

INITIAL STATEMENT OF REASONS

Title – Course Decertification/Suspension

Regulation 1001, 1057, 1058 and add Procedure D-16

At the February 20, 2104 meeting, the Commission approved proposed amendments to the POST Administrative Manual (PAM), Section B – Regulation 1001, 1057, 1058 and added Procedure D-16.

POST is proposing changes to clearly define staff actions of course suspension and decertification, which staff has the responsibility of such actions and providing an appeals process to the Executive Director and the Commission and established procedure for such appeals.

Justification for Proposed Revisions

Penal Code sections 13503(d) grants the Commission authority to cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions. Penal Code sections 13503(g) grants the Commission authority to do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it. It is of vital importance that all regulations are clearly written and accurately reflect POST practices. Providing definitions and designating explicit authority to suspend a training course will eliminate any questions regarding the ability of POST staff to act in the best interest of the Commission. It is proposed that Regulation 1001 be amended to include definitions of “Course Decertification” and “Course Suspension”. A revision to Regulations 1057 and 1058 will designate explicit authority for taking these actions. The time authorized for the appeal process should also be amended to provide the appellant, staff, and the Commission additional time to deliberate and render its decision concerning appeals. The addition of *Procedure D-16, Appeals of Denial of Certification/Suspension/Decertification of Training Courses section D-16-1 Appeals Process* will ensure consistency in how appeals shall be conducted.

Added the definitions of *Course Decertification* and *Course Suspension* for clarify.

1001. Definitions

[“**Academy Coordinator**” through “**Commuter Trainee**”...continued]

“Course Decertification” is the act of removing a course from the catalog of certified courses for reasons specified in Regulation 1057.

“Course Suspension” is the act of denying a presentation request for a course for reasons specified in Regulation 1057. While the course is suspended, it may remain in the catalog of certified courses until the conditions supporting the suspension are resolved.

[“**Department or Participating Department**” through “**Web-Based Training (WBT)**”...continued]

Authority cited: Sections 13506 and 13510.3, Penal Code.

Reference: Sections 13503, 13507, 13510, 13510.1, 13510.3, 13510.5, and 13523, Penal Code.

INITIAL STATEMENT OF REASONS
Title – Course Decertification/Suspension
Regulation 1001, 1057, 1058 and add Procedure D-16

The title is expanded to include the denial of certification or suspension of a course. Text added to specify an Assistant Executive Director can decertify or suspend a course under specific circumstances. Text was deleted stating the Commission may decertify a course. Text added for new specification (a) for clarity. Text was added to (d) to include denial of certification or suspension for clarity. Also under (d) the word *causes* was replaced with the word *reasons* for clarity.

1057. Denial of Course Certification/Suspension/Decertification

An action to deny certification, or to suspend or decertify a course may be taken by an Assistant Executive Director when: ~~Courses may be decertified by action of the Commission when:~~

- (a) There is no current demonstrated need for the course set forth in Regulation 1052 (a)(b);
or
(ab) There is no longer a demonstrated need for the course; or
(bc) There is a failure to comply with the requirements set forth in Regulations 1052-1055; or
(ed) There are other causes-reasons warranting denial of certification/suspension/decertification as determined by the Commission.

Authority cited: Sections 13503 and 13506, Penal Code.

Reference: Section 13503(c), Penal Code.

POST staff has the duty and responsibility to monitor certified courses to insure they are being presented in the manner under which certification was granted and that course safety procedures are being followed so that students attending certified courses are not subject to injuries during training. POST also receives complaints about courses that are being presented that have unsafe conditions as well as not conforming to the course's certification approval.

The Commission meets three times a year and as such is not in position to take timely action in the interest of student safety or review of course delivery as approved in the certification process. This amendment fixes the responsibility for suspension and/or decertification with an Assistant Executive Director. This allows several levels of review of staff's evaluation of a safety condition or the manner in which a course is being presented which may be counter to certification approval and an appeals process that ends with the Commission. The conditions which could lead to suspension or decertification for a course not being presented as certified would include but not be limited to changing instructors without notifying POST, use of an instructor not eligible to teach a course as provided in Regulation 1070, increasing/decreasing the length of the course or changing course content without notifying POST as required in Regulation 1053(d).

