



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Washington State Criminal Justice Training Commission

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: January 20, 2003 *12/11/02 ST*

(2) Purpose: WAC 139-06: New statute, which requires the Commission to promulgate rules regarding Peace Officer Certification in compliance with new RCWs.

(3) Citation of existing rules affected by this order:

Repealed: N/A
 Amended: N/A
 Suspended: N/A

(4) Statutory authority for adoption: RCW 43.101.080

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 02-18-066 on August 29, 2002 (date).

Describe any changes other than editing from proposed to adopted version: N/A

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
- Other (specify) _____*

Emergency Rules

- Immediately
- Later (specify) _____

* (If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Sharon M. Tolton

Signature

Title

Deputy Director

Date

12-20-02

CODE REVISER USE ONLY

CODE REVISER OFFICE
STATE OF WASHINGTON

DEC 21 2002

TIME 2:32 PM

WSR 03-02-010

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Chapter 139-06 WAC

CERTIFICATION, DENIAL, REVOCATION, INVESTIGATION, COMMENCEMENT OF ACTION

NEW SECTION

WAC 139-06-010 Certification. (1) Effective January 1, 2002, all Washington peace officers shall be required to submit a signed peace officer certification form to the commission, which shall serve as an official request for certification as a peace officer in Washington state. The form shall be submitted to the commission by the peace officer at such time as the peace officer has met the requirements for certification contained in RCW 43.101.095, and shall certify that the peace officer has met such requirements. The commission shall issue a certificate of peace officer certification upon verification that the peace officer is eligible for certification.

(2) A peace officer who has satisfied, or has been exempted from, the basic training requirements of RCW 43.101.200, prior to January 1, 2002, but who was not employed as a commissioned peace officer on January 1, 2002, and has not had a break of more than twenty-four consecutive months of law enforcement service, shall upon his or her return to employment submit a peace officer certification form to the commission as described in subsection (1) of this section. The commission shall issue a certificate of peace officer certification upon verification that the peace officer is eligible for certification. If the peace officer's break in law enforcement service was more than twenty-four consecutive months, the peace officer must comply with the training requirements of WAC 139-05-200. The commission shall determine under chapter 43.101 RCW and rules of the commission whether the peace officer is eligible for certification and, if so, it shall determine any requirements that the peace officer must meet as a condition of certification.

(3) A certification granted based on an administrative exemption under WAC 139-05-200 shall remain in effect for the duration of the exemption.

(4) Upon determination that a certification form contains missing or deficient information, commission staff shall notify the peace officer and the peace officer's employing agency (for purposes of this chapter, "peace officer's employing agency" shall mean the law enforcement agency of termination and/or current

employing law enforcement agency) of such and the peace officer must submit the missing or deficient information to the commission within thirty days of the date the request is issued. Failure to submit the missing or deficient information within the required time shall result in a recommendation that the peace officer's request for certification be denied.

(4) In order to determine a peace officer's eligibility for certification, commission staff may request information in addition to that provided on the peace officer certification form. The peace officer or the peace officer's employing agency shall submit the requested information within thirty days of the date the request is issued. Failure to comply with the commission's request shall result in a recommendation that the peace officer's request for certification be denied.

NEW SECTION

WAC 139-06-020 Notification of termination. (1) Each law enforcement agency of the state of Washington or any political subdivision thereof who employs peace officers shall notify the commission by approved personnel action report form when a peace officer terminates employment with that agency for any reason. Such notification must be made within fifteen days of the termination becoming final.

(2) The agency shall, upon request by the commission, provide any additional documentation, files or information, as the commission may deem necessary to determine whether the termination provides grounds for revocation or denial of the peace officer's certification.

NEW SECTION

WAC 139-06-030 Investigative cooperation. All agencies shall cooperate in any investigation conducted by the commission regarding a peace officer's certification status.

NEW SECTION

WAC 139-06-040 Investigation, probable cause--Commencement of proceedings. (1) Upon request by a peace officer's employing agency, on its own initiative, or upon the filing of a complaint, on an approved form, by a law enforcement officer or duly authorized representative of a law enforcement agency, the commission may commence an investigation to determine whether there is probable cause to believe that a peace officer's certification should be denied or revoked under RCW 43.101.105.

