

## ARMs Index

Subchapter 1 - Organization.....	1
Subchapter 2 - Certification.....	5
Subchapter 3 - Training Courses.....	16
Subchapter 6 - Coroners.....	18
Subchapter 7 - Revocation/Suspension of Certification.....	19

**23.13.101 Organization and General Provisions, Public Inspection of Orders and Decisions** (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, except confidential information which is protected from disclosure by federal or state law. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

**23.13.102 Definitions** As used in this chapter, 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 denial, revocation, suspension, or sanction proceeding against an officer.

(2) “Case status committee” is a three-member committee of the POST Council, appointed by the chair of the council. The council chair shall designate a chair of the case status committee. The case status committee’s purpose is to determine whether allegations of misconduct by a public safety officer should be investigated by POST staff, to determine whether a certificate sanction is appropriate, to determine the appropriate sanction to a certificate upon a finding of misconduct, and to review other proposed actions at the request of the director. The director will act based upon a majority vote of the case status committee.

(3) “Certification” or “certificate” means any certification granted by the council after completion of the specific requirements as set forth in these rules.

(4) “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.

(5) “Conviction” means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, without regard to the sentence imposed or whether the charge is later dismissed.

(6) “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.

(7) “Director” or “executive director” means the bureau chief of the public safety officer standards and training bureau.

(8) “Employing authority,” “employing agency,” or “governmental unit” means any entity 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.

(9) “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.

(10) “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.

(11) “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.

(12) “Informal proceeding” means 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.

(13) “MAPA” means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(14) “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.

(15) “Misdemeanor probation/pretrial services officer” means a public safety officer who regularly performs the following functions as part of their work assignment:

(a) gathers information about pretrial defendants or misdemeanants through interviews and records checks;

(b) reports information regarding pretrial defendants or misdemeanants to a judge so the judge can determine the propriety of pretrial supervision, detainment, or sentence revocation;

(c) monitors pretrial defendants’ or misdemeanants’ compliance with court- ordered pretrial release or misdemeanor probation conditions;

(d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and

(e) reports violations of court-ordered conditions to the court.

(16) “MLEA” or “Academy” means the Montana Law Enforcement Academy.

(17) “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.

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

(19) “POST-approved training” means training reviewed and approved pursuant to ARM 23.13.301 for which POST gives training credit, including but not limited to basic, regional, and professional courses.

(20) “POST certified instructor” means a public safety officer, as defined in these rules, who has met the requirements for and received an Instructor Certificate pursuant to

these rules, and may apply for and receive approval for POST training credit pursuant to these rules, for trainings the officer conducts.

(21) "Presiding officer" means the chair of the council who holds all the same powers as a hearing examiner for the purpose of contested cases.

(22) "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 or 44-4-403, MCA to an elected official.

(23) "Respondent" means the public safety officer against whom an allegation of misconduct has been made, or the officer's legal representative.

(24) "Revocation" means the permanent cancellation by the director or 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.

(25) "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.

(26) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, 23.13.203, or the laws or rules of Montana.

(27) "Sexual misconduct" is defined as:

(a) any sexual activity, contact, or communication which occurs while the officer is on duty;

(b) any sexual contact without consent as defined in 45-5-501(1)(b), MCA, without regard to whether such violation results in criminal charges or a conviction, including gratuitous physical contact with suspects or other civilians, such as unnecessary searches, frisks, or pat-downs;

(c) any sexual activity, contact, or communication, on or off duty, which the officer facilitates with public safety agency property, resources, or information systems;

(d) procuring, observing, or disseminating pornographic or sexually offensive material either on duty or using department property or resources, when such procurement, observation, or dissemination is not related to the officer's official duties;

(e) engaging in sexual harassment as defined in applicable laws; or

(f) any other sexual conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer.

(28) "Substance abuse" means the use of illegal drugs, other illegal substances, or legally acquired drugs in a manner 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 or safety of the public or a fellow officer.

(29) "Suspension" means the annulment, for a 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.

(30) "Voluntary surrender" means a public safety officer agrees to the revocation of the officer's certificate.

**23.13.103 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.

**23.13.104 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](http://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.

