

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

JUL 15 11 10 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Procedural; CITE AUTHORITY 19-1-4-j and 19-1-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 24

TITLE OF RULE BEING AMENDED: Administrative Rules for the
Personnel of the West Virginia Department of Agriculture

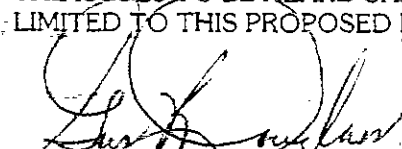
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 19, 1994 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Department of Agriculture
State Capitol, Room E-28
1900 Kanawha Blvd., E.
Charleston, WV 25305-0170
Attn. J. Fisher

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

13.20

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Administrative Rules for Personnel of the WV Dept. of Agr.
Type of Rule: Legislative Interpretive x Procedural
Agency WV Department of Agriculture
Address State Capitol, Room E-28
1900 Kanawha Boulevard, E.
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

This change in our procedural rules will not entail financial adjustments.

3. Objectives of these rules:

To give employees the option of taking unpaid maternity leave as opposed to exhausting their sick and annual leave for pregnancy and delivery.

Rule Title: Adm. Rules for Personnel of the WV Dept. of Agriculture

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

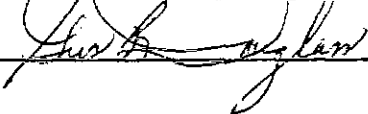
None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 15, 1994

Signature of Agency Head or Authorized Representative



TITLE 61

PROCEDURAL RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 24

ADMINISTRATIVE RULES FOR THE PERSONNEL OF THE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

§61-24-1. General

1.1. Scope - These rules establish administrative procedures for the personnel of the West Virginia Department of Agriculture. This rule supersedes the West Virginia Department of Agriculture Policy Manual that was last updated on May 15, 1992

1.2. Authority. - §19-1-4-j and §19-1-3

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Repeal of Former Rule. These procedural regulations repeal West Virginia Procedural Regulations "State Department of Agriculture, Chapter 19-1-4-j and 19-1-3, Series 61, Administrative Rules For The Personnel of The West Virginia Department of Agriculture", filed September 8, 1993, with an effective date of October 16, 1993.

§61-24-2. Definitions

2.1. "Commissioner" means the Commissioner of the West Virginia Department of Agriculture.

2.2. "Department" means the West Virginia Department of Agriculture.

2.3. "Employee" means a person who lawfully occupies a full time position with the West Virginia Department of Agriculture and who is paid a wage or salary.

2.4. "Employer" means the West Virginia Department of Agriculture or any affiliated political subdivision.

2.5. "Guests" means persons who are not employees of the Department.

2.6. "Hospitality" means food, non-alcoholic beverages, and related expenses for the reception of guests by the Department for a specific event or function; as referenced in WV Division of Finance and Administration Policy Number 11.

2.7. "Hostile environment" means conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or offensive working environment.

2.8. "Impaired job performance" means a change for the worse in job performance indicators, including employee evaluations, productivity, safety record, absenteeism, and interpersonal relationships with fellow employees.

2.9. "Legal Holiday" is defined in W. Va. Code §2-2-1.

2.10. "Personal problems" means problems which have impaired job performance, including, but not limited to, emotional or behavioral disorders, alcohol or drug abuse, family or marital discord and financial or legal problems.

2.11. "Personnel Director" means the Administrative Assistant to the Commissioner or the commissioner's designee.

2.12. "Probationary period" means a trial work period designed to allow the Commissioner the opportunity to evaluate the ability of the employee to effectively perform the assigned duties and for the employee to adjust to the organization and programs of the Department so that a determination can be made by both parties whether the employee wishes to be, or should be, a permanent employee of the Department.

2.13. "Quid Pro Quo" means this for that or something for something in reference to sexual consideration in exchange for job benefits.

2.14. "Schedule adjustment" means time off within the same work week.

2.15. "Sexual Harassment" means any unsolicited and unwelcomed sexual advances, requests for sexual favors, and other verbal, written, or physical conduct of a sexual nature when:

2.15.a. submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;

2.15.b. submission to or rejection of such conduct is used as the basis for employment decisions affecting an employee; or

2.15.c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2.16. "Workplace" means a site for the performance of work done in connection with a grant from or a contractual relationship with the West Virginia Department of Agriculture.

§61-24-3. General

3.1. This rule does not constitute an express or implied contract. The employee may choose to separate from his/her employment at any time. The Department reserves the right to terminate the same. All managerial and administrative functions, responsibilities and prerogatives entrusted to and conferred upon employers inherently and by law are retained and vested exclusively with the Department, including, but not limited to: the right to establish and administer policies, practices and procedures and change them, to direct and discipline the work force of the Department, the right to take action necessary in the judgement of the Commissioner to increase the efficiency of and operate the Department.

§61-24-4. Wage and Hour Rules

4.1. The official work week for all employees within the Department is 12:01 a.m. Saturday until 12:00 midnight on Friday.

4.2. Payment for employees is calculated on the basis of a 40-hour work week, or eight (8) hours per day with seven and a half (7 1/2) hours of actual work time. Time spent on meal periods is not calculated into the hours worked.

4.3. Although the Department observes a 37 1/2 hour work week, compensatory time or overtime pay for employees does not accrue until after 40 hours have been worked.

4.4. Work time (or hours worked) includes all the time an employee is required to be on duty, on the Department's premises, or at a prescribed work place; and, all the time when the employee is required to work for the employer. Time spent by the employee in physical or mental exertion under the control and direction of the Department is regarded as hours worked.

4.5. Those employees receiving benefits within the Department do receive payment for holidays, annual leave, sick leave, but it is not necessarily at an overtime rate of pay because holidays and leave are not considered hours worked for the purpose of calculating overtime compensation.

4.6. All full time employees receive payment for all legal holidays regardless of scheduled work days, while part time employees only receive credit for those holidays actually worked.

4.7. Any employee who does not work a full 37 1/2 hour work week has a positive, mandatory duty to contact the Division Director by 11:30 a.m. on the appropriate payday to inform the director of their shortage. It is then the employee's choice to take annual leave or to have their paycheck reduced accordingly. It is the Division Director's responsibility, upon notice, to contact the Director of Administrative Services with this information by 12:00 noon on payday so that appropriate action can be taken.

4.8. Legal holidays

4.8.a. Legal holidays are counted in the actual work week, but are hours paid, not hours worked for the calculation of overtime pay.

4.8.b. If an employee is asked to work on a holiday, such time is to be reported. If an employee does work on a holiday, it is common practice to grant the employee a later day off for the holiday observance (Holiday Credit Earned).

4.8.c. Work on a legal holiday in itself does not require a premium rate of compensation such as time and a half or double time, therefore time earned for working on a holiday is to be given at a later date on an hour for hour basis.

4.8.d. The Commissioner must give written permission to work on a legal holiday prior to such work.

4.8.e. Holiday Credit Earned (HCE) should be designated on the time and attendance form clearly distinguished from compensatory time earned. HCE must be taken within twelve months from the date of its earning.

4.9. Schedule Adjustment

4.9.a. As long as the total actual work hours in the scheduled work week do not exceed forty (40) hours, overtime or compensatory time provisions are not necessary. Schedule adjustment is the mechanism whereby supervisors and employees seek to avoid the unnecessary accumulation of compensatory time or overtime.

4.9.b. In most situations, every effort will be made to adhere to the work schedules that are posted within the Department facilities. There are, however, times when it is necessary to revise or rearrange a schedule because of unexpected shortages of staff and similar factors.

4.10. Working while on Call

4.10.a. Any employee who is required to remain on the employer's premises or so close to them that he or she cannot use the time effectively for his or her own purposes is working while on call.

4.10.b. If an employee is completely relieved from duty and can use the release time effectively for his or her own purposes, he or she need not be compensated, where the terms "completely relieved from duty" means that the employee is definitely told in advance that he or she may leave the job for a specified period and is given a definite time for return to work.

4.10.c. An employee who is merely required to leave work at his or her home or with Department officials or where he or she may be reached is not working while on call.

4.10.d. Each Division Director should establish general waiting time and on call time guidelines for employees and submit them to the Commissioner for approval before implementation. Each Division Director shall notify his or her employees of these waiting time and on call time guidelines as soon as possible after receiving approval from the Commissioner.

4.11. Rest Periods

4.11.a. Rest periods of a short duration ranging from five (5) minutes to ten (10) minutes are common in the work place. These rest periods are available in the Department to promote the employee's efficiency and are considered as work time in calculating the 40-hour work week. However, there is no requirement that rest periods be granted to an employee.

4.11.b. It is the practice of the Department to grant a maximum of two (2) rest periods per 8-hour shift if the employee's supervisor determines that work schedule and conditions warrant such breaks.

4.11.c. The rest period shall be limited to a maximum of ten (10) minutes and the employee must remain in the general proximity of the work place during the rest period.

4.12. Meal Periods

4.12.a. Although bona fide meal periods are not required under the provisions of the various laws, rules and regulations imposed upon the Department, a meal period of one half (1/2) hour to forty-five (45) minutes shall be available to each employee in the 8-hour work schedule (as long as the employee actually works seven and one-half (7 1/2) hours including rest periods.)

4.12.b. Every effort should be made by all supervisors within the Department to guarantee each employee a scheduled meal period.

4.12.c. It is not necessary for an employee to be permitted to leave the workplace if he or she is otherwise freed from his or her normal duties during the meal period.

4.12.d. The lunch time meal period will be one half-hour in duration. The half-hour time will be available for employees between the hours of 11:00 a.m. and 1:00 p.m., and shall be taken on the half-hour (i.e. 11:00 to 11:30, 11:30 to 12:00, etc.). Each Division Director shall be responsible for developing its lunch policy so that the business of the Department will not be significantly interrupted.