The burden of proof in the filing of an appeal is the responsibility of the appealing party as they are not satisfied with the decision of the Executive Director, therefore it is incumbent upon them to show why or how the decision should be overturned or amended by the Commission. During the appeals hearing the Commission will hear arguments from the

INITIAL STATEMENT OF REASONS
Title – Course Decertification/Suspension
Regulation 1001, 1057, 1058 and add Procedure D-16

appellant with a response from the Executive Director and the Commission making a final ruling on the substance of the appeal.

The time to file an appeal, for the Executive Director to respond to the appellant and the time for the Executive Director to advise the appellant of the Commission's decision has been extended by 15 days so there are sufficient time at all levels for a complete and timely response.

1058. Appeals Process

(a) **Any action to deny certification, or to suspend or decertify a course certification/decertification decision may be appealed to the ~~POST~~ Executive Director.** The appeal, and all relevant course documentation the appellant believes supports the appeal, must be submitted in writing and received by ~~to~~ the Executive Director within 30-45 calendar days of the Assistant Executive Director's notification of denial of certification, suspension or decertification. ~~date of the certification/decertification notice.~~

Within 30-45 calendar days of receiving the appeal, the Executive Director shall respond to the appellant in writing with a decision affirming, reversing or modifying the decision of the Assistant Executive Director, and provide the ~~and the~~ reasons for the decision.

(b) **The Executive Director's decision may be appealed to the Commission.** The appeal, and all relevant ~~course~~ documentation the individual appellant believes supports the appeal, must be submitted in writing and received by ~~to~~ the Commission at POST within 30-45 calendar days of the date of the Executive Director's decision.

Appeals received at least 45 calendar days prior to the next scheduled Commission meeting will be heard at that meeting. Appeals received with less than 45 calendar days remaining prior to the next scheduled Commission meeting will be heard at a subsequent meeting. The Commission shall notify the appellant of the date, time, and location of the hearing within 10 calendar days of the receipt of the appeal to by the Commission. ~~The appellant or appellants designated representative(s) shall have the right to present evidence at the hearing.~~

At an appeal hearing, the burden of proof is on the appellant to demonstrate to the Commission that error was committed by POST staff in its decision. (Reference PAM Section D-16 for Commission Appeals Process)

The Executive Director shall mail or otherwise deliver the Commission's decision to the appellant within 40-15 business days following the receipt of the Commission's written decision.

[1058(b) through 1060... continued]

Authority cited: Sections 13503 and 13506, Penal Code.
Reference: Section 13503(c), Penal Code.

INITIAL STATEMENT OF REASONS

Title – Course Decertification/Suspension

Regulation 1001, 1057, 1058 and add Procedure D-16

Added *Procedure D-16, Appeals of Denial of Certification/Suspension/Decertification of Training Courses* and *Section D-16-1 Appeals Process* to ensure consistency in how appeals shall be conducted. The reason the Commission approaches the issue in this manner is that it is considered an *appeal* of the Executive Director’s decision and in an appeal, the appellate bears the initial burden of proof – here, that staff acted incorrectly in making the decertification decision.

To handle the matter in any other way would be unwieldy and simply too difficult to implement in any meaningful way, considering the manner in which the Commission conducts business. The Commission has opted for an informal approach that nevertheless balances the due process rights of the appellant against the Commission’s structure and needs. As you know, the Commission is not subject to the Administrative Procedure Act and has opted for a more informal approach to these matters. The unpaid Commissioners only meet three times a year, at a public meeting, with many other issues to address, and generally act as a policy setting body that, largely, is asked to simply review and give input and direction to staff, which handles most of the actual business of the Commission. There is no hearing officer or Administrative Law Judge (ALJ) who could handle an evidentiary proceeding involving shifting burdens of proof, unless the Commission established such a procedure and paid for an ALJ or hearing officer, or alternatively, required the full Commission (most of whom are not lawyers and none of whom are judges) to deal with such evidentiary niceties.