(2) Upon a determination by commission staff that there is not probable cause to revoke or deny a peace officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the decision, shall be furnished to the peace officer's employing agency, the complainant, if any. A peace officer's employing agency, or the complainant, if any, may request review by the chair of the commission or his or her designee, of a determination that there is not probable cause to revoke or deny a peace officer's certification, by making such request in writing within fourteen days of the mailing of notification of the decision not to proceed.

(3) Upon a determination by the commission that there is probable cause to believe that the peace officer's certification should be revoked or denied, the commission shall prepare a statement of charges and commence revocation proceedings under RCW 43.101.155.

(4) Any designee of the chair under this section must be a member of the commission.

NEW SECTION

WAC 139-06-050 Notification--Request for hearing--Default. (1) Commission staff shall prepare a statement of charges, stating the grounds for denial or revocation of the peace officer's certification. The statement of charges shall be accompanied by a notice that the peace officer is entitled to a hearing on the denial or revocation of certification. The notice shall include the steps the peace officer must take to request a hearing. The notice and statement of charges shall be sent to the peace officer and a copy to the peace officer's employing agency.

(2) A request for a hearing on the denial or revocation of certification must be made by the peace officer on an approved form and received by the commission within sixty days from the date of the mailing of the statement of charges.

(3) Failure to request a hearing, or failure to appear at a requested hearing or at a prehearing conference, shall constitute default and the hearing panel shall enter a final order under RCW 34.05.440.

(4) A peace officer may waive a hearing by so indicating on the hearing request form. By waiving a hearing the peace officer acknowledges that his or her certification should be denied or revoked and the hearings panel shall enter such an order.

HEARING

NEW SECTION

WAC 139-06-060 Hearing panels. (1) The commission shall establish a list of eligible individuals to be appointed as members of the hearing panels. Names may be submitted for consideration from law enforcement agencies, law enforcement organizations representing management or labor, from institutions of higher learning, and from eligible individuals interested in serving as panel members. Staff shall review applications and submit a list of eligible individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(2) A new panel may, but need not, be established for each hearing.

(3) Each hearing panel shall select a presiding member who shall be responsible for signing documents on behalf of the panel, and for conducting prehearing conferences and any other hearings that may be necessary. If a panel hears more than one hearing, a new presiding member may, but need not, be selected for each hearing.

NEW SECTION

WAC 139-06-070 Location of hearings--Identification of panel--Disqualification. (1) Upon receipt of a request for hearing, the hearing panel shall set the date and time of the hearing, and the date and time of a prehearing conference. Hearings will be held at the commission's training facility located at: 19010 1st Avenue South, Burien, Washington, 98148, unless the panel determines otherwise.

(2) Notification of the dates of the hearing and initial prehearing conference shall also contain the names of the members of the hearing panel.

(3) Any motion for disqualification of a panel member must be

filed prior to the initial prehearing conference.

NEW SECTION

WAC 139-06-080 Filing of documents. An original and five copies of all documents, pleadings and other correspondence shall be filed at the commission's training facility located at: 19010 1st Avenue South, Burien, Washington, 98148, addressed to the attention of the certification manager, and one copy shall also be served on the opposing party or their attorney, if represented by counsel. Service shall be accomplished in accordance with the superior court civil rules.

NEW SECTION

WAC 139-06-090 Prehearing conferences. The parties or their attorneys shall attend the prehearing conference(s), which may be held telephonically, and which may be conducted by the presiding member of the hearing panel. The parties shall be prepared to discuss the timing and filing of any motions, and of witness and exhibit lists, as well as the need for discovery. A prehearing order shall be issued at the conclusion of the conference.

NEW SECTION

WAC 139-06-100 Attendance at hearing--Burden of proof. (1) The peace officer shall appear in person at the hearing. Failure to appear in person shall constitute default and the hearing panel shall enter an order under RCW 34.05.440.

(2) The standard of proof shall be clear, cogent, and convincing evidence.

NEW SECTION

WAC 139-06-110 Final order. (1) The hearing panel shall enter its final order within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties, the peace officer's employing agency, and the complainant, if any.

(2) The decision of the hearing panel shall be the final decision of the commission.