4.13. Travel Time

4.13.a. The Department is not required to compensate an employee for time spent walking, riding, or traveling to and from the actual place of performance of the principal activity or activities of work. However, if an employee has gone home after completing his or her normal days' work and is subsequently called out to return to the work place to perform an emergency job for the employer, all time spent on travel for the emergency shall be considered work time.

4.13.a.A. In the context of certain situations stipulated in the Fair Labor Standards Act, employees in the non-exempt overtime classification may have to be compensated for business travel time. For example, if an employee is given a special assignment and instructed to travel four (4) hours to a city, work for three (3) hours, and return home, the eight (8) hours in travel as well as the actual work time are compensable. The employee need not be compensated for travel from home to the work place or official headquarters.

4.13.b. Travel time that is part of an employee's principal activity such as travel from a central meeting place to a job site or travel from job site to job site during the work day must be counted as hours worked. If an employee normally finishes work at one job site at 5:00 p.m. and is sent to another until 8:00 p.m. and then is required to return to his or her employer's premises arriving at 9:00 p.m., all the time is work time. However, if the employee goes home instead of returning to his or her employer's premises, the travel after 8:00 p.m. is home to work travel and is not counted as hours worked.

4.14. Overtime Classification

4.14.a. An employee's work title in itself does not distinguish exemption or eligibility for overtime classification.

All laws and rules and regulations require that a review of the actual duties performed distinguishes whether a particular employee is exempt or covered by overtime provisions. The Personnel Director with the assistance of employees and their supervisors, will determine what applies to each employee within his/her jurisdiction.

4.14.b. Any employee actually employed in a bona fide (EXECUTIVE, ADMINISTRATIVE, or PROFESSIONAL) capacity is excluded from the provisions for overtime compensation. The following provisions shall determine the employee's exemption from the overtime provisions of all Federal and State wage and hour laws, rules and regulations. General examples of exempt employee classifications are provided.

4.14.b.A. EXECUTIVE. (Commissioner, Deputy Commissioner, Division Directors, Managers, etc.) is an employee: whose primary duty consists of the management of the enterprise in which he or she is employed, or of a department or subdivision of it; who customarily and regularly directs the work of two or more employees therein; who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or other change of status of other employees is given particular weight; who customarily and regularly exercises discretionary power; who does not devote more than 20 percent of his or her hours during the work week to activities not directly and closely related to the performance of duties described in this sentence; and who is compensated for his or her services on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging, or other facilities.

4.14.b.B. ADMINISTRATIVE. (Division Director, Supervisor, etc.) is an employee: whose primary duties consists of either office or non-manual work directly related to management policies or general business operations or administrative functions; who customarily and regularly exercises discretion and independent judgment; who regularly and directly assists an executive; or who performs, under general supervision only, specialized work requiring special training, experience, or knowledge; or who executes under general supervision only, special assignments and tasks; who does not devote more than 20 percent of his or her hours worked in the work week to activities not directly related to the functions described; and who is compensated for his or her services on a salary or fee basis at a rate of not less than \$155 per week.

4.14.b.C. PROFESSIONAL. (Veterinarian, etc.) is an employee whose primary duty consists of: work requiring advanced knowledge acquired by a prolonged course of specialized intellectual instruction and study; work that is original and creative in character in a recognized field of artistic endeavor and the result of which depend primarily on the employee's

invention, imagination, or talent; whose work requires the consistent exercise of discretion in its performance; whose work is predominantly intellectual and varied in character; who does not devote more than 20 percent of his or her hours worked during the work week to activities not essential to the work described; and who is compensated for services on a salary or fee basis at a rate of not less than \$170 per week.

4.14.c. Any employee within the Department is to be considered non-exempt for purposes of overtime compensation when at least twenty (20) percent of their actual work duties do not coincide with the exempt provisions previously cited in this section of the rule.

4.15. Non-exempt employees may work no more than forty (40) hours in any work week without receiving overtime compensation in accordance with Department procedures.

4.16. Non-exempt employees of the Department are not be permitted to work more than forty (40) hours in any work week unless their supervisor obtains approval from the Division Director prior to the performance of the work. However, if an employee should work with or without approval, he or she must still be properly compensated for the hours worked.

4.17. Any supervisor allowing a non-exempt employee to work more than forty (40) hours in a work week without the appropriate approval may be subject to disciplinary action. Accordingly, any employee covered by this policy who works more than forty (40) hours without approval may also be subject to disciplinary action.

4.18. Each Division Director may establish procedures authorizing supervisors to schedule overtime in emergency situations. Such policies must be approved by the Commissioner prior to the implementation.

4.19. Overtime Compensation

4.19.a. Employees who work over forty (40) hours in a work week will be paid overtime compensation, which includes cash payment or compensatory time off. Payment of overtime compensation will be determined based on the employee's classification as "exempt" or "non-exempt".

4.19.b. Overtime compensation will be paid at a rate of time and a half (including compensatory time and cash payment for overtime).

4.19.c. Compensatory time off

4.19.c.A. Exempt employees may be compensated for actual work activities performed beyond forty (40) hours per work

week with compensatory time off to be taken at a later date, which may be accrued up to a two hundred forty (240) hour balance.

4.19.c.B. Compensatory time will be accrued at a rate of: For every one hour (over 40 hours per week) earned, employees will receive 1 1/2 hours. (Example, an employee who works 43 hours in one week will earn [3 hours x 1.5 = 4.5 hours of compensatory time]).

4.19.d. Cash payment for overtime

4.19.d.A. Non-exempt employees may only be compensated with cash payments for actual work activities performed beyond forty (40) hours per work week.

4.19.d.B. Overtime pay will be paid at a rate of 1.5 multiplied by the employee's hourly pay rate for every hour worked over forty (40) hours in a work week. The hourly rate for the purposes of overtime compensation is calculated as follows: (Annual Salary + Annual Increment) / 2080 hours = Hourly rate.

4.19.d.C. Although it is not required by applicable laws and regulations, the Commissioner reserves the right to exercise the option of providing cash payment for overtime to exempt employees at a rate of time and a half, in lieu of providing compensatory time off.

4.19.e. All requests for payment of overtime for work in excess of forty (40) hours in a work week by a non-exempt employee must be submitted by providing the Administrative Services Office with a copy of the employee's time and attendance report for the period pertaining to the request. A supply of these documents will be provided to each office and must be submitted by the following pay period for which the overtime work was performed and within the first two (2) days of the scheduled pay period.

4.19.f. Each employee is responsible for promptly reporting overtime hours worked to their supervisor. The supervisor is responsible for promptly informing the Administrative Services Office that overtime hours have been worked, and for documenting those hours.

4.20. Reporting

4.20.a. Schedule adjustments in accordance with these rules must be noted by supervisors on records such as time sheets or flex-time logs.

4.20.b. When a full-time employee of the Department actually works on a holiday, documentation indicating the hours worked on this holiday must be submitted to the Administrative Services Office by the end of the next period.

4.20.b.A. Employees compensated by a salary shall document Holiday Credit Earned being earned on the Department leave slip by clearly indicating that holiday time is being earned and which holiday is involved.

4.20.b.B. Employees compensated by an hourly wage shall document Holiday Credit Earned on the hourly payroll time sheet by clearly indicating which holiday is involved.

4.20.b.C. When holiday leave is used, a leave slip must also be submitted indicating that Holiday Credit Earned is being taken.

4.21. Time and Attendance Forms

4.21.a. The Department will issue time and attendance forms to be used by employees. These forms may be obtained by request to the Administrative Services Division.

4.21.b. Record systems established in each division will be audited by the Administrative Services Office to insure compliance with these rules.

4.21.c. Each employee is responsible for completing the Time and Attendance Form for each pay period and submitting it to their immediate supervisor. The immediate supervisor shall keep a copy of this form, if necessary for administrative purposes, and forward the original form to the Division Director.

4.21.d. If the employee record authorized leave time or overtime, a xeroxed copy shall be made by the Division Director and forwarded to the Fiscal Management Office for the purpose of cross-checking against leave forms and/or determining payroll data.

4.21.e. Each employee shall commence completion of the Time and Attendance Form at the beginning time period of the pay period. The pay period is based on a bi-monthly basis on the 15th and 30th of the month for 30 day months, the 16th and the 31st for 31 day months, and the 14th and the 28th for the month of February.

4.21.f. If two sheets are needed to record the Time and Attendance for any pay period they shall be submitted stapled together along with a copy of each approved leave annual leave or sick leave form, if available. If the approved leave form(s) are not available the Division Director shall attach them as they become available.

4.21.g. The comment section of the Time and Attendance form should be used to explain items that may be mandated in the management of the employee's time and attendance.

4.21.h. Division Directors will secure all Time and

Attendance records, including leave request forms in a secure location as the same are considered personal in nature. Only authorized auditors and management supervisors will have authority to review these records.

4.22. Each division shall establish procedures to record the earning and use of compensatory time and overtime. Time and attendance records must indicate when overtime is earned and when compensatory time is used. Each division will establish and maintain a record of compensatory time and overtime, and keep records updated as these items are earned.

§61-24-5. Leave

5.1. Annual leave

5.1.a. Only full-time employees are eligible for annual leave.

5.1.b. Eligible employees will accrue annual leave at the rate indicated:

<u>Years of Service</u>	<u>Accrual Rate</u>
less than 5	10 hours/calendar month
5-10	12 hours/calendar month
10-15	14 hours/calendar month
15 or more	16 hours/calendar month

5.1.c. All annual leave requests are to be made in writing to their immediate supervisor as far in advance of the requested period as possible, except for emergency situations which may be requested by telephone or in person to the immediate supervisor. The longer the leave the more advance notice will be needed.

5.1.d. Annual leave shall be granted at times that will not materially affect the Department's efficient operation. Supervisors may take this standard into account when making their decision to approve or disapprove leave requests.

5.1.e. Any request for emergency annual leave made by telephone must be reviewed to determine work needs on a given day prior to the issuing of a verbal approval. Such requests may be denied, in which case the employee shall be given a reasonable time in which to travel to work.

5.1.f. Annual leave may not be granted in advance of the employees accrual of such leave.

