PEACE OFFICER STANDARDS AND TRAINING COMMISSION
PROPOSED REGULATIONS AT 555 CMR 7.00
RECERTIFICATION

7.01 Definitions

For the purposes of 555 CMR 7.00, the following terms have the following meanings unless the context requires otherwise:

Authority refers to an officer's employing agency or any supervisor therein; the civil service commission; any arbitrator or other third-party neutral with decision-making power; and any court.

Bridge academy training refers to the "additional training as required by the municipal police training committee" pursuant to St. 2020, c. 253, § 102(b).

Certification period refers to the period of time between the effective date and the expiration date of an individual's certification as a law enforcement officer, including any period of continuation, provided for under M.G.L. c. 30A, § 13 or 555 CMR 7.03, beyond the reference date.

Commission refers to the peace officer standards and training commission as an agency, including its commissioners and its staff.

Conditional certification and *conditional recertification* refer to a certification of the type described in 555 CMR 7.04.

Decertification and *revocation of certification* are synonymous, as provided in M.G.L. c. 6E, § 1, and such terms refer to a revocation of certification made by the commission pursuant to M.G.L. c. 6E, § 10, an action distinct from a "denial of recertification."

Denial of recertification refers to a commission decision not to renew an individual's certification as a law enforcement officer, made pursuant to M.G.L. c. 6E, §§ 3(a) and 4, an action distinct from "decertification" or "revocation of certification."

Employing agency refers to the law enforcement agency for which an officer is employed or the appointing authority that is responsible for submitting documentation concerning an officer's recertification to the commission.

Final decision refers to the ultimate commission decision on recertification, following any review or hearing or the expiration of the time afforded for an officer to seek such review or hearing, and following the satisfaction of any conditions attached to a conditional recertification or the expiration of the time to satisfy any such conditions; and does not include a decision granting a conditional recertification.

Full certification and *full recertification* refer to a decision granting certification for three years pursuant to M.G.L. c. 6E, § 4(f)(3), without any limitation, condition, restriction, or suspension imposed pursuant to M.G.L. c. 6E, § 3(a) or another provision.

Good character and fitness for employment refers to "good moral character and fitness for employment in law enforcement," M.G.L. c. 6E, § 4(f)(1)(ix).

Municipal police training committee and *MPTC* refer to the agency of the same name within the executive office of public safety, as established in M.G.L. c. 6, § 116.

Reference date. The end date for an officer's certification provided for in St. 2020, c. 253, § 102 or the end date of a prior certification issued to an officer by the commission, whichever is later, without regard to any period of continuation provided for by M.G.L. c. 30A, § 13 or 555 CMR 7.03.

7.02 Submission of Employing Agency Information to the Commission.

(1) The executive director shall distribute to employing agencies all information and forms required for recertification of law enforcement officers as approved by the commission.

(2) The executive director shall set the dates by which such information and forms shall be submitted to the commission by employing agencies, and may extend any such due date for good cause shown. Subsequent extensions may be requested and granted, but in no case can any one extension allowed by the executive director exceed thirty (30) calendar days.

(3) Notwithstanding 555 CMR 7.02(2), any employing agency seeking an extension must submit to the commission, with its first request for an extension, a roster of officers for whom it intends to seek recertification.

7.03 Continuation of Certification Period.

(1) Pursuant to M.G.L. c. 30A, § 13, the certification period for an officer shall continue after the reference date for the officer, if:

(a) The application, in a form approved by the commission, is submitted in advance of the reference date for the officer;

(b) The application is submitted in advance of any applicable deadline, and in conformity with any procedures, established by the commission; and

(c) The commission finds the application to be substantially complete.

(2) The inclusion of an officer's name in a roster submitted in accordance with 555 CMR 7.02(3) shall be considered an application on behalf of the officer for purposes of 555 CMR 7.03(1)(a).

(3) A certification period continued pursuant to this section 555 CMR 7.03 will end upon the issuance of a final decision regarding recertification.

7.04 Conditional Recertification.

(1) The division of certification shall conditionally recertify an officer if the officer is unable to meet the standards for recertification solely due to circumstances beyond the officer's control and which are attributable to the officer's employing agency, the municipal police training committee, or the commission.

(2) The division of certification may conditionally recertify an officer in other appropriate circumstances, including, but not limited to, where:

(a) The officer's application for recertification is substantially complete and does not reveal any basis for denying recertification, but certain additional details need to be supplied or certain information needs to be verified;

(b) The officer was unable to satisfy a requirement for recertification because the officer was on approved leave during the relevant time or because of another valid reason;

(c) The officer has experienced a demonstrable hardship which has interfered directly with the officer's ability to meet a requirement for recertification; or

(d) The officer has taken all required steps in connection with the recertification process, but circumstances beyond the officer's control have delayed a final decision on the officer's application.

