

**NAME OF AGENCY:**

Council on Law Enforcement Education and Training (CLEET)

**TYPE OF DOCUMENT:**

Rule Impact Statement

**PROPOSED RULES:**

**CHAPTER 10. PEACE OFFICER CERTIFICATION**

390:10-1-2 [AMENDED]

390:10-1-3 [AMENDED]

390:10-1-5 [AMENDED]

390:10-1-7 [AMENDED]

**SUMMARY:**

Amendments are necessary to clarify statutory certification and employment procedures and CLEET certification procedures relating to inactive officers. Amendments also clarify disciplinary procedures relating to officers who work while under administrative suspension.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311(B)(2) and 70 O.S., Section 3311, et seq.

**CLASSES OF PERSONS AFFECTED:**

Peace officers; Peace officers who work while under suspension.

**PERSONS WHO WILL BENEFIT:**

Employing law enforcement agencies, the peace officer profession and the public at large.

**PROBABLE ECONOMIC IMPACT UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: (Listing of fees and justification).**

None. There are no fees associated with this change.

**PROBABLE COSTS AND BENEFITS TO THE AGENCY OR ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULE; SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT; AND ANTICIPATED EFFECT ON STATE REVENUES:**

None. There are no costs associated with this change and no additional monies are required for implementation.

**ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS OR ASSISTANCE REQUIRED TO IMPLEMENT OR ENFORCE RULE:**

None.

**ADVERSE EFFECT ON SMALL BUSINESSES AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT:**

None.

**MEASURES TAKEN TO MINIMIZE COMPLIANCE COSTS; ALTERNATIVES CONSIDERED:**

Not applicable.

**EFFECT OF THE PROPOSED RULE ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF PROPOSED RULE IS NOT IMPLEMENTED; NATURE OF RISK TO PUBLIC HEALTH, SAFETY AND ENVIRONMENT AND EXTENT PROPOSED RULE WILL REDUCE THE RISK:**

This proposed rule would not affect the public health, safety or environment.

**DETRIMENTAL EFFECT OF THE PROPOSED RULE ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF PROPOSED RULE IS NOT IMPLEMENTED:**

None.

**DATE PREPARED:**

February 2, 2011

### **390:10-1-2. Minimum certification and employment standards**

(a) For the purposes of the rules of this Chapter and 70 O.S. Section 3311, a peace officer is defined as a duly appointed or elected law enforcement officer who is paid for working more than twenty-five (25) hours per week and whose duties minimally include all of the following on a full-time basis:

- (1) Preserving the public peace;
- (2) Preventing crime;
- (3) Protecting life and property;
- (4) Enforcing laws and ordinances of this state and its political subdivisions; and
- (5) Executing arrest warrants and search warrants.

(b) All persons hired or elected as peace officers shall meet the employment and training standards set forth in this chapter as set forth in Section 3311 of Title 70 of the Oklahoma Statutes. Calculation of said employment shall be based on cumulative periods of employment.

(c) The Council, or its designee, may grant an extension of the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes, upon written application by the employing agency, and when good cause is shown, as determined by the Council or its designee. Peace officers granted an extension of time to attend and complete a training academy are not permitted to work in the capacity of a peace officer during the extension period.

(d) In the event any officer so appointed or elected fails to comply with the employment and training standards and an extension of time is not granted, the employing agency shall comply with 70 O.S., Section 3311(E)(3) at the first opportunity made available by CLEET. Individuals who fail to comply with employment and/or training standards may reapply for certification two (2) years from the date of final ineligibility. Individuals who reapply will be required to start the academy over again without regard to previous classwork completed.

(e) Students are expected to complete the first basic academy in which they are enrolled. In the event a student cannot complete their initial academy, the student can complete the course work in another the academy if such work can be completed in the next subsequent academy and within a one year period from the date of hiring or appointment as a peace officer. If reentry exceeds one year, students will be required to start the academy over again without regard to previous classwork completed unless reentry was delayed by a documented medical condition or military orders prohibiting participation. Exceptions may be made by the Director, or Director designee, for students who have been granted extensions of time as authorized by 70 O.S., Section 3311 (E)(3).

(f) The Council may provide options for remedial or make-up training for students attending approved academy or CLEET basic academy programs pursuant to academy rules.

### **390:10-1-3. Employment status reporting**

All state, county, and local law enforcement agencies affected by the rules of this chapter and 70 O.S. Section 3311, shall report to CLEET the employment and termination of any appointed or elected peace officer within ten (10) days of the date of employment or termination of employment of said officer. Such notification shall be in a format accepted by CLEET. Termination reports shall include resignations, discharges or dismissals, retirements, and deaths of officers covered under the rules of this chapter and laws. Failure to do so may disqualify a law enforcement agency from participating in training programs sponsored by the Council.

### **390:10-1-5. Requirements for certification**

(a) No person may be certified as a peace officer under the laws and the rules of this chapter until the following requirements have been met.

(1) The agency employing an officer seeking certification, or in the case of an elected official, the elected official himself must certify to CLEET that the employment standards set forth in 70 O.S. Section 3311 (E)(F)(G)(J) have been met. This certification shall be in a format accepted by CLEET.