5.1.g. The maximum amount of accrued annual leave that an

employee can carry from one calendar year to the next is 320 hours.

5.1.h. The minimum charge against annual leave is thirty (30) minutes, and must be taken in increments of thirty (30) minutes.

5.1.i. Persons who leave the employment of the Department will be compensated for their balance of unused annual leave up to 320 hours.

5.1.j. In the event of the death of an employee, unused annual leave will be converted in a manner causing the benefits to accrue to the heirs of the estate of the employee.

5.1.k. Employees who transfer from other state agencies shall be allowed to transfer unused annual leave from their previous position when written notice regarding this leave is provided by their previous employer.

5.1.l. An employee who becomes ill and who is admitted to a hospital or has medical services performed in an emergency room while on previously approved annual leave may request that all or part of the time spent in a hospital or emergency room be charged to sick leave. The employee must request such action on the day of return to work and must provide a physician or hospital statement listing the specific dates of hospitalization or emergency room services. Sick leave will be charged only for the period of time the employee is hospitalized or in the emergency room. The remainder of the time must be charged to annual leave.

5.2. Sick Leave

5.2.a. Only full-time employees are eligible for sick leave. Eligible employees will accrue twelve (12) hours of sick leave per month. There are no restrictions on the amount of sick leave that can be accrued.

5.2.b. The Department makes no distinction between personal sick leave and family sick leave. Sick leave encompasses both personal and family sick leave.

5.2.c. Sick leave may be granted:

5.2.c.A. in the event of an illness of, or injury to, an employee which makes him or her incapable of performing his or her duties;

5.2.c.B. when a physician determines and states in writing that the employee's presence may jeopardize the health of others due to exposure to contagious disease;

5.2.c.C. for incapacity due to pregnancy ~~(under the~~

~~same conditions applying to any illness). The mother may request and be granted, at the Commissioner's discretion, up to 12 weeks of unpaid maternity leave without exhausting accumulated sick and annual leave.~~

5.2.c.D. for routine dental and medical appointments; and

5.2.c.E. for illness and/or routine dental and medical appointments for the employee's immediate family.

5.2.d. The minimum charge against sick leave will be thirty (30) minutes, and must be taken in increments of thirty (30) minutes.

5.2.e. The maximum charge against sick leave will be one work year per substantially continuous absence after which time the employee should consider disability retirement.

5.2.f. Call-in Procedure

5.2.f.A. All employees are to call their immediate supervisor or designated alternate to report an absence as soon as practically possible on the scheduled workday.

5.2.f.B. Employees shall not contact a general office receptionist or any other employee in lieu of calling their immediate supervisor or designated alternate.

5.2.f.C. Failure to call in within the first hour and one-half of the scheduled workday, without mitigating circumstances, will be cause to request the employee to use annual leave for the period of absence or to be placed in a leave of absence without pay status for the period and may be cause for further disciplinary action.

5.2.g. Sick leave forms must be submitted during the first working day the employee returns to work.

5.2.h. Any employee who is absent in excess of three consecutive days and who requests sick leave must submit a doctor's excuse justifying the employee's absence. Employees who cannot provide such justification may be charged annual leave for their absence and may be subject to disciplinary action.

5.2.i. For extended periods of leave, a physician's statement confirming the necessity of continuing leave must be submitted every thirty (30) days.

5.2.j. Employees who transfer to the Department from other state agencies shall be allowed to transfer unused sick leave from their previous position when written notice is provided by the

5.2.k. After a leave of absence/reduction in force, any unused accumulated sick leave will be reinstated if a permanent employee is reinstated within a year from the date of separation.

5.2.1. When an employee appears to have a pattern of sick leave abuse, the Commissioner may:

5.2.1.A. request appropriate substantiation of the employee's claim for leave, such as verification of illness for less than three days; or,

5.2.1.B. subject that employee to more stringent reporting requirements in the future.

5.3. Family Leave

5.3.a. An employee shall be entitled to a total of twelve weeks of unpaid family leave, following the exhaustion of all his or her annual and personal leave, during any twelve-month period:

5.3.a.A. because of the birth of a son or daughter of the employee;

5.3.a.B. because of the placement of a son or daughter with the employee for adoption; or

5.3.a.C. in order to care for the employee's son, daughter, spouse, parent or dependent who has a serious health condition.

5.3.b. In the case of a son, daughter, spouse, parent or dependent who has a serious health condition, such family leave may be taken intermittently when medically necessary.

5.3.c. An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed twelve consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

5.3.d. If family leave is foreseeable because of birth or adoption, the employee shall provide the Commissioner with two weeks written notice for such expected birth or adoption.

5.3.e. If family leave is foreseeable because of planned medical treatment or supervision, the employee shall:

5.3.e.A. make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the Department, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent; and

5.3.e.B. provide the employer with two weeks written notice of the treatment or supervision.

5.4. Bereavement Leave

5.4.a. Bereavement leave should be available in the case of a death in the immediate family of the employee.

5.4.b. The Commissioner recognizes that the significance of a death in an employees' family is inevitably different for each employee. Employees are expected to make bereavement leave requests in a professional manner.

5.4.c. Bereavement leave may not last more than three days without the prior approval of the Commissioner.

5.4.d. Bereavement leave will not be charged to an employee's annual leave or sick leave.

5.5. Military Leave

5.5.a. All employees who are members of the National Guard or of any of the Reserve Components of the Armed Forces of the Federal Government shall be entitled to leave of absence from duty without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades during business hours ordered by proper authority, or for field training or active service for a maximum period of thirty calendar days in any one calendar year ordered or authorized by proper authority.

5.5.a.A. The term "without loss of pay" shall mean that the employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that such employee may have received other compensation during the same period.

5.5.a.B. An employee shall be required to submit an official order from the appropriate military officer in support of the request for military leave.

5.5.a.C. The leave of absence for military leave shall be considered as time worked for the Department when computing seniority, eligibility for increase and experience with the Department.

5.5.a.D. The terms of this section shall not apply under the provisions of any Selective Training and Service act, or other such act whereby the President may order into active duty the National Guard and the Reserve Components of the Armed Forces of the Federal Government.

5.5.b. Any employee entering the U.S. armed services in time of war, national emergency or under compulsory provisions of

law of the U.S. in time of peace must be granted a leave of absence without pay from with the Department.

5.5.b.A. Upon completion of and discharge from any such armed services and within the applicable time period described by federal statute, rule, or regulations regarding return to employment, the employee shall have the right to reassume his or her service with the Department without any prejudice whatsoever to his or her status, merit rating or standing by reason of such absence.

5.5.b.B. Employees shall be credited with all annual leave, sick leave, and compensatory time not used at the commencement of his or her leave of absence.

5.5.b.C. These provisions shall not be construed as:

5.5.b.C. (a). an attempt to enlarge or to extend the length of employment of any temporary employee or to create a definite term where no definite term with respect to the position heretofore existed; or as providing that the salary paid by the Department shall continue to be paid to the employee while he or she is not performing the duties of his or her position with the state because of such services with the armed forces of the United States.

5.5.c. To the extent that any portion of this section of the rule is inconsistent with or conflicts with the requirements of any applicable federal statute, rules, or regulations regarding military leave or re-employment rights, the provisions of the applicable federal statute, rule, or regulations shall govern only to the extent that this section is inconsistent or in conflict with such federal statute, rule, or regulation.

5.6. Court, Jury, and Hearing Leave

5.6.a. Upon application in writing, an employee shall be granted leave with pay when, in obedience to a subpoena or direction by proper authority, he or she serves upon a jury or appears as a witness before any court or judge, any legislative committee, or any officer, board, or body authorized by law to conduct any hearing or inquiry.

5.6.b. The employee shall furnish such written confirmation of absence as is required by the Department.

5.6.c. The employee shall be entitled to a leave of absence with pay for the period of absence required to perform such duty. Annual leave will not be charged during the time the employee is on court, jury, or hearing leave.

5.7. Leave of Absence Without Pay

5.7.a. Upon application in writing to, and upon receipt of written approval of the Commissioner, a permanent, probationary, or provisional employee may be granted a leave of absence without pay for a specific period of time which normally should not exceed one year.

5.7.b. A leave of absence without pay may exceed the normal one year limitation.

5.7.c. This leave may be taken for a variety of reasons, including educational purposes.

5.7.d. Time spent by a probationary employee for leaves of absence shall not be construed as time served in completing the probationary period. This section shall not be construed to extend the provisional period limitation.

5.7.e. At the expiration of leave of absence without pay, the employee shall:

5.7.e.A. be reinstated to his or her former position, or one of comparable pay and duties, without loss of rights, unless the position is no longer available due to a reduction in force caused by curtailment of funds; and

5.7.e.B. furnish from the attending physician a certificate indicating the ability of the employee to return to work, if the leave of absence without pay was granted for illness.

5.7.f. The Commissioner may permit an employee to return to work at or before the expiration of the leave of absence at less than full duty, but the terms of return shall be written and are subject to review and renewal every thirty (30) calendar days. Such review may include the requirement of additional certification by a physician.

5.7.g. Failure of the employee to report promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance to the Commissioner, shall be cause for dismissal.

5.8. Medical Leave Without Pay

5.8.a. An injured or ill permanent employee, upon written application to the Commissioner, may be granted a medical leave of absence without pay not to exceed six (6) months within a twelve month period provided that:

5.8.a.A. the employee makes application (1) no later than fifteen calendar days following the expiration of all sick leave and compensatory time or (2) no later than fifteen calendar days following the date on which the employee filed a claim for

Worker's Compensation or (3) within fifteen (15) calendar days after the employee is injured or ill;

5.8.a.B. the employee's absence is due to an illness or injury which is verified by a physician's written statement that the employee is unable to perform his or her duties and giving a tentative date for the employee's return to work;

5.8.a.C. a physician's statement is submitted every thirty (30) calendar days to confirm the necessity for continued leave; and

5.8.a.D. the disability, as verified by a physician, is not of such nature as to render the employee permanently unable to perform his or her duties.

