST-approved training" means training reviewed and approved by the director or council for which POST gives training credit, including but not limited to basic, regional, and professional courses.

~~(8)~~ (17) "Presiding officer" means the chair of the council or their designated representative, who shall regulate the course of hearings held by the council who holds all same powers as a hearing examiner for the purpose of contested cases.

~~(9)~~ (18) "Public safety officer" means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303(5), (8) or 44-4-403, MCA to an elected official.

~~(40)~~ (19) "Respondent" means the public safety officer against whom a complaint an allegation of misconduct has been made, or their the officer's legal representative.

~~(11)~~ (20) "Revocation" means the permanent cancellation by the council of a public safety officer's POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.

(21) "Roll call training" means instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

~~(12)~~ (22) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, or the accepted norms of being a public safety officer 23.13.203, or the laws or rules of Montana.

~~(13)~~ (23) "Suspension" means the annulment, for a ~~period of time~~ time period set by the director or council, of a public safety officer's POST certificate, certification, and certifiability, such that the performance of public safety or peace officer duties is not permitted during that period of time.

~~(14)~~ "Uncertifiable officer" means a public safety officer who:

~~(a) is employed as a public safety officer, but does not possess the required basic certificate, as required in ARM 23.13.206;~~

~~(b) has been the object of a complaint filed pursuant to ARM 23.13.703;~~

~~(c) has been afforded the process due by law;~~

~~(d) has been found to be subject to suspension or revocation pursuant to ARM 23.13.702.~~

AUTH: 2-15-2029, 44-4-402(2), MCA

IMP: 44-4-403, 2-15-2029, MCA

REASON: These amendments are reasonably necessary to clarify existing terminology, delete unnecessary definitions, and to establish that the defined terms apply to the entire chapter, rather than only a subchapter. POST proposes to renumber the rule to place it at the beginning of POST's rules, and thereby emphasize that the definitions apply to all the rules.

23.13.710 (23.13.706) DECISION AND ORDER, STAYS ~~(1) In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.~~

~~(2) In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.~~

~~(3) In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.~~

(1) After completing a contested case proceeding, the hearing examiner shall, within 30 days of the hearing, issue findings of fact and conclusions of law that would, if adopted by the council, meet the requirements of 2-4-623, MCA.

(2) Within 15 days after the hearing examiner has issued findings, conclusions, and a proposed decision, an adversely affected party may submit exceptions to the hearing examiner's decision. The council shall receive briefs and hear oral arguments at its next meeting and deliberate pursuant to 2-4-621, MCA. The party filing the exceptions must incorporate a supporting brief in the document stating the exceptions. The opposing party may file a brief in response to the exceptions within ten days. No reply brief will be received.

(3) For the period between the submission of the hearing examiner's decision and the hearing before the council, general counsel for the council or another person designated by the council chair will act as a special master for purposes of resolving any issue arising before the council hearing.

(4) After deliberating, the council will decide to adopt, reject, or modify the hearing examiner's findings and recommendation. The council will issue a decision and order pursuant to 2-4-623, MCA, and mail a copy of this decision to respondent or the respondent's legal representative.

(5) If a party has filed exceptions to the decision of the hearing examiner, the contested case is not considered to be submitted for decision under 2-4-623(1), MCA, until oral arguments are concluded before the council.

(6) If a certificate was revoked or suspended by the director before the hearing, the certificate will remain revoked or suspended pending the outcome of the contested case proceeding and the respondent must surrender the certificate(s) to the council and forfeit the position, authority, and powers afforded the officer in this state while the contested case proceeds. However, the hearing examiner, before the contested case hearing, or the special master designated in (3), after the hearing, may, upon a properly supported motion that affords POST adequate opportunity to respond, stay the suspension or revocation for good cause shown.

AUTH: 2-15-2029, MCA

IMP: 2-4-201(2), 2-15-2029, 44-4-403(3), MCA

REASON: This amendment is reasonably necessary to clarify how the new disciplinary policy culminates in a proposed order that can either become final or that can be appealed to the full council and then to the Board of Crime Control. The amendments also clarify the effect of the orders pending review and the process for seeking a stay of the proposed order from the council. With these amendments, the rule will promote fairness for officers and also will result in decisions from the council that allow for meaningful appellate review. POST proposes renumbering this rule for purposes of continuity.

~~23.13.712 (23.13.718) APPEALS (1) If requested by the respondent an appeal may be made to the Montana Board of Crime Control pursuant to ARM 23.14.1004. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.~~

(1) A respondent, adversely affected by a final POST Council decision rendered after a contested case proceeding, may appeal to the Montana Board of Crime Control pursuant to ARM 23.14.1004 and 44-4-403(3), MCA. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review pursuant to 2-4-702, MCA.

AUTH: 2-15-2029, MCA

IMP: 2-4-201(2), 2-15-2029, 44-4-403(1), MCA

REASON: Unlike most agency decisions, POST decisions are subject to an additional layer of administrative review before a petition may be filed in district court. This amendment is necessary to clarify the availability of appeal. POST proposes renumbering this rule for purposes of continuity.

6. The POST Council proposes to repeal the following rule:

23.13.202 REQUIREMENTS FOR PUBLIC SAFETY OFFICERS HIRED
BEFORE THE EFFECTIVE DATE OF THIS REGULATION

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

REASON: The repeal of this rule is necessary to remove any inconsistency or confusion as to which officers are subject to the code of ethics. This rule clarifies the existing rule that the requirements of the code of ethics apply to officers employed before the effective date of the code's adoption in 2008. ARM 23.13.202 is inconsistent with ARM 23.13.201, 23.13.203, 23.13.204, 23.13.205, and 23.13.206 as proposed for amendment above.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., September 18, 2014.

8. Chris D. Tweeten, Attorney at Law, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, transfer, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Matt Cochenour
Matt Cochenour
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State July 28, 2014.