(2) Having met the employment standards set forth herein, an officer must certify to CLEET that he or she is physically able to fully participate in and complete all phases of the CLEET Basic Peace Officer Certification Academy. This certification shall be in writing on forms to be provided by CLEET. CLEET shall reserve the right to refuse training to persons found to be physically unable to complete all phases of basic certification training.

(3) The head of the agency employing an officer enrolling in a CLEET Basic Certification Academy, shall first certify to CLEET that the officers's employing agency will fully assume all medical expenses incurred by said officers as a result of any injury or illness incurred during basic certification training.

(4) Any officer seeking peace officer certification must successfully complete all phases of a CLEET Basic Certification Academy, or a CLEET - approved basic certification academy.

(5) Every full-time peace officer, certified by the Council, who has been inactive for five or more years, upon re-entry to full-time status, must complete refresher training as prescribed by CLEET and successfully pass a written examination as prescribed by the Council, within one (1) year of employment.

(A) Trainees must achieve a passing score as determined by CLEET on the examination.

(B) Any trainee that fails the examination will be permitted to retake that examination within five (5) business days of the first examination.

(C) If the trainee fails the retake examination, the trainee's agency head must petition the Director in writing, to receive additional training and examination opportunities.

(b) The Council on Law Enforcement Education and Training, pursuant to relevant provisions of the Americans With Disabilities Act, will not discriminate against persons capable of performing essential functions required in peace officer training programs with or without reasonable accommodation.

### **390:10-1-7. Withdrawal, suspension and reinstatement of certification**

(a) "**Withdrawal**" defined. A withdrawal of certification is the voluntary surrender of peace officer certification by an officer that has been certified pursuant to the provisions of 70 O.S. 3311 et seq.

(1) An officer requesting a withdrawal of certification must notify CLEET of his intent in writing to voluntarily surrender peace officer certification and have his name withdrawn from the list of Oklahoma certified peace officers.

(2) If an officer is requesting withdrawal by voluntary surrender of peace officer certification based upon completed, pending or contemplated criminal proceedings, the officer must include in the notice to withdraw certification, a certified copy of the charges, sentencing agreement or other information to support the action. This would include any deferred sentencing agreement.

(3) When a request for withdrawal of certification has been received by CLEET, the supporting documents will be verified and an investigation conducted to determine the facts for the stated underlying purpose of the withdrawal of certification.

(4) CLEET will enter a Final Order of Withdrawal which must be signed by the officer requesting the voluntary surrender of peace officer certification and the Director. The Final Order of Withdrawal must include:

- (A) A statement by the officer that the withdrawal and surrender of peace officer certification is voluntary; and
- (B) Acknowledgment of the underlying facts for the withdrawal; and
- (C) Acknowledgment that the information gathered during the investigation of the request for withdrawal may be submitted as evidence at a hearing upon the request of the officer for reinstatement of certification;

(b) **Suspension.** The certification of a peace officer may be suspended pursuant to the provisions of 70 O.S. §3311 et seq.

(1) If any action against a peace officer results in the suspension of peace officer certification, the suspended officer shall not engage in law enforcement activities of any type during the period of suspension. Any peace officer found to be engaging in law enforcement activities of any kind during the period of suspension shall be subject to revocation of peace officer certification without prior notice but otherwise subject to administrative proceedings.

(2) When permitted by law, the officer and CLEET may enter an agreement for the suspension of peace officer certification. The Agreed Final Order of Suspension must include the length of the suspension.

(3) Administrative actions involving actions against a peace officer in which suspension of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq. and this chapter.

(4) A suspension ordered after administrative hearing shall state the term of the suspension. Unless otherwise provided by law, the Hearing Examiner may establish a reasonable length of suspension.

(c) **Reinstatement.**

(1) After five years, an officer who has had peace officer certification suspended or who has voluntarily withdrawn his certification, may have peace officer certification reinstated through the following procedures:

- (A) The officer shall file a request for reinstatement in writing, under oath.
- (B) The request shall require the applicant to furnish information reasonably required to enable the Council to determine the fitness of the applicant for certification.

(2) The request for reinstatement shall be referred to the Assistant Director for processing of the request.

(3) The request will be reviewed by the Assistant Director and General Counsel to approve or deny the request. The following factors will be considered during the review:

- (A) Circumstances surrounding the suspension or voluntary withdrawal of certification;
- (B) Successful completion of the terms for suspension or voluntary withdrawal of certification;
- (C) Any pending charges or actions in this state or any other state; and
- (D) Activities of applicant during the period of suspension.

(4) If a request is denied, the Administrative Procedures found in OAC 390:2-1 et. seq. will govern the hearing.

(5) Individuals who have had their certification reinstated must meet the continuing education requirements described in 70 O.S. 3311.4.

(d) **Notification.** Upon the suspension, withdrawal or revocation of peace officer certification pursuant to 70 O.S. 3311 et seq. or these rules, CLEET shall provide written notification of such action to the head of the employing law enforcement agency and the district attorney in the jurisdiction where the officer is or was last employed, and to any other entity required by law.