5.8.b. The Department shall, at least fifteen (15) days prior to, if possible, but no later than five (5) days following the expiration of the employee's sick leave, mail to the employee a written notice of the employee's right to a medical leave of absence without pay and that the leave will not be granted if the employee fails to apply within the above time limits.

5.9. Commissioner's Merit Leave

5.9.a. The Commissioner may award Commissioner's Merit Leave to any employee in recognition of exemplary performance of the duties of the Department. No employee may be awarded Commissioner's Merit Leave for more than two working days within a 12 month period.

5.9.b. Commissioner's Merit Leave will not be charged against the employees annual leave, sick leave or accumulated compensatory time.

5.9.c. All Commissioner's Merit Leave must be used within the same fiscal year in which it is given.

5.10. Leave Records

5.10.a. The Department will maintain a current leave record of its employees' accrued and used leave.

5.10.b. Each employee shall have access to his or her leave records subject to the provisions of section 12 of this rule.

§61-24-6. Flex-time

6.1. The purpose of establishing a flex-time system is to increase managerial boundaries and allow for better service to the public while permitting employees with flexible hours to manage

personal responsibilities.

6.2. Flex-time will be used on a division by division basis. Flex-time will not be used in a division where safety/risk considerations override the benefits of flex-time. Any Division Director who desires to participate in this program shall make their request to the Commissioner. Divisions will not begin flex-time until they have received approval from the Commissioner.

6.3. Flex-time Provisions

6.3.a. All employees must work the standard workweek of 37 1/2 hours of actual work time.

6.3.b. All employees must work during core time which is from 9:00 am - 3:00 pm, unless they are on approved leave. Core time is the minimum total number of hours designated each day in which all full-time employees must be on the job.

6.3.c. There is a flexible band at each end of the core time from 7:00 am until 9:00 am for arrival and from 3:00 pm until 5:00 pm for departure. The flexible band is a designated time frame within which an employee may choose the time of arrival and departure from work. An employee can come in any time during this flexible band as long as it adjusted at the end of the day to cover the 8 hours required each day.

Ex. 7:15 am - 3:15 pm
8:30 am - 4:30 pm
8:45 am - 4:45 pm etc.

6.3.d. The customer service hours will be from 7:30 am - 4:30 pm. The customer service hours will correspond with the customer service band which are the hours during the day in which the Department provides services to the public.

6.3.e. An employee may select a tour of duty, (the hours that they are scheduled to work), within this flexible period. If conflicts arise due to two or more conflicting tours of duty then they should be resolved on the basis of seniority. The employee with the longest tenure has higher right to the option of tour of duty. This agreement should be confirmed with the Division Director.

6.3.f. An application for a specific tour of duty must be filled out by an employee at the beginning of their tour of duty and if whenever there is a change in their tour of duty. The employee must have original and changed tour of duties approved by their Division Director.

6.3.g. There will be a flexible window of 15 minutes allowed on either side of the scheduled arrival time in which an

employee does not have to fill out a leave slip if they are late, provided:

6.3.g.A. the length of the work day is appropriately adjusted at the end of the tour of duty; and

6.3.g.B. no employee begins work before 7:00 am or later than 9:00 am nor completes the work day before 3:00 pm or later than 5:00 pm.

6.3.h. All employees affected under this policy are required to sign in and out on the sign-In Log documenting hours worked. This log must show the time when work began (not necessarily the time of arrival), and the appropriate time of departure from the work place.

6.3.i. Break periods and lunch breaks should not be accumulated for any reason and are not flexible under flex-time.

6.4. All employees of the Department operating under the flex time system, will use the Flex Time/Time and Attendance Log as their official Time and Attendance report. All employees not operating under the Flex Time system who wish to use the Flex Time/Time and Attendance Log as opposed to the Time and Attendance Form shall have the option to do so.

6.5. Divisions and/or persons wishing to use the Flex Time/Time and Attendance Log shall do so by listing four employees per sheet or until all individuals are accounted for. The Log sheet shall be located in a centralized area and shall be completed daily by all employees operating thereunder.

§61-24-7. Work Related Injuries.

7.1. Employees who have been injured in a work related accident are not permitted to obtain benefits from the State Worker's Compensation System and sick leave benefits at the same time.

7.2. Worker's Compensation awards may be drawn only for job related injuries, while sick leave is intended to be used for non-job related illness or injuries.

7.3. If sick leave is taken following a work related injury, an employee can have the sick leave re-instated, if the employee compensates the agency for the appropriate amount of sick leave that was taken.

7.4. Employees must report all job related injuries to their immediate supervisor within 24 hours of the injury.

7.5. The Division Director must report any injury to the Administrative Services Division within three working days of the incident.

7.6. Employees required to be absent from work due to a compensable work-related injury must elect to receive either Temporary Total Disability Benefits, known as TTD Benefits, from Workers' Compensation or paid sick leave as soon as possible after the injury. Employees should contact the Administrative Services Division to obtain FORM NO. 02-F072, ELECTION OF OPTION - WORKER'S COMPENSATION OR SICK LEAVE BENEFITS in order to identify their choice of compensation.

7.7. Employees who fail to select either sick leave or TTD Benefits and consequently receive both benefits, must repay their choice of benefit. Repayment may be authorized through payroll deduction by completing FORM NO. 02-F071 - ASSIGNMENT OF FUTURE WAGES. Lump sum repayment is also acceptable.

7.8. Failure to report work related injuries may subject the employee to disciplinary actions.

§61-24-8. Drug-Free Workplace

8.1. It is the policy of the Department that the unlawful manufacture, distribution, dispensing, possession or use of controlled substances is prohibited in the workplace.

8.2. As a condition of employment all employees will:

8.2.a. abide by the terms of this section of the rule.

8.2.b. notify his or her supervisor of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction; and

8.2.c. notify his or her supervisor of any other criminal drug statute conviction for a violation no later than ten (10) days after such conviction.

8.3. Within thirty days of receiving such notice, the Department will take appropriate personnel actions. Penalties may range from written reprimand to dismissal and may include requiring such employees to participate in a substance abuse assistance or rehabilitation program as provided through the Department's Employee Assistance Program, in accordance with section 10 of this rule.

8.4. The Department will maintain on file copies of the certification of compliance with the United States Government's Drug-Free Workplace Act of 1988.

§61-24-9. Probationary Period

9.1. All new or rehired employees shall be required to serve a probationary period.

9.2. The probationary period begins on the employee's official starting date of employment and ends after six (6) months of employment.

9.3. Promoted employees may be required to serve a probationary period based upon the recommendation of the Division Director with the concurrence of the Commissioner.

9.4. The terms of the probationary period will be explained to a prospective employee when employment is offered and, to the new employee during their initial orientation.

9.5. The performance of probationary employees will be evaluated twice by their supervisors during the probationary period. The first evaluation will occur between the second and third month of employment. The second evaluation will occur between the fourth and fifth month of employment.

9.6. Evaluations will be based on objective standards established for the employee's areas of responsibility and will be conducted using evaluation tools prescribed by the Commissioner.

9.7. Evaluations should be signed by the supervisor and the employee at the time of their completion. Only signed evaluations will be considered valid.

9.8. Evaluations will be the main tool in determining whether the performance of the employee is sufficient to warrant continued employment.

9.9. One calendar month before the end of the probationary period, the supervisor must submit the recommendation to the Personnel Office on the proposed status of the employee. Copies of the evaluations must be attached to the recommendation.

9.10. The Commissioner or his or her designee will then make the decision on the status of the employee and this decision will be communicated to the employee and the supervisor in writing.

9.10.a. Probationary employees whose performance is judged to be less than sufficient are subject to an extension of the probationary period, a denial of the probationary salary increase or termination.

9.11. The failure of the supervisor to evaluate and make the

scheduled recommendation on the status of probationary employees will be considered a failure to follow Department procedure and may subject the supervisor to disciplinary action under section 13 of this rule.

9.12. If at any time during the probationary period it is determined that the services of the employee are unsatisfactory or unnecessary the employee may be dismissed. In such cases, the Department shall provide written notice of not less than ten (10) days, including an explanation of the reasons for such action.

9.13. All new employees will be hired at 95% of the starting salary designated for the position.

9.14. In order to provide an incentive for the successful completion of the probationary period, probationary employees whose performance is judged to be sufficient for continued employment by the Commissioner will be eligible to a five percent salary adjustment which will raise their pay to the full starting salary for the position.

9.15. A probationary raise may not increase the level of the employee's salary above the amount that is approved by the Commissioner as the position's starting salary.

9.16. In cases where, at the end of the probationary period, and, in the judgment of the supervisor, additional time is needed to fully acquaint the employee with the position, a two month extension of the probationary period is possible only with the written permission of the Commissioner.

9.16.a. A probationary period may not be longer than eight months.

9.16.b. A probationary salary increase may not be delayed past the end of the extended period of probation.

9.16.c. A probationary employee whose performance has been judged to be less than sufficient at the end of an extended probationary period will be dismissed at that time.

9.17. Probationary employees may apply for other positions within the Department only with the permission of the Commissioner.

9.18. Probationary employees who are new to the Department will be expected to limit absences and will not be eligible for annual leave except in emergency situations.

\$61-24-10. Employee Assistance Program

10.1. The purpose of the Employee Assistance Program is to

provide confidential assistance to full-time employees and their dependents (who are eligible for coverage under the Public Employee's Insurance Program) to reduce the adverse impact of personal problems on job performance. "Personal problems" means problems which have impaired job performance, including, but not limited to, emotional or behavioral disorders, alcohol or drug abuse, family or marital discord, and financial or legal problems.

10.2. Employees are eligible for assistance through the EAP regardless of race, age, color, creed, or national origin.

10.3. The employee is responsible for meeting the cost of treatment. Public Employee health insurance (PEIA) or other third party payers may provide compensation for certain types of treatment.

10.4. Program Assumptions

10.4.a. Early identification and treatment of problems is essential to the successful resolution of the problem.