**23.13.201 Minimum Standards for the Appointment and Continued Employment of Public Safety Officers** (1) 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, all public safety officers 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 or a crime involving unlawful sexual conduct;
- (e) be of good moral character as determined by a thorough background check;
- (f) be a high school graduate or 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;
- (g) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative;
- (h) be in good standing with POST and 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;
- (i) possess a valid driver's license if driving a vehicle will be part of the officer's duties;
- (j) abide by the code of ethics contained in ARM 23.13.203; and
- (k) 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 Denial, 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) Every public safety communications officer, as a part of the training required in (2)(k), must complete, every two calendar years, a telephone cardiopulmonary resuscitation (TCPR) course. The required TCPR training shall follow evidence-based, nationally recognized guidelines for high-quality TCPR that incorporate recognition protocols for out-of-hospital cardiac arrest (OHCA) and continuous education. The training must cover a minimum of the following topics:

- (a) anatomy and physiology of the circulatory and cardiovascular systems;
- (b) relationship between circulatory, respiratory, and nervous systems;

- (c) signs and symptoms of acute coronary syndrome (ACS);
- (d) signs of life recognition;
- (e) early recognition of the need for CPR;
- (f) agonal respirations;
- (g) hypoxic seizures and sudden cardiac arrest;
- (h) pathophysiology of sudden cardiac death/cardiac arrest;
- (i) the role of TCPR in cardiac arrest survival;
- (j) the importance of minimizing disruptions when TCPR is in progress;
- (k) physiology behind the performance of the instructions;
- (l) automated external defibrillators and the role they play in resuscitation;
- (m) explanation, with practical training exercises, for different TCPR instructions, including: adult, child, infant, neonate, pregnant patients, obese patients, and stoma patients;
- (n) critical incident stress management; and
- (o) unusual circumstances posing challenges to the delivery of TCPR instructions, such as: patients with do-not-resuscitate orders or physician orders for life-sustaining treatment, patients on ventilators, post-operation patients, patients obviously dead on arrival, electrocution, drowning, strangulation, two-rescuers ventilations, and cardiac arrest from trauma.

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

**23.13.203 Code of Ethics** (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 abide by the code of ethics contained herein.

(2) 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. 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 denial, suspension, sanction, or revocation of any POST certificate.

(3) 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 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 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 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.”

**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, 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 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.

**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 as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

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

(3) All public safety officers must abide by 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 must have completed the designated combinations of education, training, and experience as established 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 denial 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)(k).

(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 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. 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.

(8) 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.

**23.13.206 Requirements for the Basic Certificate** (1) POST will issue basic certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer;
- (d) misdemeanor probation/pretrial services officer;
- (e) public safety communications officer;
- (f) coroner; and
- (g) reserve officer.

(2) 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 August 1, 2008, 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.
- (b) Public safety officers hired before August 1, 2008, must have:
  - (i) completed the probationary period prescribed by the employing agency, and served a minimum of one year with the present employing agency;
  - (ii) completed the basic course at the MLEA, or an equivalency as defined by the council; and
  - (iii) satisfied the requirements for the basic certificate by their experience, and satisfactorily performed their duties as attested to by the head of the agency for which they are employed.
- (c) Public safety officers with out-of-state 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) 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 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 MLEA. The council will require those who fail an equivalency program to successfully complete the basic course at the academy; and

(iii) whose training 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.

(d) All of the training and equivalency requirements for the basic certificate must be accomplished within one year of the initial appointment.

(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 officer's appointing authority. 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) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) absence of reasonable access to the basic course, or the legal training course; and/or

(iii) an unreasonable shortage of personnel within the department.

(f) A public safety officer who has been issued a basic certificate by the council and whose last date of employment as a public safety officer in the discipline for which the officer received a basic certificate was less than 36 months prior to the date of the person's present appointment as a public safety officer in the discipline for which the officer received a basic certificate is not required to fulfill the basic educational requirements as set forth in these rules.

(g) If the last date of employment as a public safety officer in the discipline for which the officer received a basic certificate is more than 36 months but less than 60 months prior to the date of present employment as a public safety officer in the discipline for which the officer received a basic certificate, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency course administered by the academy. If the public safety officer fails the basic equivalency course, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within one year of the public safety officer's most recent appointment.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate will correspond to the basic training course the officer attended. 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. POST will not reissue a basic certificate merely to change the discipline listed.

### **23.13.207 Requirements for the Public Safety Officer Intermediate Certificate**

(1) POST will issue intermediate certificates in the following disciplines:

(a) peace officer;

(b) detention/corrections officer;

(c) probation and parole officer;

(d) misdemeanor probation/pretrial services officer; and

(e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, a peace officer or probation and parole officer who is an applicant for an award of the intermediate certificate:

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

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

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

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the intermediate certificate:

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

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

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

(4) In addition to ARM 23.13.204 and 23.13.205, a public safety communication officer who is an applicant for an award of the intermediate certificate:

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

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

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

(5) Officers who believe they are eligible for an intermediate certificate must submit a completed application, 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) 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.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before March 27, 2020 meets the requirement of (3)(b).

