

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 23.13.102, 23.13.201,) REPEAL
23.13.203 through 23.13.210,)
23.13.212, 23.13.215, 23.13.217,)
23.13.301, 23.13.601, 23.13.702,)
23.13.703, 23.13.704, and 23.13.714;)
and the repeal of ARM 23.13.211)
pertaining to the certification of public)
safety officers)

TO: All Concerned Persons

1. On July 20, 2018, the Public Safety Officers Standards and Training (POST) Council published MAR Notice No. 23-13-254 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1342 of the 2018 Montana Administrative Register, Issue Number 14. The Council held a public hearing on the proposed rules on August 15, 2018.

2. The POST Council has amended ARM 23.13.102, 23.13.201, 23.13.203, 23.13.204, 23.13.206, 23.13.212, 23.13.215, 23.13.601, 23.13.702, 23.13.703, and 23.13.704, and repealed ARM 23.13.211 as proposed.

3. The POST Council has amended ARM 23.13.205, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.217, 23.13.301, and 23.13.714 as proposed, but with the following changes from the original proposal, new matter underlined and deleted matter interlined:

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) through (6)(a) remain as proposed.

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

(7) No more than 15% of the required training hours will be allowed from in-service training. An officer who wishes to use in-service training hours when applying for intermediate, advanced, supervisory, command, and other certificates must submit documentation of in-service training hours with the officer's certificate application.

(a) The POST Council is not responsible for maintaining records of the course content supporting regional, online, or in-service training hours acquired to satisfy the requirements of this rule. The employing agency or the individual officer must maintain records of the course content supporting regional, online, or in-service training hours acquired to satisfy this rule ~~and provide those records with the application for intermediate, advanced, supervisory, command, and other~~

certificates.

(8) remains as proposed.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) through (2)(b) remain as proposed.

(c) must have ~~three~~ four years of discipline-specific experience and 200 combined job-related training hours as follows: provided in these rules.

~~(i) an 80-hour intermediate course as approved by the council;~~

~~(ii) a minimum of 120 additional training hours consisting of a maximum of 30 hours of in-service training and any combination of online or regional training.~~

(3) through (3)(b) remain as proposed.

(c) must have ~~three~~ four years of discipline-specific experience and 144 combined job-related training hours as follows: provided in these rules.

~~(i) a 24-hour intermediate course as approved by the council;~~

~~(ii) a minimum of 120 additional training hours consisting of a maximum of 40 hours of in-service training and any combination of online or regional training.~~

(4) through (4)(b) remain as proposed.

(c) must have ~~three~~ four years of discipline-specific experience and 84 combined job-related training hours as follows: provided in these rules.

~~(i) a 24-hour intermediate course as approved by the council;~~

~~(ii) a minimum of 60 additional training hours consisting of any combination of in-service, online, or regional training.~~

(5) Officers who believe they are eligible for an intermediate certificate must submit a completed application, ~~a certificate of completion for each regional training and a transcript of online and in-service training,~~ with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site.

(a) and (b) remain as proposed.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) through (2)(a) remain as proposed.

(b) must have ~~six~~ eight years of discipline-specific experience and 400 combined job-related training hours as follows: provided in these rules.

~~(i) a 40-hour management course as approved by the council;~~

~~(ii) an 80-hour intermediate course as approved by the council;~~

~~(iii) a minimum of 280 additional training hours consisting of a maximum of 60 hours of in-service training and any combination of online or regional training.~~

(3) and (3)(a) remain as proposed.

(b) must have ~~six~~ eight years of discipline-specific experience and 304 combined job-related training hours as follows: provided in these rules.

~~(i) a 40-hour management course as approved by the council;~~

~~(ii) a 24-hour intermediate course as approved by the council;~~

~~(iii) a minimum of 240 additional training hours consisting of a maximum of 80 hours of in-service training and any combination of online or regional training.~~

(4) and (4)(a) remain as proposed.

(b) must have ~~six~~ eight years of discipline-specific experience and 184

combined job-related training hours as follows: provided in these rules.

~~(i) a 40-hour management course as approved by the council;~~
~~(ii) a 24-hour intermediate course as approved by the council;~~
~~(iii) a minimum of 120 additional training hours consisting of any combination of in-service, online, or regional training.~~

(5) Officers who believe they are eligible for an advanced certificate must submit a completed application, ~~a certificate of completion for each regional training and a transcript of online and in-service training,~~ with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site.

(a) and (b) remain as proposed.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) through (2)(a) remain as proposed.

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

(c) through (4) remain as proposed.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) through (2)(a) remain as proposed.

(b) must have completed a minimum of ~~a 160-hour command course approved by the council~~ 160 hours or more of a POST-approved professional development course or courses on a supervisory, management, or leadership topic; and

(c) and (3) remain as proposed.