10.4.b. The decision to seek diagnosis and accept treatment for any suspected problem or illness is primarily the responsibility of the employee.

10.4.c. The Department's concern for the individual's personal life, including drinking practices and the misuse of drugs, begins only when it adversely affects job performance or attendance. "Impaired job performance" means a change for the worse in job performance indicators, including employee evaluations, productivity, safety record, absenteeism, and interpersonal relationships with fellow employees.

10.5. It is the policy of the Department that the voluntary request of assistance through this program will not be made a matter of record nor will it jeopardize the employee in any way.

10.6. Any employee of the Department who violates the confidence associated with participation in the Employee Assistance Program may be subject to disciplinary action.

10.7. No reference concerning the nature of the personal problems shall appear in the personnel file.

10.8. Personal records of actions taken or decisions to terminate are to be related to the unsatisfactory performance or attendance of the employee and not to personal problems.

10.9. Implementation Procedures

10.9.a. When an employee's performance or attendance is unsatisfactory it will be called to his or her attention using

regular Department procedures and policies.

10.9.b. If low performance or poor attendance continues, the supervisor may again discuss the problem with the employee and may elect to offer referral to the EAP.

10.9.c. If the employee accepts the offer of help and the job performance or attendance problem is corrected, no further action will be taken.

10.9.d. If the employee refuses the offer of help and the job performance or attendance problem continues, disciplinary actions will be taken.

10.10. Employees may voluntarily seek counseling and information on a confidential basis from the Employee Assistance Program (EAP). No record of such participation may be placed in the personnel files and the supervisor shall not be notified.

10.11. Shawnee Hills Community Mental Health/Mental Retardation, Inc. has been contracted by the Department to provide a comprehensive Employee Assistance Program (EAP), including, but not limited to:

10.11.a. orientation of Department employees for the purpose and use of the EAP;

10.11.b. training of supervisory staff in the implementation of EAP principles and procedures;

10.11.c. initial assessment and evaluation of all supervisory and self-initiated referrals;

10.11.d. emergency contacts on a twenty-four hour basis;

10.11.e. case management services for employees involved in the program; and

10.11.f. additional seminars and training in related areas (e.g. stress management).

10.12. The Commissioner will designate an EAP Coordinator responsible for administering the program and who will serve as the contact for information and assistance with the program. The EAP Coordinator will be bound by the rules of confidence expressed in this section. Violation of confidence by the EAP Coordinator will be cause for disciplinary action, including immediate dismissal if necessary.

§61-24-11. Smoking and Tobacco Policy

11.1. The purpose of this policy is to encourage a healthy workplace environment where the needs and concerns of smokers and non-smokers alike are considered at all Department operated facilities. This policy is based on thoughtfulness, consideration and cooperation between smokers and non-smokers. It is the intention of this policy that inevitable exceptions to these guidelines be worked out in a fair and equitable manner as compromises among adults, meeting the mandate prescribed by and expressed in the spirit of this policy.

11.2. The term "smoking" covers the use of cigarettes, cigars and pipes, chewing tobacco and snuff.

11.3. All employees, customers, and visitors are expected to comply with the provisions of this policy.

11.4. Smoking is prohibited in

11.4.a. any area in which a fire or safety hazard potentially exists;

11.4.b. most common areas including elevators, stairwells, waiting rooms, copier rooms, auditoriums, reception areas, restrooms and mailroom;

11.4.c. classrooms and conference rooms;

11.4.d. state vehicles, unless the vehicle is specifically assigned to the employee, in which case he or she may not smoke in the vehicle if non-smoking employees are present;

11.4.e. the Guard house (Bldg. X-2 of the Guthrie Center);

11.4.f. the "Bowling Alley" (Bldg. 1 of the Guthrie Center);

11.4.g. all sewage wastewater, electrical generating and other equipment buildings (including Buildings 3, 4, 8, 21, and 22 of the Guthrie Center);

11.4.h. laboratory areas in Bldg. 11 and 12 of the Guthrie Center and at the Moorefield Field Office;

11.4.i. storage facilities in Bldgs. 16, 17C, 17D and 20 of the Guthrie Center and at the Moorefield Field Office;

11.4.j. the apple packing line and coolers at the Inwood Farmers' Market;

11.4.k. storage and indoor sales areas at the Charleston Farmers' Market; and

11.4.1. pesticide, feed and materials storage facilities, equipment facilities and barns at the McCausland Farm.

11.5. Private offices may be designated as smoking permitted or prohibited by the occupant. The occupant should demonstrate personal courtesy and refrain from smoking in his or her office when a non-smoking employee, customer or visitor is present.

11.6. In shared areas where smokers and non-smokers work together, the supervisor will make a reasonable effort to separate smokers and non-smokers if requested to do so. Supervisors should take into consideration the following factors: airflow, ventilation, existing physical barriers that might affect airflow and/or ventilation, and an individual's sensitivity to smoke.

11.7. Employees are encouraged to deal with disagreements directly by working out a compromise among themselves. If compromise is unavailable, the situation should be brought to the attention of the supervisor. Supervisors or employees may bring unresolved conflicts to the Commissioner for resolution of unique situations.

11.8. Copies of this policy will be distributed to all employees.

11.9. Signs will be posted to designate areas where smoking is prohibited. Employees may use desk top signs to remind others of their desire to not smoke.

11.10. Ashtrays will be available in appropriate smoking areas.

§61-24-12. Personnel Records.

12.1. The Department will maintain personnel records and information for each applicant, employee, and past employee in a manner that will balance each individual's right to privacy with the Department's need to obtain, use, and retain employment information.

12.2. Personnel records are to contain information which is needed by the Department to conduct its business or which is required by federal, state, or local law. This information normally will include, but will not necessarily be limited to, the following: application forms, payroll information, performance appraisals, medical information as required for Worker's Compensation and attendance records, disciplinary records, and attendance and tardiness records.

12.3. Employees have a responsibility to keep their personnel records up to date by promptly notifying the Personnel Office in

writing off any changes in the following:

12.3.a. name;

12.3.b. address;

12.3.c. telephone number;

12.3.d. marital status, where the change in status affects benefits and/or tax withholding;

12.3.e. number of dependents;

12.3.f. addresses and telephone numbers of dependents and spouse or former spouse (for insurance purposes only);

12.3.g. beneficiary designations for any of the insurance, disability and pension plans; and

12.3.h. persons to be notified in case of emergency.

12.4. In addition, employees who have a change in the number of dependents or marital status must complete a new Form W-4 for income tax withholding purposes within ten days of the change if the change results in a change in the number of dependents.

12.5. Employees are allowed to inspect their own personnel records.

12.6. Employees are prohibited from inspecting any personnel files except their own, except where there is a legitimate managerial need to know the information. Examples of individuals who may have a legitimate need to inspect personnel records include the Commissioner, Deputy Commissioner, Payroll Clerk, Personnel Clerk, the Personnel Director or a designated assistant, and any Division Director who is considering an employee for promotion, transfer, or other personnel action.

12.7. Any access to a personnel file should be verified and recorded and kept as a permanent part of the file.

12.8. Employees who, after inspecting their personnel files, feel that any material is inaccurate or irrelevant may submit a written request to the Personnel Director to have the material revised or removed from the file. If such a request is not granted, the employee will be permitted to place a written statement of disagreement in the file and can pursue the matter further using the regular Administrative Review policies.

12.9. There is some information in an employee or applicant file that is available to the public and that availability is protected under both federal and state freedom of information

statutes. There is other information in these same files that is not available to the public and not required to be distributed under either federal or state freedom of information statutes.

12.10. Employees are to refer any requests from outside the Department for personnel information concerning applicants, employees, and past employees to the Personnel Director.

12.11. The Personnel Director may verify wage and salary information and release the following information without first obtaining the written consent of the individual involved: employment dates, position held, and location of job site. Any other information will require a written release by the employee.

12.12. The Personnel Director is to make provisions to retain certain personnel records as required by various federal, state, and local laws.

§61-24-13. Disciplinary Action.

13.1. The purpose of this Disciplinary Action policy is to establish a uniform policy Department of Agriculture for formal disciplinary action. This portion of the rule shall apply to all employees of the Department; however, the Executive staff and the Division Directors are subject to discipline by the Commissioner, who is not confined to the provisions of this policy.

13.2. This policy may not limit the authority of the Commissioner given under the Constitution and statutes of the State of West Virginia.

13.3. Disciplinary action may be taken or recommended by Supervisors and other appropriate supervisory employees of the West Virginia Department of Agriculture who must follow this policy when taking or recommending disciplinary action.

13.4. The Department supports the concept of progressive discipline. The nature of the offense is the main factor in determining disciplinary action. Offenses are described as Major or Minor, with the appropriate level of response detailed for each in this policy.

13.5. Certain flagrant violations may warrant disciplinary action outside the progressive disciplinary process. Although the disciplinary action is "progressive" it should not be implied that each of these actions must occur in this order when a more immediate response is needed.

13.6. The Personnel Director is available to provide assistance, consultation, and assistance in preparing disciplinary action or assisting in formulating the recommendations of

disciplinary action, or to answer any questions an employee has about the disciplinary process.

13.7. Any proposed disciplinary action must be based on facts and evidence, therefore, the supervisor must take great care in the analysis of the situation (which may include discussing the problem with the employee to find facts); but in no case during this fact finding process should a supervisor or Division Director tell an employee that a suspension, demotion, disciplinary transfer, or dismissal is being contemplated.

13.8. The Personnel Director will make all notifications about disciplinary proceedings above the level of written reminder.

