

**COLORADO DEPARTMENT OF LAW
PEACE OFFICER STANDARDS AND TRAINING BOARD**

2020

**RULES CONCERNING DEFINITIONS, DIRECTOR'S AUTHORITY,
SUBJECT MATTER EXPERTS, HEARINGS, VARIANCES, PROCESSES
FOR SEEKING EXEMPTION FROM STATUTORY CERTIFICATION
RESTRICTIONS, REVOCATION OF CERTIFICATIONS,
BASIC, PROVISIONAL AND RESERVE CERTIFICATIONS, BASIC AND
RESERVE TRAINING ACADEMIES, AND
IN-SERVICE TRAINING.**

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to sections §§ 24-31-303 (1)(g), (l) and (m), and 24-31-307(1), C.R.S., the Colorado Peace Officer Standards and Training Board (POST) has the authority and duty to promulgate and amend specific rules and regulations as further specified herein to facilitate the requirements of SB 20-217 and related statutory provisions. In addition to non-substantive amendments proposed, the following substantive amendments are intended.

Amendments are proposed to Rule 1 – Definitions:

- Add “refresher” to the types of training academies where training academies are specifically referenced within the definitions.
- Utilize the term “per” where appropriate to promote consistency.
- Supplement the list of “disqualifying incidents” to account for new legislation incorporated within SB 20-217, as follows:
 - Add a finding of untruthfulness;
 - Add conviction, etc., for a crime involving unlawful use or threatened use of force;
 - Add conviction, etc., for a crime involving the failure to intervene in the use of unlawful force;
 - Add if found civilly liable for the use of unlawful force and for the failure to intervene in the use of unlawful force;
 - Add if a finding by an administrative body for failure to intervene in the use of unlawful force for an incident that resulted in serious bodily injury or death; and
 - Add for failure to satisfactorily complete peace officer training
- Modify the definition of “fingerprint based criminal history record check.”
- Modify the definition of “operable firearm” and “practical exercise” to promote uniformity of terms used.

- Modify the definition of “POST Identification” without substantively altering its meaning.
- Modify the definition of “recognized disciplines for arrest control training” without substantively altering its meaning.
- Modify the definition of “refresher academy” without substantively altering its meaning.
- Modify the definition of “reserve peace officer” without significantly altering its meaning.
- Modify the definition of “subject matter expert” to clarify that the Chair of the POST Board has the authority to formally recognize the expert.
- Modify the definition of “successful completion” without substantively altering its meaning.

An amendment is proposed to Rule 2 – Meetings, to make a minor, non-substantive change.

Amendments are proposed to Rule 3 – Director’s Authority, to supplement the authority delineated to include authority to issue remedial action and compliance order for non-compliance with POST rules and to approve eyewitness identification training and other statutorily mandated training.

Amendment are proposed to Rule 4 – Subject Matter Expert Committees to substitute "Chair of the Board” for “Board, to clarify that only one person per agency may serve on single committee at one time, and to clarify that members of committees shall not participate in subject matter expert committee functions relate to their respective organization or organization employees.

Amendments are proposed to Rule 5 – Hearings, to provide for forty (40) rather than thirty (30) days of notice for the hearing set, and to clarify the process for revocation hearings for criminal convictions and disqualifying incidents.

An amendment is proposed to Rule 7 – Variances, to clarify that a temporary variance is valid for six (6) months from the date of issue.

An amendment is proposed to Rule 8 – Process for Seeking Exemption from Statutory Certification Restrictions, to clarify that the POST Director may hold a meeting to address the merits of an applicant’s request for exemption from statutory certification restrictions.

Amendments are proposed to Rule 9 – Revocation of Certification re-stating the POST Board’s authority to suspend or revoke peace officer certification, but to remove the recitation of the specific bases therefor already set forth in § 24-31-305, C.R.S.

Amendments are proposed to Rule 10- Basic Peace Officer Certification, to state that the POST Board is authorized to issue POST Basic Peace Officer Certification to any applicant who is in good standing with POST, to state that certification documentation must be submitted to POST via the law enforcement training academy where applicable, and to remove references to reserve certificate holders.

Amendments are proposed to Rule 11 – Provisional Certification, to allow for substantial equivalence for provisional certification, to provide that an applicant must be in good standing with POST, to state that provisional certification applications are valid for one year from date of submission, to allow for a one-time variance extension of six (6) months for provisional certification, and to allow an applicant to complete the provisional certification process while their application is valid, regardless whether their certification letter has expired.