**23.13.208 Requirements for Public Safety Officer Advanced Certificate** (1) POST will issue advanced certificates in the following disciplines:

(a) peace officer;

(b) detention/corrections officer;

(c) probation and parole officer;

(d) misdemeanor probation/pretrial services officer; and

(e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, a peace officer or probation and

parole officer who is an applicant for an award of the advanced certificate:

- (a) must possess the discipline-specific intermediate certificate; and
- (b) must have eight years of discipline-specific experience and 400 combined job-related training hours as provided in these rules.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the advanced certificate:

- (a) must possess the discipline-specific intermediate certificate; and
- (b) must have eight years of discipline-specific experience and 304 combined job-related training hours as provided in these rules.

(4) In addition to ARM 23.13.204 and 23.13.205, a public safety communications officer who is an applicant for an award of the advanced certificate:

- (a) must possess the discipline-specific intermediate certificate; and
- (b) must have eight years of discipline-specific experience and 184 combined job-related training hours as provided in these rules.

(5) Officers who believe they are eligible for an advanced certificate must submit a completed application, 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) 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.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before March 27, 2020 meets the requirement of (3)(a).

**23.13.209 Requirements for Public Safety Officer Supervisory Certificate** (1) POST will issue supervisory certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer;
- (d) misdemeanor probation/pretrial services officer; and
- (e) public safety communications officer.

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

- (a) must possess the discipline-specific intermediate certificate;
- (b) must have successfully completed a 32-hour POST-approved management course;

and

(c) 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.

(3) 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.

(4) 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.

(5) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before March 27, 2020 meets the requirement of (2)(a).

**23.13.210 Requirements for Public Safety Officer Command Certificate** (1) POST will issue command certificates in the following disciplines:

(a) peace officer;

(b) detention/corrections officer;

(c) probation and parole officer;

(d) misdemeanor probation/pretrial services officer; and

(e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the command certificate:

(a) must possess the discipline-specific supervisory certificate;

(b) must have completed a professional development course or courses cumulating a minimum of 160 hours or more of POST-approved, supervisory, management or leadership topic matter; and

(c) 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.

(3) 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.

(4) A misdemeanor probation/pretrial services officer who possessed a probation and parole supervisory certificate before March 27, 2020 meets the requirement of (2)(a).

**23.13.212 Instructor Certification Requirements** (1) Instructor certificates are not discipline-specific and POST may issue an instructor certificate to any public safety officer who meets the qualifications in these rules.

(2) A public safety officer providing POST approved training as defined in these rules must be certified by the council as an instructor.

(3) To qualify as an instructor, the officer shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) two years of public safety experience;

(b) an active POST basic certificate in the officer's current discipline;

(c) an endorsement from the applicant's agency head; and  
(d) successful completion of a POST-approved instructor development course.  
Effective October 28, 2017, all instructor development courses must be a minimum of 40 hours in length and must include a minimum of the following:

- (i) 12 hours of curriculum design;
- (ii) 8 hours of adult learning theories;
- (iii) 8 hours of foundation skills for trainers;
- (iv) 8 hours of training preparation and delivery; and
- (v) 4 hours of context of training.

(4) Instructor certificates in any discipline issued prior to October 28, 2017 and any instructor certificate issued after October 28, 2017, may be renewed every four years.

(5) The council or the director may deny applications for instructor certification for failure to satisfy the required qualifications. The council or the director may recall, suspend, or revoke instructor certificates at any time for good cause to ensure the quality of the training programs.

(6) 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.

(7) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before March 27, 2020 meets the requirement of (3)(b).

**23.13.214 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.

(4) Upon notice of the reserve officer's qualification, made by the reserve officer's agency head to the director on a form approved by the council, POST will issue a reserve officer basic certificate to the reserve officer.

**23.13.215 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 instructor as defined in these rules to conduct or oversee and document annual firearms proficiency. The instructor must also have attended a

minimum 40-hour firearms instructor course or its equivalent, which includes the following topics:

- (i) firearms safety;
- (ii) role of the instructor;
- (iii) civil and criminal liability exposure;
- (iv) instructional techniques for firearms instructors;
- (v) operation of the firing line;
- (vi) range preparation;
- (vii) handgun;
- (viii) disabled officer techniques; and
- (ix) low light shooting techniques.