13.9. Progressive Discipline Procedures for Major Offenses

13.9.a. Examples of major offenses are:

13.9.a.A. dishonesty;

13.9.a.B. conviction of felony;

13.9.a.C. substance abuse on the job;

13.9.a.D. falsification of records;

13.9.a.E. violation of standards as established by State Ethics Commission;

13.9.a.F. abuse of leave;

13.9.a.G. habitual tardiness;

13.9.a.H. violation of rules, regulations, and policies as established by the Department, State of West Virginia, federal government, or any organization or governing body associated with the Department;

13.9.a.I. habitual or unauthorized sleeping on the job;

13.9.a.J. work-related criminal violations;

13.9.a.K. carrying firearms on their person while on the job, or in a state vehicle;

13.9.a.L. physical abuse of state property;

13.9.a.M. insubordination;

13.9.a.N. assault and/or battery of co-workers or others;

- 13.9.a.O. abusive language and/or gestures;
- 13.9.a.P. destroying property of others;
- 13.9.a.Q. sexual, verbal, or physical harassment of others;
- 13.9.a.R. discrimination;
- 13.9.a.S. use of state property for private gain or profit; and
- 13.9.a.T. failure to meet deadlines in a manner that substantively affects the work of the Department.

13.9.b. The failure to meet the deadlines proscribed in this timetable for disciplinary procedures for major offenses will result in the termination of the process, except in the case of emergencies or other extenuating circumstances.

13.9.c. Step 1: Major offenses are to be reported in writing by the supervisor to the Division Director within five working days of the event or the time when a violation was known by the supervisor. (If the Division Director is the immediate supervisor, the deadline for action in steps one and two is ten days.)

13.9.c.A. The initial written report should: clearly document the violation; include the date and time of the violation, or of the time the supervisor became aware of the violation; describe the nature of the violation; and state the recommendation for disciplinary action.

13.9.d. Step 2: The Division Director has five working days to review the supervisor's recommendation, and to comment in writing to the Commissioner, except for the recommendation for decision making leave, in which case the recommendation must be made to the Personnel Director within 24 hours of the event or of the time that the supervisor becomes aware of the violation. Any recommendation for disciplinary action stronger than a written reminder must be reviewed by the Personnel Director for legal and procedural issues.

13.9.e. Step 3: The Personnel Director has five working days to review the recommendation from the Division Director.

13.9.e.A. The review of the recommendations from the Division Director will include only the procedural, policy, and legal issues of the proposed action.

13.9.e.B. During this stage of the review, the Personnel Director will not be concerned with determining the guilt

or innocence of the employee, but instead will review the strength of the evidence presented relative to the discipline recommended to provide an objective evaluation of the appropriateness (legal, procedural) of the level of disciplinary action that has been recommended.

13.9.e.C. The Personnel Director will inform the employee in writing of the pending recommendation and will explain to the employee what options are available to him or her.

13.9.f. Progressive Discipline options for major offenses

13.9.f.A. Written Reminder.

13.9.f.A. (a). A written reminder is the minimum action that can be taken when a major offense occurs.

13.9.f.A. (b). Division Directors may provide a written reminder to any employee under their supervision; or a supervisor may provide a written reminder to an employee under their supervision with the written concurrence of the Division Director.

13.9.f.A. (c). A written reminder for a major offense requires the concurrence of the Division Director, but not the Personnel Director.

13.9.f.A. (d). All written reminders will be placed in the personnel file of the individual involved.

13.9.f.A. (e). The written reminder must be presented to the employee by the supervisor or Division Director in a private setting. In no case should such a letter be placed in a public area for the employee to pick-up. Every effort should be made to deliver the written reminder to field employees in person. Exceptions to this procedure require the approval of the Personnel Director.

13.9.f.A. (f). The written reminder should be signed and dated by the supervisor and by the employee to prove receipt.

13.9.f.A. (g). There can be no appeal of written reminders, but an employee may place a written statement of disagreement in his or her personnel file. The statement must be submitted to the Personnel Director within five working days of receipt of the written reminder.

13.9.f.B. Suspension Without Pay.

13.9.f.B. (a). Any supervisor may recommend to his or her Division Director a suspension without pay for an

employee for a period varying from 1-30 days, depending on the gravity of the offense and the employee's previous disciplinary record.

13.9.f.B.(b). The recommendation must then be communicated in writing to the Personnel Director with the comments and recommendation of Division Director included.

13.9.f.B.(c). The Personnel Director will then review these recommendations for policy, procedure and legal issues.

13.9.f.B.(d). The Personnel Director will inform the employee of the recommended action (in writing) of the pending recommended action and will explain options that are available to the employee at that point in the process, including Administrative Review as noted in section 14 of this rule.

13.9.f.B.(e). The letter of suspension without pay may only be issued by the Commissioner.

13.9.f.C. Disciplinary Demotion.

13.9.f.C.(a). Any supervisor may recommend a demotion of duties and/or salary in response to a major offense.

13.9.f.C.(b). The recommendation must then be communicated in writing to the Personnel Director with the comments and recommendation of the Division Director included.

13.9.f.C.(c). The Personnel Director will then review these recommendations for policy, procedure and legal issues.

13.9.f.C.(d). The Personnel Director will inform the employee of the recommended action (in writing) and will explain options that are available to the employee at that point in the process, including Administrative Review as noted in section 14 of this rule.

13.9.f.C.(e). The letter of demotion or salary reduction may only be issued by the Commissioner.

13.9.f.D. Disciplinary Transfer.

13.9.f.D.(a). Any supervisor may recommend a disciplinary transfer in response to a major offense.

13.9.f.D.(b). The recommendation must then be communicated in writing to the Personnel Director with the comments and recommendation of the Division Director included.

13.9.f.D.(c). The Personnel Director will then review these recommendations for policy, procedure and legal issues.

13.9.f.D.(d). The Personnel Director will inform the employee of the recommended action (in writing) and will explain options that are available to the employee at that point in the process, including Administrative Review as noted in section 14 of this rule.

13.9.f.D.(e). The letter of transfer may only be issued by the Commissioner.

13.9.f.E. Dismissal.

13.9.f.E.(a). Only in the most severe situations will a dismissal be considered without there first being a record of written warning, a reprimand, or a suspension.

13.9.f.E.(b). Any supervisor may recommend a dismissal in response to a major offense.

13.9.f.E.(c). The recommendation must then be communicated in writing to the Personnel Director with the comments and recommendation of Division Director included.

13.9.f.E.(d). The Personnel Director will then review these recommendations for policy, procedure and legal issues.

13.9.f.E.(e). The Personnel Director will inform the employee of the recommended action (in writing) and will explain any options that are available to the employee at that point in the process, including Administrative Review as noted in section 14 of this rule.

13.9.f.E.(f). The letter of dismissal may only be issued by the Commissioner.

13.9.f.F. Decision Making Leave.

13.9.f.F.(a). Decision Making Leave is paid leave that may last only one work day. The purpose of decision making leave is to give the one day of leave, which will allow the employee to:

13.9.f.F.(a).1. consider the implications of his or her behavior;

13.9.f.F.(a).2. consider the seriousness of the charges against him or her; and

13.9.f.F.(a).3. consider the potential impact that the behavior could have upon his or her continued employment with the Department.

13.9.f.F.(b). Any supervisor may recommend decision-making leave to the Division Director in response to a major offense.

13.9.f.F.(c). The recommendation must then be communicated in writing to the Personnel Director with the comments and recommendation of Division Director included.

13.9.f.F.(d). The Personnel Director will then review these recommendations for policy, procedure and legal issues.

13.9.f.F.(e). The Personnel Director will inform the employee of the recommended action.

13.9.f.F.(f). The supervisor and employee will meet immediately upon the employee's return from decision-making leave. The employee's behavior will be discussed; and a written action plan for correcting the problem will be agreed upon by both the supervisor and the employee (stating what steps will be taken to solve and monitor the problem). This plan will be retained by both the supervisor and the employee, but will not be retained for more than thirty days from the date that the leave was issued.

13.9.f.F.(g). There is no appeal of decision making leave, but, the employee may place a written statement of disagreement in the employee's personnel file within five days of the return to work. This statement must be submitted to the Personnel Director.

13.10. Progressive Disciplinary Procedures for Minor Offenses

13.10.a. Examples of minor offenses are:

13.10.a.A. excessive tardiness;

13.10.a.B. excessive or improper personal telephone calls;

13.10.a.C. failure to meet deadlines;

13.10.a.D. messiness/sloppiness/disorganization;

13.10.a.E. unjustified complaining;

13.10.a.F. improper use of state property;

13.10.a.G. failure to check in/out of work place;

- 13.10.a.H. unprofessional courtesy and appearance;
- 13.10.a.I. excessive fraternization;
- 13.10.a.J. avoidance of work; and
- 13.10.a.K. improper or habitual practical jokes.

13.10.b. Actions taken in response to minor offenses must follow the procedures in this section of the rule.

13.10.c. Verbal Reminder.

13.10.c.A. A verbal reminder should be the first disciplinary action taken for all minor offenses.

13.10.c.B. A supervisor is permitted to issue a verbal reminder to an employee for a job related activity.

13.10.c.C. A verbal reminder is to be given to the employee by the supervisor within two working days of event or, of the time when the violation is known to the supervisor.

13.10.c.D. The verbal reminder must be issued to the employee in a private setting. A verbal reminder may be given by telephone to a field employee, if necessary.

13.10.c.E. The supervisor must clearly state to the employee that a verbal reminder is being issued, what activity was incorrect, and what activity would have been correct.

13.10.c.F. The supervisor must document a verbal reminder (whether delivered in person or by phone) after the discussion by completing a verbal reminder notice (provided by Personnel Office). This record is to be signed by the employee and the supervisor, and will list only the broad subject of the reminder, but will not list details of the incident.

13.10.c.G. A copy of all verbal reminders must be placed in the employee's personnel file.

13.10.c.H. In all cases the supervisor must maintain personal notes regarding the verbal reminder indicating date, time, and a full summary of the discussion.

13.10.c.I. There is no appeal of verbal reminders.

13.10.d. Written Reminder.

13.10.d.A. Repeated minor offenses should be documented by written reminders.

13.10.d.B. A supervisor is permitted to issue a written reminder in response to multiple minor offenses of the same nature. When possible, a verbal reminder should precede the written reminder.