Amendments are proposed to Rule 21 – Basic and Reserve Training Academies, to specify that Academy Directors have discretion to utilize other classroom facilities as necessary for academic programs, provided those facilities are appropriate, safe and adhere substantially to the statements set forth in part (d) of the rule, and to provide for an Academy Director to notify POST in the event a primary classroom facility is rendered unusable for twenty-one (21) or more days.

Amendments are proposed to Rule 28 - In-Service Training Program, to state that failure to satisfactorily complete training can result in suspension or revocation of POST certification, to specify that remedial training hours completed after January 1 to gain compliance for a prior calendar year shall not count towards the current year requirement, to specify that the onus is on the chief executive of each law enforcement agency for the true, accurate and verifiable entry of training records into the POST Database, to require agencies to keep and enter into the POST Database records pertaining to in-person courses, including sign-in sheets, topics covered, and existing lesson plans. Amendments proposed to Rule 28 also specify that compliance with in-service training programs is required of agencies AND individual peace officers, that concerning individual peace officers, POST will send our preliminary compliance reports for each training period, and that POST staff shall suspend and perhaps revoke peace officer certifications for failure to complete training requirements.

Purpose

The purpose of the amended rules is to provide clarification to persons subject to POST peace officer certification requirements and provide updated information regarding items referenced in these rules as set forth herein.

Contemplated Schedule for Adoption

Rules will be adopted on September 18, 2020, with an effective date of November 15, 2020.

Listing of Persons and Parties Affected

Peace officers, including those applying for certification and those currently employed as certified peace officers, and law enforcement academy staff will be affected by this anticipated rulemaking.

It has been declared by the General Assembly that certification and training standards of peace officers is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is imperatively necessary that these proposed amendments be adopted.

Rule 7 – Variances

Effective November 15, 2020

- (a) The Board may, upon sufficient cause shown, authorize variances to persons who are otherwise required to meet the requirements of these rules.
- (b) To request a variance, an applicant must submit a written petition to the Director, fully explaining all relevant facts. Any person seeking a temporary or permanent variance has the burden of establishing that:
 - (I) The variance is consistent with the basic purposes and policies of § 24-31-301, et seq., C.R.S.; and
 - (II) Strict application of the statutes and rules pertaining to the certification process would present a practical difficulty or unnecessary hardship. Mere inconvenience or expense does not suffice.
- (c) The Director, in the Director's discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information, or may hold a meeting.
- (d) Any variance granted under this rule shall be subject to such limitations or conditions as the Director or Board deems necessary in order to conform to the basic purposes and policies of applicable law.
 - (I) A temporary variance is valid for six (6) months from the date of issue. One variance may be granted at the discretion of the Director per incident.
- (e) If any determination made by the Director pursuant to this rule is not appealed by the applicant within thirty (30) days pursuant to Rule 5(c), such determination shall become final.
- (f) Pursuant to § 24-31-303(5)(a) and § 24-31-305(1)(a)(III), C.R.S., no person may, through a variance or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102, C.R.S., without having first passed the required certification examination and become certified.

Rule 7 – Variances

~~Effective July 1, 2017~~ **Effective November 15, 2020**

- (a) The Board may, upon sufficient cause shown, authorize variances to persons who are otherwise required to meet the requirements of these rules.
- (b) To request a variance, an applicant must submit a written petition to the Director, fully explaining all relevant facts. Any person seeking a temporary or permanent variance has the burden of establishing that:
 - (I) The variance is consistent with the basic purposes and policies of § 24-31-301, et seq., C.R.S.; and
 - (II) Strict application of the statutes and rules pertaining to the certification process would present a practical difficulty or unnecessary hardship. Mere inconvenience or expense does not suffice.
- (c) The Director, in ~~his~~ **the Director's** discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information, or may hold a meeting.
- (d) Any variance granted under this rule shall be subject to such limitations or conditions as the Director or Board deems necessary in order to conform to the basic purposes and policies of applicable law.
 - (I) A **TEMPORARY** variance is valid for six (6) months from the date of issue. One variance may be granted at the discretion of the Director per incident.
- (e) If any determination made by the Director pursuant to this rule is not appealed by the applicant within thirty (30) days pursuant to Rule 5(c), such determination shall become final.
- (f) **PURSUANT TO** § 24-31-303(5)(a) and § 24-31-305(1)(a)(III), C.R.S., no person may, through a variance or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102, C.R.S., without having first passed the required certification examination and become certified.