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

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

(a) Primary duty 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 50 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; and

(f) Secondary or backup handgun – a minimum of 12 rounds fired at a distance ranging from point blank to at or beyond seven yards, which includes a minimum of six rounds fired at or beyond seven yards.

(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.

(5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule.

### **23.13.216 Public Safety Officer Employment, Education, and Certification Standards**

(1) Except as provided in (2), the basic and basic equivalency training standards set forth in 7-32-303, 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. The council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and

parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.

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

(3) A public safety officer's employing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of the public safety officer.

**23.13.217 Requirements for SWAT Primary Course Credit** (1) To receive POST approval for a SWAT primary course, a course must meet the following requirements:

(a) the course must be a minimum of 40 hours in length and be approved pursuant to ARM 23.13.301 and 23.13.304 and must contain a minimum of the following:

(i) team communication, team make-up;

(ii) confrontation management to include preplanning, immediate action, planning, execution, post execution;

(iii) weapons, munitions, and equipment to include live fire, close quarter defense, crisis negotiations, intelligence gathering/ground reconnaissance, preplanning tactics, walk through, breaching techniques;

(iv) team movement and interior tactics to include approach, position, entry, search, static, dynamic, halls, stairs;

(v) open air/mobile assault, downed officer citizen rescue, chemical agents/diversionary device/less lethal, practical exercises, and legal issues.

(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.

(2) To obtain the status of POST-approved training, training courses must:

- (a) meet the requirements for trainee attendance and performance, and the instructor requirements contained in these rules;
- (b) be based upon generally recognized best practices;
- (c) comport with Montana laws and court decisions;
- (d) 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 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 (3).

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

- (a) an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught;
- (b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and
- (c) a copy of the course advertisement.

(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) an instructor certification or training record and an instructor biography;
- (b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and
- (c) a copy of the course advertisement.

(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. 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.

### **23.13.302 Requirements for Trainee Attendance and Performance in POST Approved Courses**

(1) Trainees enrolled in any POST approved course shall be admitted only in accordance with rules of eligibility and admission as either contained herein or contained in the course announcement.

(2) No trainee may receive credits for a training course if absences exceed 10% of the total hours for the course.

(3) Any trainee who fails to comply with these rules pertaining to attendance, performance, and behavior shall be denied credits.

(4) A POST-certified instructor will not receive training credit for any training in which the POST-certified instructor provides instruction.

(5) Failure to comply with the rules contained herein or other guidelines may result in either denial of course approval or a revocation of course approval.

**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 will be prescribed by the council.

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

(3) The council will review and approve the curriculum for all basic public safety officers' courses. The review may consist of examining and approving the course syllabus and/or a thorough review of individual course performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(4) The council may approve changes from the course content established at the last review upon written application from the MLEA administrator, training agency, or training provider providing evidence that such change is compatible with the public interest.

**23.13.601 Coroner Education and Continued Education and Extension of Time Limit for Continued Certification** (1) Coroner education shall be conducted as prescribed in 7-4-2905, MCA.

(2) New coroners shall complete the 40 hour basic coroner course at the academy or other equivalent course approved by POST:

(a) the basic coroner course must be completed in accordance with 7-4-2905, MCA.

(3) Coroners must complete 16 hours of continuing coroner education at least once every two years.

(a) The council may extend the two year time limit requirement for the continuation of coroner's certification, set forth in 7-4-2905, MCA, upon the written application of the coroner or the appointing authority of the deputy. The application must explain the circumstances which necessitate the extension;

(b) Factors considered in granting or denying an extension include, but are not limited to:

(i) illness of the coroner/deputy coroner or an immediate family member;

(ii) absence of reasonable access to the continuing coroner education; or

(iii) an unreasonable shortage of personnel;

(c) The council may not grant an extension to exceed 180 days; and

(d) The council will not grant extensions after the expiration of the two year time limit.

### **23.13.702 Grounds for Denial, Sanction, Suspension, or Revocation of POST**

**Certification** (1) Any legitimate allegation made against any public safety officer that may result in the denial, sanction, revocation, or suspension of that officer's certification must be considered by either:

- (a) the case status committee and the executive director; or
- (b) the council.

(2) The public safety officer's employing authority must report to the executive director any substantiated grounds for denial, sanction, suspension, or revocation of POST certification as enumerated in (3). If review of an officer's conduct is pending before any court, council, tribunal, or agency, the employing authority may wait for a final adjudication before reporting the officer's conduct to the executive director. If the officer's conduct results in termination of the officer's employment, the notice requirements of 7-32-303, MCA, and ARM 23.13.216 apply.