13.10.d.C. A written reminder must be issued within five working days of event or, of the time when violation is known to the supervisor.

13.10.d.D. A written reminder requires the concurrence of the Division Director, but not the Personnel Director.

13.10.d.E. The written reminder must be presented to the employee by the Supervisor in a private setting. In no case should such a letter be placed in a public area for the employee to pick-up. Every effort should be made to deliver the written reminder to field employees in person. Exceptions require the approval of the Personnel Director.

13.10.d.F. The document should be signed and dated by the supervisor and/or by the employee to prove receipt.

13.10.d.G. The written reminder must be placed in the permanent personnel file of the individual involved.

13.10.d.H. There is no appeal of written reminders. However an employee may express disagreement by providing a written statement to the Personnel Director which will be attached to the written reminder in the employee's personnel file. This statement must be submitted within five days of receipt of the written reminder.

13.10.e. Suspension Without Pay.

13.10.e.A. Suspension without pay is available to supervisors as a response to repeated or multiple minor offenses that occur within a period of twelve successive calendar months. The timetable for action on suspension without pay is the same as the timetable for suspension without pay in the major offenses, as described in this section of the rule.

13.10.e.B. A supervisor may recommend in writing to the Division Director a suspension without pay for an employee for a period varying from 1-30 days, depending on the gravity of the offense and the employee's previous disciplinary record.

13.10.e.C. The recommendation must be communicated in writing to the Personnel Director with the comments of Division Director included.

13.10.e.D. The Personnel Director will then review

these recommendations for policy, procedure and legal issues.

13.10.e.E. The Personnel Director will then inform the employee in writing of pending recommended action and will discuss options available to the employee at that point in the process.

13.10.e.F. The actual letter of suspension without pay may only be issued by the Commissioner.

13.11. An employee may respond to disciplinary action by:

13.11.a. accepting the disciplinary action; or

13.11.b. writing to the Commissioner to request that Administrative Review procedures, as noted in section 14 of this rule, be implemented prior to the implementation of the following major disciplinary actions: disciplinary transfer, disciplinary demotion, suspension without pay, dismissal; or

13.11.c. providing a written statement of disagreement to their personnel file in response to the following disciplinary actions: a written reminder, a suspension without pay for multiple minor offenses, or decision making leave.

§61-24-14. Administrative Review

14.1. Administrative Review covers complaints, problems, and/or disputes with another employee, the nature of which cause an adverse effect on the employee. Administrative Reviews may cover, but are not limited to:

14.1.a. working conditions;

14.1.b. perceptions of unfair treatment;

14.1.c. certain levels of disciplinary actions;

14.1.d. compensation issues;

14.1.e. job classification;

14.1.f. any form of alleged discrimination or harassment;

14.1.g. application of policies, practices, rules, regulations and procedures believed to be to the detriment of an employee; and

14.1.h. improper administration of benefits or compensation, however Administrative Review of PEIA and PERS issues may be limited to established appeal mechanisms already used by

these agencies.

14.2. The goal of this policy is to assist employees in arriving at a satisfactory resolution to differences involving work-related matters. The emphasis of the process should be positive and it should reflect good communication between the people involved, resulting in a fair and effective resolution.

14.3. Only full-time employees of the Department shall be eligible to participate in the Administrative Review process.

14.4. Administrative Reviews for Division Directors and Executive staff will be conducted by the Commissioner, who may elect to use any of the procedures designated in this policy.

14.5. Employees of the West Virginia Department of Agriculture are not eligible to participate in the West Virginia State Employee Grievance Board.

14.6. Employees with questions about the process are encouraged to contact the Personnel Director.

14.7. Procedures

14.7.a. Step One: Informal Resolution of Problem

14.7.a.A. An employee with a complaint should discuss the problem with the immediate supervisor in an attempt to resolve the matter informally.

14.7.a.B. This informal attempt at problem solving should take place within five working days after the disagreement or incident occurs and/or the employee becomes aware of the incident.

14.7.a.C. In the unlikely event an employee and the immediate supervisor are unable to resolve the problem, then the next level of review may be requested. Only in the most severe cases will a Step Two review be considered without an acknowledged attempt to resolve the issue with the immediate supervisor.

14.7.a.D. The parties involved in the Step One process may inform the Personnel Director if they choose to do so.

14.7.b. Step Two: Request for Administrative Review to supervisor

14.7.b.A. Should the Step One process fail to resolve the issue, the employee should submit a written Request for Administrative Review (Step Two) to their the immediate supervisor within five working days of their original (Step One) discussion.

14.7.b.B. The written request should:

14.7.b.B.(a). specifically state that it is a request for Administrative Review;

14.7.b.B.(b). describe the issue summarizing relevant points from the initial discussion (dates, times, locations, other specific information);

14.7.b.B.(c). request copies of relevant letters or documents needed from the employees's file;

14.7.b.B.(d). submit written signed statements by any relevant witnesses; and

14.7.b.B.(e). state what redress or relief is sought. In other words, what action is needed to remedy the situation. The relief sought must be within the capability of the Department to grant. The redress options may include reimbursement for costs incurred by the employee in filing for Administrative Review, (such as copying of materials or travel costs).

14.7.b.C. The immediate supervisor must respond to the employee in writing within five working days after receiving the employee's written request for Administrative Review.

14.7.b.C.(a). The immediate supervisor's response must explain in reasonable detail the reasons for, or policies used, in reaching a decision on the matter. The supervisor must retain a copy of the response for their records.

14.7.b.D. If the employee does not feel the Administrative Review has been answered satisfactorily in Step Two, he or she may choose to proceed to Step Three.

14.7.b.E. The parties involved in the Step Two process may inform the Personnel Director if they choose to do so.

14.7.c. Step Three: Request for Administrative Review to supervisor's supervisor

14.7.c.A. The employee must present the written Step Three request for Administrative Review to the person occupying the position one level above the immediate supervisor in the organizational structure; unless the person occupying the position one level above the immediate supervisor is a member of the Executive Staff, the employee should skip the Step Three process and proceed directly to the Step Four process. The written request for Administrative Review shall state the reason for the disagreement and synopsis of the issues.

14.7.c.B. The employee must present the Step Three written request for Administrative Review within five working days following the completion of the Step Two process.

14.7.c.C. The person requesting the Step Three review must provide a copy of the request for review for the Personnel Director.

14.7.c.D. The person to whom the written request for Administrative Review is submitted must respond in writing to the employee within five working days of receipt of the employee's written request.

14.7.c.E. If the employee does not feel the issue has been resolved with the Step Three process he or she may choose to proceed to Step Four level.

14.7.d. Step Four: Hearing

14.7.d.A. In some instances it is appropriate to move directly to Step Four process as outlined in the Progressive Discipline section of these rules.

14.7.d.B. The person seeking a Step Four Administrative Review must notify the Personnel Director in writing within ten working days after receiving a response in the Step Three process.

14.7.d.C. The final hearing at this level must be convened within fifteen working days of the employee's submission of the request for review to the Personnel Director.

14.7.d.D. In the written request, the person seeking the review must specify which of the following options for review they are requesting:

14.7.d.D. (a). a review before the Commissioner or the commissioner's designee;

14.7.d.D. (b). a review before a three-person committee appointed by the Commissioner, where no more than one member of the committee is from the employee's job classification; or

14.7.d.D. (c). a review before a three-person committee, where one person is selected by the employee, one person is selected by the employee against whom the Administrative Review was filed, and one person will be selected by the two panel members previously chosen, or if they cannot agree on a person, this person will be selected by the Commissioner. The person selected by the other two panel members, or by the Commissioner, will Chair the Committee. No more than one member of this committee can be from the employee's job classification.

14.7.d.E. Any proceedings, discussions, or deliberation will be conducted with the principles of fairness and

professional behavior as the guiding principle.

14.7.d.F. Hearings held in the Step Four process are not intended to imitate a court of law. However, the general principles of due process, testimony, and evidence may be used to guide the proceedings.

14.7.d.G. Hearings shall be recorded on tape. A transcript shall be provided upon written request of and at the expense of the requesting party.

14.7.d.H. After the hearing, the Chair of the Committee will send a written recommendation with all supporting documents to the Commissioner within ten working days.

14.7.d.I. The Commissioner will then render a written decision within ten working days from the receipt of this recommendation.

14.7.d.J. A copy of the decision will be sent to both parties involved in the Administrative Review, and will be placed in the file of both parties.

14.7.d.K. This is the final step in the Administrative Review procedure.

14.8. The Personnel Director (unless he or she is an involved party, in which case the Commissioner will designate another employee for this purpose) or their designee will coordinate the Administrative Review procedures, to include arranging the tape recording of a Step Four hearing if necessary.

14.9. The period of time indicated within which an answer must be given does not commence until the first working day following the initiation of the previous step.

14.10. If time requirements are not met by the person who requests the review, the decision will be made against that person.

14.11. Extensions of time limits at each step may be granted if both parties concur in writing prior to the expiration of the established time limit; or if either party has a verifiable sickness, accident, or scheduled absence from work.

14.12. Representation

14.12.a. An employee may have another employee assist him/her in the Administrative Review procedure. The assisting employee should not be an attorney, or the Personnel Director.

14.12.b. The first step supervisor and the second step supervisor may have another employee assist him/her in the

procedure. The assisting employee should not be an attorney or the Personnel Director.

14.12.c. The Personnel Director retains the right to monitor the review process to protect the interest of those involved, and to discuss issues to that end with all involved parties.

14.12.d. The Department seeks to discourage the participation of lawyers in the department's internal review process.

14.12.e. In any instance where a legal counsel who has been retained to represent a party in the process contacts personnel involved at any step in the Administrative Review procedure, that person should relay this information immediately to the Personnel Director.

14.12.f. Employees who take legal action against the Department without first using the Administrative Review procedures may forfeit their rights to Administrative Review.

14.13. Any costs (ex: travel or material) associated with a review will be assumed by the parties preparing for Administrative Review.