(3) An officer shall not be required to satisfy any conditions attached to a conditional recertification, nor shall any time periods associated with any such conditions begin to elapse, before the conclusion of any review or hearing, or the expiration of the time afforded for the officer to seek such review or hearing, pursuant to 555 CMR 7.10.

(4) Change in Certification Status.

(a) When an officer fails to satisfy a condition of a conditional recertification within the time allowed, taking into account the provisions of 555 CMR 7.04(3), the division of certification shall terminate the officer's certification, unless good cause for an extension of time for the officer to satisfy the condition has been shown.

(b) When an officer satisfies all conditions of a conditional recertification within the time allowed, taking into account the provisions of 555 CMR 7.04(3), and the commission has not otherwise limited, restricted, or suspended the officer's certification, the division of certification shall convert the conditional recertification into a full certification with an

expiration date of three (3) calendar years from the reference date for the officer.

(5) In all other respects, an officer who holds a conditional certification is "certified," as that term is used in M.G.L. c. 6E.

7.05 Determination of Good Character and Fitness for Employment.

(1) General Standards Utilized by Employing Agency and Commission. Any assessment of whether an officer possesses good character and fitness for employment shall take into account on-duty and off-duty conduct.

(2) Submission by Employing Agency.

(a) Each officer's employing agency shall provide a submission to the commission concerning whether an officer possesses good character and fitness for employment, in accordance with commission policy.

(i) In assessing good character and fitness for employment, an employing agency may take into account whether an officer adheres to state and federal law, acts consistently with recognized standards of ethics and conduct adopted by the employing agency or as set forth in the Law Enforcement Code of Ethics and Standards of Conduct most recently adopted by the International Association of Chiefs of Police, and is worthy of the public trust and of the authority given to law enforcement officers. In making such an assessment, the agency also may rely on questionnaires, any guidance or forms approved by the Commission, performance reviews, relevant education, specialized training, professional awards, achievements, commendations by law enforcement agencies or officials or others, instances of imposed discipline, patterns of misconduct, and any other evidence of past performance.

(b) If an employing agency determines that an officer possesses good character and fitness for employment, the agency shall provide, upon request by the commission, documentation supporting such a determination.

(c) If an employing agency determines that it cannot find that an officer possesses good character and fitness for employment, the employing agency shall make a written report to the commission, a copy of which shall be simultaneously provided to the officer and the head of the officer's collective bargaining unit.

(i) The written report shall contain an explanation for the agency's determination, including, but not limited to, a description of specific conduct supporting the agency's determination. The written report must be sufficient to permit the commission to evaluate the basis for the employing agency's determination, and to permit the commission to determine whether the officer possesses good character and fitness for employment.

(ii) As to each instance of specific conduct cited in the agency's report as evidence that the officer may lack good character and fitness for employment, the employing agency shall address:

(1) Any discipline imposed or decision issued by an authority as a result of the conduct, or the reason(s) why there was no discipline or decision;

(2) The extent to which the officer complied with any such discipline or decision;

(3) Any similar conduct allegedly undertaken by the officer subsequent to any such discipline or decision; and

(4) The dates of each instance of conduct, and imposition of discipline or issuance of a decision.

(d) Response by Officer. Within fourteen (14) calendar days of the submission of the report to the commission, or a longer period of time allowed by the commission upon a showing of good cause, the officer may submit a written response to the commission, a copy of which shall be simultaneously provided to the officer's employing agency.

(3) Assessment and Determination by Commission.

(a) The division of certification shall render an initial determination as to whether an officer possesses good character and fitness for employment, in accordance with any protocols adopted by the commission, upon giving due consideration to all information available to it, including, but not limited to, the following:

(i) An attestation that an officer possesses good character and fitness for employment and accompanying information;

(ii) Any report by an employing agency of the type described in 555 CMR 7.05(2)(c); and

(iii) Any response by an officer of the type described in 555 CMR 7.05(2)(d).

(b) The division of certification may, to the extent reasonably possible, obtain additional information that may prove helpful in determining whether an officer possesses good character and fitness for employment.

(4) Consideration of Particular Matters.