23.13.217 REQUIREMENTS FOR SWAT PRIMARY COURSE CREDIT

(1) remains as proposed.

(2) The director or the director's designee will review applications and approve or deny POST credit pursuant to these rules, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(3) Upon approval by the director or the director's designee, the course will be reflected on the attending officers' POST training transcripts unless the council takes further action.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) The director or the director's designee may approve any request for POST training credit. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.

(1) through (1)(e) remain as proposed but are renumbered (2) through (2)(e).

(f) contain course content that has been reviewed and approved ~~is retained~~ by the agency hosting the training, or the employing authority of the officer receiving credit for the training, either before or after the training occurs, through the procedures set forth in ~~(2)~~ (3).

~~(2)~~ (3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not suspended or on probation and must submit an application for accreditation to the director and retain documentation of:

(a) through (c) remain as proposed.

~~(3)~~ (4) To receive POST training credit, an agency hosting a training by any other person or entity for a public safety officer or officers must submit an application for accreditation to the director and retain documentation of:

(a) through (c) remain as proposed.

~~(4)~~ (5) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to retain the required documentation set forth in these rules and monitor the standards for training, trainee attendance, and performance as set by the council. Agency Records maintained under this rule are subject to audit by the executive director or the director's designee during normal business hours upon reasonable notice to the agency.

23.13.714 CONTESTED CASE HEARING (1) through (8) remain as proposed.

(a) POST has the burden of proving by a preponderance of the evidence that there was ~~a basis~~ good cause for the denial, sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action;

(b) and (c) remain as proposed.

4. The POST Council has thoroughly considered the comments and testimony received. Copies of the written comments were provided to the Council and will be provided to the public on request. A summary of the comments received and the department's responses are as follows:

COMMENTS 1 AND 2: Fergus County Sheriff, Troy Eades, testified in support of POST's proposal. Powder River County Sheriff, Allen Drane, Jr., provided a written comment in support of POST's proposal. Sheriff Eades testified that having individual agencies maintain records for their individual officers would make it easier for the agencies to track and access the training of their own officers.

RESPONSE TO COMMENTS 1 AND 2: POST agrees that the agencies should have more immediate access to the content of officers' training. The Council also recognizes the benefits to maintaining a central record of training hours which meet POST's training requirements. In an effort to provide both local and centralized access to such records, POST will continue to track training hours for every officer on a transcript, but will no longer require that course content be sent to POST.

COMMENT 3: Lieutenant Jeff Rodrick of the Missoula County Detention Facility opposes the proposed changes to ARM 23.13.209. Lt. Rodrick commented that the 40-hour management course is not defined in the Council's proposal. He stated that the proposal for the Supervisory Certificate in this rule appears to make the Advanced Certificate (ARM 23.13.208) redundant.

RESPONSE TO COMMENT 3: The POST Council agrees that the management course proposed in ARM 23.13.209 should be more defined prior to POST adopting the requirement. POST has amended its proposal to provide for the 32-hour management course which it has required in the past.

COMMENTS 3-11: Lieutenant Jeff Rodrick of the Missoula County Detention Facility, Chief Doug Colombik of the Miles City Police Department, Mayor Donald Barnhart of the City of Columbia Falls, Chief Clint Peters of the Columbia Falls Police Department, Chief Steve Crawford of the Bozeman Police Department, Chief Rich St. John of the Billings Police Department, Hamilton Police Chief and President Ryan Oster of the Montana Association of Chiefs of Police, Truman Tolson on behalf of Chief Mike Brady of the Missoula Police Department, and Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department oppose POST's proposed changes to ARM 23.13.207. The commenters oppose the 80-hour intermediate course required of peace officers to obtain an Intermediate Certificate. Lieutenant Rodrick stated that the course is not defined and the course requirements should be provided. Chiefs Oster, Colombik, Crawford, Peters, St. John, Brady, and Mayor Barnhart oppose the changes because they believe that the course is too onerous due to budget constraints and staffing issues. They were also concerned about officers being unable to attend the course and therefore unable to receive wage increases pursuant to their collective bargaining agreements. Many commenters felt that the Montana Law Enforcement Academy (MLEA) would be unable to fulfill the need for the course. Some commenters also oppose changing the years of service required due to issues with renegotiating contracts with unions and because they believe that time and experience are important.

RESPONSE TO COMMENTS 3-11: The POST Council recognizes the difficulties with renegotiating collective bargaining agreements and has restored the required years of service to four years for an intermediate certificate. The Council also has determined to further define curricula for each discipline in consultation with the MLEA which any POST-certified instructor may teach in shortened blocks. POST has removed the requirement for the intermediate courses from ARM 23.13.207.