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

(a) willful falsification of 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 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) engaging in substance abuse as defined in these rules;

(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) conviction of a criminal offense enumerated in Tit. 45, Ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA, or an offense which would be a criminal offense enumerated in Tit. 45, Ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA if committed in this state;

(f) neglect of duty or willful violation of orders or policies, procedures, rules, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;

(g) willful violation of the code of ethics set forth in ARM 23.13.203;

(h) conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer;

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

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

(k) 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;

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

(m) engaging in sexual misconduct as defined in these rules; or

(n) the denial, 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.

(4) It is a defense to an allegation of substance abuse, as defined in these rules, if the officer shows by a preponderance of the evidence that the officer's substance abuse has been eliminated or overcome by reasonable treatment.

**23.13.703 Procedure for Making and Receiving Allegations of Officer Misconduct and for Informal Resolution of Those Allegations by the Director**

(1) The POST Council will create, maintain, and adopt in public meetings a policy and procedure for processing and responding to allegations. The 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 denial, 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. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered unless the director determines that public safety may be threatened if POST takes no action on an anonymous 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) Within 30 days of 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, 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, and which may contain a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. 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. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the

reason more time is required. The director may grant or deny requests for additional time at the director's discretion.

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation to be presented to the case status committee. If an allegation is received from an employing agency, the executive director may, if appropriate under the circumstances, send a "Letter 1" (as described in the POST Council's policy and procedure adopted under (1)) to the officer prior to consultation with the case status committee, provided the director notify the committee of the Letter 1 as soon as practicable.

(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;

(c) A person making an allegation must use the allegation form available from POST staff or submit an allegation in substantially similar format.

(d) An employing authority or the Montana Law Enforcement Academy may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.

(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 the case status committee and 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 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, and upon a majority vote of the case status committee, the director, contested case counsel for POST, 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, and based upon a majority vote of the case status committee, 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.

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

(iv) Unfounded: The investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.

(v) Exonerated: The investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.

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

(e) if a denial, 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 denial, sanction, suspension, or revocation 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. The director will notify the case status committee of the stay as soon as practicable.

(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.

**23.13.704 Requests for a Formal Contested Case Hearing Under MAPA** (1) If the director denies, 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.

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

(b) 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 date of the notice of agency action.

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

(2) Any public safety officer or employing authority aggrieved by a decision of the director, other than a decision by the director to deny, sanction, suspend, or revoke a certificate, that is not a final decision following a contested case hearing, as provided in 2-4-623, MCA, may request the denial be placed on the agenda for consideration by the council at the council's next regularly scheduled meeting.

**23.13.705 Formal MAPA Contested Case Proceedings** (1) A contested case involves a determination by POST that affects the rights or responsibilities of the petitioner or respondent.

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

(3) Contested case proceedings before the council 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) In cases under ARM 23.13.704(2), the 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) In cases under ARM 23.13.704(2), contested case counsel for POST will represent the director during the proceedings.

**23.13.706 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. If the director takes emergency action to suspend a certification, the director will inform the case status committee as soon as practicable and will take further action based upon a majority vote of the committee.

**23.13.707 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.”



**23.13.709 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.

**23.13.711 Contested Cases, Record** (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.

**23.13.713 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 or other party 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.

**23.13.714 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 hearing will be held in Helena, Montana unless the director determines that another venue is more appropriate.

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

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

(5) 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.

(6) 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.

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

(8) At the contested case hearing under ARM 23.13.704(2):

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

(b) the director will be represented by contested case counsel during the contested case process; and

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

- (i) opening statements by both parties;
- (ii) presentation of evidence by POST;
- (iii) cross examination by the respondent;
- (iv) presentation of evidence by the respondent;
- (v) cross examination by POST; and
- (vi) rebuttal testimony.

**23.13.715 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.

**23.13.716 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.

**23.13.719 Decision and Order, Stays** (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 denied, revoked or suspended by the director before the hearing, the certificate will remain denied, 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 denial, suspension or revocation for good cause shown.

(7) Case status committee members may not participate in deliberations or any decision of the full council regarding the denial, revocation, or suspension of an officer's POST certification, unless the committee member did not participate in the committee's decisions on the matter and did not participate in committee meetings at which the matter was discussed.

**23.13.720 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 petitioner or respondent, as applicable, 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.

**23.13.721 Appeals** (1) A final POST Council decision rendered after a contested case proceeding is the final agency decision subject to judicial review pursuant to 2-4-702, MCA.