One way to look at this is that staff’s decision has already passed the gauntlet of a “first look” to see if the decision of the Assistant Executive Director (AED) is well founded and based on regulation, as it is the *Executive Director’s* decision (as to whether the AED made the correct decision) that is being appealed to the Commission. In other words, while the Commission’s regulation does not so expressly provide, it could be looked at the staff bears more of the burden at the Executive Director level (to justify their actions in the face of a challenge) and if the Executive Director agrees with staff after that first look, the appellant then bears the burden of challenging *that* decision at the next level of review.

Commission Procedure D-16, Appeals of Denial of Certification/Suspension/Decertification of Training Courses

D-16-1 Appeals Process

At an appeal hearing, the burden of proof is on the appellant to demonstrate to the Commission that error was committed by POST staff in its decision. Accordingly, the appellant will present its appeal first, followed by a presentation by POST staff. The appellant or the appellant’s representative is permitted to reserve time to use in rebuttal, and staff is permitted to reserve time as well if it so desires. The Commission will have a certified court reporter present to transcribe all proceedings in connection with the hearing. Each side’s presentation should be no more than 30 minutes in length. Additional time may be requested and granted at the sole discretion of the Chair of the Commission, if the Chair believes the request to be appropriate and warranted under the circumstances

The formal rules of evidence do not apply at the hearing. The parties’ submissions will primarily be in the form of written documents, which may include witness statements. Any witness statements or other submissions may be, but are not required to be, under oath. While

INITIAL STATEMENT OF REASONS

Title – Course Decertification/Suspension

Regulation 1001, 1057, 1058 and add Procedure D-16

the documents and evidence should be exchanged by the parties in advance of the hearing, the Commission will not refuse to consider any evidence offered at the hearing and the appellant may produce evidence at that time. However, it is helpful to the Commissioners to have the opportunity to consider documentary evidence in advance, considering the time restrictions inherent in public meetings. All such materials, including any binders of materials the appellant wishes to present to the Commissioner's for consideration, should be delivered to the Commission's office at least 20 business days prior to the hearing. There is no need to formally stipulate to the introduction of any documents at the hearing and no need to formally move items into evidence; any items offered, including the pre-hearing submissions, will be considered and given the weight believed by the Commission to be appropriate based upon the particular evidence. The Commission may grant a continuance if requested if either POST staff or the appellant introduces evidence that has not previously been provided to the other party. The formal presentation before the Commission during the appeal is normally more in the nature of a presentation or summary of the parties' evidence, an argument as to the application of that evidence to the applicable standard, and a request for a particular decision by the Commission. Following the parties' presentations, and upon submission of the matter to the Commission for deliberation, the Commission will deliberate in closed session and determine whether the Executive Director's decision will be affirmed, reversed, or modified. When the Commission has completed its deliberations, its written decision shall be issued to the Executive Director within 15 business days.

Authority cited: Sections 13503 and 13506, Penal Code.

Reference: Section 13503(d) and 13503(g) Penal Code.

Business Impact/Small Businesses

The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses, as defined by Government Code section 11342.610, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses

The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Assessment

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the State of California, and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the

INITIAL STATEMENT OF REASONS

Title – Course Decertification/Suspension

Regulation 1001, 1057, 1058 and add Procedure D-16

Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to effected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of the law.

Economic Impact Analysis

Because the Commission on Peace Officer Standards and Training sets selection and training standards for law enforcement, adoption of the proposed amendments of regulations will neither create nor eliminate jobs in the state of California nor result in the elimination of existing businesses or create or expand businesses in the state of California.

There would be no benefits of the proposed amendments of regulations to the health and welfare of California residents or any impact which would affect worker safety or the states' environment.