COMMENTS 3, 5-11: Lieutenant Jeff Rodrick of the Missoula County Detention Facility, Mayor Donald Barnhart of the City of Columbia Falls, Chief Clint Peters of the Columbia Falls Police Department, Chief Steve Crawford of the Bozeman Police Department, Chief Rich St. John of the Billings Police Department, Hamilton Police Chief and President Ryan Oster of the Montana Association of Chiefs of Police, Truman Tolson on behalf of Chief Mike Brady of the Missoula Police Department, and Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department oppose POST's proposed changes to ARM 23.13.208. The commenters oppose the 40-hour advanced course required of officers to obtain an Intermediate Certificate. Lieutenant Rodrick stated that the course is not defined and the course requirements should be provided. Chiefs Oster, Crawford, Peters, St. John, Brady, and Mayor Barnhart oppose the changes because they believe that the course is too onerous due to budget constraints and

staffing issues. They were also concerned about officers being unable to attend the course and therefore unable to receive wage increases pursuant to their collective bargaining agreements. Many commenters felt that the MLEA would be unable to fulfill the need for the course. Some commenters also oppose changing the years of service required due to issues with renegotiating contracts with unions and because they believe that time and experience are important.

RESPONSE TO COMMENTS 3, 5-11: The POST Council recognizes the difficulties with renegotiating collective bargaining agreements and has restored the required years of service to eight years for an advanced certificate. The Council also has determined to further define curriculum for the management course which any POST-certified instructor may teach in shortened blocks. POST has removed the requirement for the advanced course from ARM 23.13.208.

COMMENTS 5-14: Mayor Donald Barnhart of the City of Columbia Falls, Chief Clint Peters of the Columbia Falls Police Department, Chief Steve Crawford of the Bozeman Police Department, Chief Rich St. John of the Billings Police Department, Hamilton Police Chief and President Ryan Oster of the Montana Association of Chiefs of Police, Truman Tolson on behalf of Chief Mike Brady of the Missoula Police Department, Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department, Jerry Williams of MPPA, Matthew Saylor of the Butte Police Protective Association and MPPA, and Darcy Dahle of the Montana Public Employees Association oppose POST's proposed changes to ARM 23.13.301. The commenters feel that it is important that there is a central repository for officer training and having the agencies track and maintain training will diminish the training standards which POST has set. MPPA representatives commented that POST should spend its time and resources on approving and tracking training, rather than on investigations of officer misconduct. They expressed concern that POST is attempting to become an internal affairs investigative agency without any authority to do so, and that POST should rely on agency administrators to investigate complaints and follow whatever recommendation the agencies make. MPPA representatives Smith and Williams commented that POST has no authority to investigate officers without an agency's participation or notification.

RESPONSE TO COMMENTS 5-14: POST agrees that having a transcript of an officer's training hours is beneficial for the officer and for the citizens of Montana. POST has amended its proposal to provide that POST will continue to track training hours which will be done on a POST transcript. However, POST maintains that the time and resources used to review thousands of courses' content each year is too excessive. Reviewing and maintaining supporting documentation of training will be the responsibility of the agencies, officers, or other entities providing training for POST credit hours. POST will maintain records of the trainings attended through the application process such that POST will be able to obtain documentation based upon the information required on the application. POST has statutory authority and a legislative mandate to provide for the suspension or revocation of certification of public safety officers in 44-4-403, MCA. POST's administrative rules and policies

define POST's investigative process and procedure, and those rules and policies require POST to inform an agency of POST's investigations and provide POST with information regarding the agency's investigation. POST has and will continue to adhere to its own rules and policies.

COMMENTS 11-13: Vice President Daniel Smith of the Montana Police Protective Association (MPPA) and the Great Falls Police Department, Jerry Williams of MPPA, and Matthew Saylor of the Butte Police Protective Association and MPPA oppose amendments to ARM 23.13.205 which remove an officer's ability to receive POST training credit for military training and college education. Mr. Saylor testified that a great deal of work goes into such training and education, and officers should be able to use it.

RESPONSE TO COMMENTS 11-13: POST will not give credit for college education or military training. The review of the required paragraphs consumes a great deal of time and resources, and the requirements are too subjective. There is no way to clearly and objectively define how the training and education apply to an officer's current employment, and it provides preferential treatment to specific training or education and ignores other types of training, education, or experience which may also be just as relevant. Additionally, many officers receive the benefit of actual employment from their college or military background. The credit hours for college education and military training are already maintained by other entities, and POST sees no benefit to continuing to place them on another transcript.

/s/ Matthew Cochenour
Matthew 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 December 11, 2018.