REINSTATEMENT OF CERTIFICATION

NEW SECTION

WAC 139-06-120 Petition for reinstatement of certification. A peace officer whose peace officer certification has been denied or revoked may petition the commission for certification or reinstatement of certification at such time as he or she is eligible under RCW 43.101.115 and this section. A peace officer whose certification has been denied or revoked based on more than a single factor, must be eligible for certification or reinstatement of certification for each factor.

NEW SECTION

WAC 139-06-130 Standards for reinstatement of certification. (1) (a) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for any reason not also involving discharge for disqualifying misconduct is eligible for readmission and certification upon meeting the requirements set forth in WAC 139-05-242 (Readmission to basic law enforcement academy). The commission may impose a probationary period upon readmission.

(b) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for disqualifying misconduct is eligible for readmission and certification only upon meeting the requirements of subsection (4) of this section.

(2) A peace officer whose certification is denied or revoked based upon prior administrative error of issuance is eligible for certification or reinstatement of certification upon a

determination by the commission that the factors that should have prevented the peace officer from being certified have been remedied and the peace officer is otherwise eligible for certification.

(3) A peace officer whose certification is denied or revoked based upon failure to cooperate, or interference with an investigation, is eligible for certification or reinstatement of certification if the peace officer's conduct did not also involve disqualifying misconduct, or other illegal or unethical conduct, and upon a showing that the peace officer has thereafter fully cooperated and is otherwise eligible for certification. In making its determination, the commission may consider the nature and seriousness of the peace officer's conduct.

(4) A peace officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after revocation or denial, petition the commission for certification or reinstatement of certification. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.

(5) A peace officer whose certification is denied or revoked based solely upon a criminal conviction may petition the commission for certification or reinstatement of certification immediately upon final judicial reversal of the conviction. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.

(6) A peace officer whose certification has been denied or revoked, or whose certification has lapsed, due to a break of more than twenty-four consecutive months of law enforcement service as a peace officer, may upon return to service as a law enforcement officer, petition the commission for certification or reinstatement of certification. Upon receipt of a petition for certification or reinstatement of certification, the commission shall determine if the peace officer is eligible for certification or reinstatement of certification. The terms of certification or reinstatement of certification may be subject to the requirement of basic law enforcement academy or the basic law enforcement equivalency academy in addition to other requirements as imposed by the commission.

NEW SECTION

WAC 139-06-140 Hearing on reinstatement of certification.

(1) The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.

(2) Upon receipt of a petition for certification or reinstatement of certification and a determination by commission staff that a hearing is necessary, or required, the peace officer and the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision whether to certify or reinstate the peace officer, and the reasons for the decision. Where the peace officer is not certified or reinstated, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that certification is not being granted or reinstated.

(3) Hearings on certification or reinstatement of certification shall be conducted by a hearing panel. The hearing panel shall review the certification file and any additional information submitted by the parties prior to the hearing and may request any additional information in order to assist in its determination. The issues shall be limited to whether the peace officer is eligible for certification or reinstatement of certification, and appropriate probationary terms in the event certification is granted or reinstated.

(4) The hearing panel shall enter a written order regarding certification or reinstatement of certification within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties, and to the peace officer's employing agency.

(5) The decision of the hearing panel shall be the final order of the commission.

NEW SECTION

WAC 139-06-150 Probationary terms on reinstatement. Upon a determination that a peace officer should be certified or reinstated, the commission may impose a term of probation which may include requirements to ensure that the peace officer has taken positive and substantial steps or actions to reconcile the causes for which the peace officer's certification was denied or revoked. When probation is imposed, the terms shall be furnished in writing to the peace officer and the peace officer's agency. Failure of the peace officer to meet the terms of probation may be grounds for a hearing to determine the status of the peace officer's

certification.

MISCELLANEOUS

NEW SECTION

WAC 139-06-160 Miscellaneous. These rules are intended to supplement the procedures contained in the Administrative Procedure Act, chapter 34.05 RCW, and the model rules of procedure, chapter 10-08 WAC. In the case of conflict between the Administrative Procedure Act, the model rules of procedure, and the procedural rules adopted in this chapter, the procedural rules adopted in this chapter shall govern.

Peace officer certification proceedings are distinct from proceedings before the commission under chapter 139-03 WAC and this chapter is not intended to modify chapter 139-03 WAC.

This chapter is not intended to affect standards relating to civil service appeals, to collective bargaining remedies, or to any similar remedies for direct review of employment actions.