(a) In rendering a determination regarding an officer's good character and fitness for employment, unless there have been allegations that an officer has engaged in multiple instances of similar or related misconduct or protocols adopted by the commission provide otherwise, neither the employing agency nor the division of certification shall consider an allegation of a particular instance of misconduct, where:

(i) An authority has made a decision in the officer's favor on the merits of a complaint alleging such misconduct;

(ii) The alleged misconduct is currently the subject of a pending investigation or adjudication by any authority;

(iii) The officer has complied, or is in the process of complying, with any disciplinary action or other adverse decision by an authority, in relation to the alleged misconduct, and the officer has not engaged in any similar conduct since the discipline or decision;

(iv) The alleged misconduct did not result in either a disciplinary proceeding or court action, and the employing agency has not offered a reasonable explanation as to why no such proceeding or action was commenced; or

(v) The allegation is not specifically and credibly supported.

7.06 Evaluation of Recertification Standards.

Except as otherwise provided in 555 CMR 7.04, the Commission shall treat the statutory recertification standards as follows:

(1) Attaining the Age of 21. This standard shall be deemed satisfied if the officer attained the age of 21 at any point in time before the reference date for the officer. If the officer has not attained the age of 21 at any point in time before the reference date for the officer, and if the reference date is prior to July 1, 2024, the officer shall be conditionally recertified on the condition that the officer shall attain the age of 21 by July 1, 2024.

(2) Successful Completion of a High School Education or Equivalent. This standard shall be deemed satisfied if the officer successfully completed a high school education or equivalent at any point in time before the reference date for the officer. If the officer has not successfully completed a high school education or

equivalent at any point in time before the reference date for the officer, and if the reference date is prior to July 1, 2024, the officer shall be conditionally recertified on the condition that the officer shall successfully complete a high school education or obtain a General Educational Development (GED) certification from an accredited program by July 1, 2024.

(3) Successful Completion of Basic Training Program.

(a) Regular Basic Training Other than Bridge Academy Training. This standard shall be deemed satisfied if the officer successfully completed a regular basic training program (not bridge academy training) at any point in time before the reference date for the officer. If the officer has not successfully completed a regular basic training program (not bridge academy training) at any point in time before the reference date for the officer, the officer shall be conditionally recertified on the condition that the officer shall successfully complete a regular basic training program (not bridge academy training) within ninety (90) calendar days or such other time as is allowed by the MPTC.

(b) Bridge Academy Training. This standard shall be deemed satisfied if the officer successfully completed bridge academy training at any point in time before the reference date for the officer. If the officer has not successfully completed bridge academy training due to a documented hardship recognized under commission or MPTC policy, the officer shall be conditionally recertified in accordance with commission policy. Where commission policy is not applicable, the officer will be conditionally recertified on the condition that the officer shall successfully complete bridge academy training by the date stipulated by the MPTC for that officer.

(4) Successful Completion of a Physical and Psychological Fitness Evaluation. This standard shall be deemed satisfied if the officer successfully completed a physical and psychological fitness evaluation that was required for graduation from an academy or training program certified by the MPTC or the training programs prescribed by M.G.L. c. 22C prior to the reference date for the officer. The commission will implement a policy concerning officers who were certified pursuant to St. 2020, c. 253, § 102 but did not successfully complete a physical and psychological fitness evaluation that was required for graduation from an academy or training program certified by the MPTC or the training programs prescribed by M.G.L. c. 22C prior to the applicable reference date.

(5) Successful Completion of a State and National Background Check. This standard shall be deemed satisfied if the following criteria are met:

(a) A background check of the type described in M.G.L. c. 6E, § 4(f)(1)(v) was successfully completed at any point in time before the reference date for the officer;

(b) The commission has received all disciplinary records as described by commission policy relative to an officer prior to the reference date for the officer;

(c) The commission has received an attestation to certain key facts regarding the officer's background; and

(d) The commission does not discern any basis, based on information it has received, for finding the standard unmet.

If this standard is not satisfied because no background check has been conducted, the officer shall be conditionally recertified on the condition that this standard must be met within ninety (90) calendar days. In all other circumstances where the officer has not satisfied this standard, the officer shall not be recertified, notwithstanding any provisions of 555 CMR 7.06 that provide for conditional recertification.

(6) Successful Completion of an Examination.

(a) Examination Part of Regular Basic Training (Not Bridge Academy Training). This standard shall be deemed satisfied if the officer successfully completed an examination required for completion of regular basic training (not bridge academy training) at any point in time before the reference date for the officer. If the officer has not successfully completed an examination required for completion of regular basic training (not bridge academy training) at any point in time before the reference date for the officer, the officer shall be conditionally recertified on the condition that the officer shall successfully complete an examination as part of regular basic training (not bridge academy training) within ninety (90) calendar days or such other time as is allowed by the MPTC.

(b) Examination Part of Bridge Academy Training. This standard shall be deemed satisfied if the officer successfully completed an examination required for completion of bridge academy training at any point in time before the reference date for the officer. If the officer has not successfully completed an examination required for completion of bridge academy training due to a documented hardship recognized under commission or MPTC policy, the officer shall be conditionally recertified in accordance with commission policy. Where commission policy is not applicable, the officer will be conditionally recertified on the condition that the officer shall successfully complete an examination as part of bridge academy training within the timeframe determined by the MPTC.

(7) Possession of Current First Aid and Cardiopulmonary Resuscitation Certification. This standard shall be deemed satisfied if the officer currently possesses such certificates or the equivalent. If the officer does not currently possess such certificates or the equivalent, the officer will be conditionally recertified on the condition that the officer shall obtain such certificates or the equivalent within ninety (90) calendar days.

(8) Successful Completion of an Oral Interview Administered by the Commission. This standard shall be deemed satisfied if, in accordance with commission policy, an officer is interviewed by, discusses a set of questions with, or discusses the officer's responses to a questionnaire with, the head of the officer's agency or the head's designee, or in the case of the head of the agency, the head's appointing authority. If this standard is not satisfied because of certain action or inaction by the employing agency, or because the officer was on approved leave, the officer will be conditionally certified on the condition that the standard is satisfied within the later of ninety (90) calendar days or ninety (90) calendar days following the officer's return to active service, as applicable. If this standard is not satisfied for any other reason, the officer shall not be recertified, notwithstanding any provisions of 555 CMR 7.06 that provide for conditional recertification.

(9) Good Character and Fitness for Employment. This standard shall be deemed satisfied if the division of certification determines the officer meets the criteria set out in 555 CMR 7.05. If this standard is not satisfied, the officer shall not be recertified, notwithstanding any provisions of 555 CMR 7.06 that provide for conditional recertification.

7.07 Issuance of Decision.

(1) The division of certification shall review each officer's application for recertification and provide written notification of a decision on the application for recertification to the officer and the officer's employing agency and the head of the officer's collective bargaining unit in accordance with commission policy, or where there is no commission policy, a policy adopted by the executive director.

(2) A decision that does not provide for full recertification shall be distinct from decertification and shall not implicate M.G.L. c. 6E, § 10.

(3) If the decision provides for anything other than full recertification, the notification described in 555 CMR 7.07(1) shall also inform the officer of the ability to seek review by the executive director as provided for in 555 CMR 7.10(1) and a hearing as provided for in 555 CMR 1.10 and 555 CMR 7.10(2).

7.08 Retroactivity of Recertification. A decision to recertify an officer made after the reference date for the officer, notwithstanding 555 CMR 7.03, will apply retroactively to that date, regardless of whether the recertification is subject to any limitations, conditions, or restrictions.

7.09 Restriction or Revocation of Certification. The granting of a recertification shall not preclude the limiting, conditioning, restricting, suspending, or revoking of the certification in accordance with law, when warranted, including but not limited to circumstances where an officer has made a material misrepresentation to the commission or the officer's employing agency in connection with the recertification process.

7.10 Possible Action Following Decision Declining to Grant Full Recertification.

(1) Executive Director Review.

(a) Within twenty-one (21) days of a decision by the division of certification declining to grant full recertification, an officer may submit a written petition to the executive director requesting review of the decision, a copy of which the officer shall provide to the officer's employing agency.

(b) The executive director, or that person's designee, may ask any entity or individual to provide additional information, orally or in writing, or to appear at a meeting concerning the matter.

(c) The executive director, or that person's designee, shall provide the officer and the officer's employing agency with a written decision on the petition within a reasonable time.

(2) Opportunity for Hearing. Following the process described in 555 CMR 7.10(1), an officer may request a hearing before the commission concerning an application for recertification in accordance with 555 CMR 1.10.

(3) Vacating of Prior Decision to Recertify. If a decision to recertify an officer is vacated, the officer shall be deemed to have been certified during the period of time between the decision to recertify and the decision to vacate.

(4) Reapplication by Officer. Where an officer has received a decision denying a full recertification, the commission may attach limitations, conditions, or restrictions on the officer's ability to reapply.

7.11 Final Determinations.

(1) An officer's application shall not be deemed "finally determined," as that term is used in M.G.L. c. 30A, § 13, absent a final decision by the commission.

7.12 Expiration of Regulations.

(1) 555 CMR 7.00 shall expire on June 30, 2025.