14.13.a. Costs may be reimbursable if the employee requests reimbursement for specific costs that are within the capacity of the Department to pay and the Administrative Review request is successful. Reimbursement of costs is an issue that will be included in the Step Four recommendation to the Commissioner.

14.13.b. The Department will reimburse costs for employees only.

14.14. Requests for copies of material are to be made to the Personnel Director.

14.15. No reprisals of any kind shall be taken by the Department or any supervisor against any party, any representative, or any participant in the Administrative Review procedure because of such participation. This will include anyone in the Administrative Review procedure who may participate either as a witness or as a member of the hearing panel.

14.15.a. Conversely, the Administrative Review process represents a serious attempt to solve problems that arise in the workplace and should not be used flippantly or without consideration.

14.16. Work release time for the purpose of preparing and

participating in the Step Three and Step Four process is paid time that is not charged to either sick leave or annual leave, and is not required to be made up or added into overtime calculations.

14.16.a. Work release time will be granted to the employee who filed the request, committee member, or to those employees who are called as participants to attend hearings on a particular Administrative Review.

14.16.b. Requests for work release time for the purpose of preparing for Administrative Review will be considered in light of the demands of the Department workload.

14.16.c. Requests for work release are to be made to the Personnel Director.

14.16.d. No more than one-half day of work release will be granted for the Step Three process. No more than one-half day of work release will be granted for the Step Four process. No work release is available for the Step One and Step Two process.

14.17. Administrative Review proceedings and information concerning any individual review are strictly confidential. If an employee breaches confidentiality, the Department has a right of response to any inquiry.

14.18. An Administrative Review may be resolved and ended at any level by the agreement of both parties.

§61-24-15. Recycling

15.1. The Department encourages, promotes and will facilitate the recycling of any materials that the Department, from time to time, will deem recyclable. Recycling will include, but is not limited to, soda pop cans; office paper; and, general glass items

15.2. Recycling of special items, including, but not limited to, laboratory glass, newspapers; and building materials shall be encouraged and facilitated on a case-by-case basis.

15.3. Receptacles will be placed in the common areas of each Department building for the collection of recyclable items.

15.4. Each receptacle shall be clearly marked as to the type of item that should be deposited therein for recycling.

15.5. The Buildings and Grounds staff, or their designee, shall be responsible for removal of items deposited for recycling.

15.6. The Buildings and Grounds staff, or their designee, shall collect and store items deposited for recycling until such

time as enough material is collected to warrant the use of a Department vehicle to transport the material to a local recycling center.

15.7. Money received from the sale of recycled soda pop cans will be used to purchase children's books which will be donated to the Bonham Elementary School library.

15.8. Money received from the sale of recyclable items other than soda pop cans will be used to offset the cost of collection and transportation of the recyclable items.

§61-24-16. Political Activities.

16.1. The Constitution of the State of West Virginia, and subsequent legislative and legal action, authorizes and designates the Commissioner of Agriculture as an independently elected constitutional office. As such, employees of the Department of Agriculture are exempt from most of the provisions of the state personnel laws affecting classified employees. The purpose of this section of this rule is to establish guidelines for political activities that are permitted and prohibited by employees.

16.2. In certain cases, the Federal Hatch Act (5 US Code 1501-1508) is more restrictive than state law and the department policy. Therefore, to the extent that employees are covered by the Hatch Act, the provisions of this section of the rule do not apply. The Federal Hatch Act governing state and local employees applies to any "individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency, but does not include (a.) an individual who exercises no functions in connections with that activity...".

16.3. Employees do not forfeit their rights as citizens. In fact, the Commissioner encourages employees to participate in the political process. An employee retains the right to vote as he or she chooses and to express opinions as a citizen on all subjects.

16.4. Political affiliation shall not be a consideration in any personnel action taken by the Commissioner and shall not be a factor in the conduct of the business of the Department.

16.5. Employees of the Department of Agriculture are prohibited from:

16.5.a. serving as a campaign financial agent or treasurer,

16.5.b. being a candidate for any national or state paid political office or court of record;

16.5.c. being a candidate for any paid local elected position (partisan or non-partisan);

16.5.d. using any official authority or influence to interfere or influence an election or nomination for office;

16.5.e. posting or distributing campaign literature or material in a state office building or other state facility;

16.5.f. posting or distributing campaign literature or material in or on a state vehicle;

16.5.g. directly or indirectly coercing, attempting to coerce, commanding, or advising another employee to pay, lend, or contribute anything of value to a political party, organization, agency or person for political purposes; or

16.5.h. conducting campaigning activities on Department owned or operated property (including arranging for campaigning by candidates) and may not conduct such activities among employees who are performing the work of the Department.

16.6. Employees of the Department of Agriculture may:

16.6.a. voluntarily campaign for a candidate or political party during non-work time, off state property, and without use of state supplies or equipment; providing that these activities are within the provisions of applicable election guidelines and laws and so long as the employee is not paid a fee other than expenses incurred;

16.6.b. voluntarily sell or purchase tickets to political affairs, dinners, rallies, or events during non-work time; provided that supervisors and managers may not sell, or attempt to sell such tickets to subordinate employees;

16.6.c. voluntarily erect campaign signs, material, or literature on private property as long as the property is not used as a state office or an official office headquarters site;

16.6.d. voluntarily attend political dinners, rallies, and dances;

16.6.e. voluntarily serve on campaign committees for a candidate, so long as he or she is not receiving compensation for the service;

16.6.f. voluntarily make a monetary contribution to a political party or candidate not to exceed limitations established by law; and

16.6.g. be a candidate for a local non-paid political

office (partisan or non partisan); provided that the campaign activities or the duties of the office are not conducted during Department work time.

16.7. Employees who violate the provisions of this policy will be subject to disciplinary action under the terms of the Department's Progressive Disciplinary policy as outlined in section 13 of this rule.

§61-24-17. Equal Employment Policy.

17.1. It is the Department's policy to employ, retain, promote, terminate, and otherwise treat any and all employees and job applicants on the basis of merit, qualifications, and competence. This policy shall be applied without regard to sex, race, color, age, religion, national origin or handicap.

17.2. It shall be the responsibility of all employees to abide by and carry out the letter, spirit, and intent of the Department's equal employment policy.

17.3. The Department supports merit opportunity concepts by insuring that all segments of the community have an opportunity to enter employment on the basis of open competition, and to advance according to their relative ability and fitness.

17.4. The selection of prospective new employees and the selection of employees for promotion shall be impartial, objective, and of a practical nature. The process shall relate to the job content in a way that fairly and accurately measures the applicant's capability to perform the job.

17.5. The employment, promotion, and employment separation of Executive staff, Division Directors, and part-time employees are not applicable to the Equal Employment policy, except that all personnel actions regarding these groups shall be taken without regard to sex, race, color, age, religion, national origin or handicap.

17.6. The Commissioner will provide a standard application form to all interested applicants. Applications are available from the Commissioner and may be picked up in the commissioner's office or may be mailed to applicants, upon request. The Personnel Director will accept resumes in lieu of application forms, but the Department reserves the right to require applicants to complete the application form.

17.7. No unsigned and undated applications or resumes will be accepted.

17.8. The application files are confidential except for review

by staff members participating in the hiring process.

17.9. The Department's application files will include all applications and resumes that have been received in the Department in the past twelve months.

17.10. Division Directors requesting the creation of a new position should make a recommendation to the Personnel Director after consultation with the Director of the Administrative Services Division. The recommendation must include a written position description which includes the activities and results expected from the individual chosen for the position. The Personnel Director will review the request to create a position and then will make a recommendation to the Commissioner. The Commissioner must approve all recommendations creating new positions prior to its creation.

17.11. Procedure for Filling Vacancies

17.11.a. When a vacancy occurs, the responsible Division Director will work with the Personnel Director and the Director of the Administrative Services Division to make a recommendation to the Commissioner regarding filling the vacancy. The Personnel Director is responsible for the written recommendation to the Commissioner.

17.11.b. Employment opportunities will be announced within the Department first, unless it is determined by the Personnel Director that no current employee meets the minimum qualifications for position. If this determination is made, the Personnel Director must have this confirmed in writing by the Commissioner.

17.11.c. The Personnel Director will make arrangements for an announcement to employees to include:

17.11.c.A. job title, job description, duties, necessary skills/education/training, minimum required experience;

17.11.c.B. name, address, and phone number of the person to whom questions may be addressed and the application sent

17.11.c.C. notice of testing, materials, or other items needed for interview;

17.11.c.D. salary range for the position; and

17.11.c.E. the headquarters for the position.

17.11.d. Employees will have a minimum of five working days to respond to any internal position announcement.

17.11.e. Employees who apply for internally advertised

positions must do so in writing to the Personnel Director.

17.11.f. Employees applying and meeting the minimum qualifications will receive interviews.

17.11.g. If a pool of qualified candidates is not obtained after an internal announcement, then the Personnel Director will review the Department's application files for qualified applicants. The Personnel Director will only consider those applications that were on file when the internal announcement was made. The Division Director and Personnel Director will work together to review applications from the application files on file within the department prior to posting the vacancy announcement.

17.11.h. If a pool of qualified candidates does not exist after a review of the Department application files, then the Personnel Director will make arrangements for an external announcement, which may include, but is not limited to: advertising in newspapers, professional journals and publications, employment publications, job services or other employment services, and schools or universities.

17.11.i. Announcements may sometimes result in an unusually large number of applicants who meet the minimum position requirements. When such circumstances arise, the Personnel Director may limit the number of applicants or candidates to advance through the process based on such considerations as:

17.11.i.A. length, type and level of work experience related to the position;

17.11.i.B. applicability of past work experience to the Department's programs, operations, and needs; and/or

17.11.i.C. type, degree, and relevance of job preparation for prescribed responsibilities, including course work, training and educational achievements.

17.11.j. All interviews must be conducted by an interview team of three members that should include the Division Director or his or her designee; the Personnel Director or his or her designee and a third party mutually agreed by the first two members. Exceptions to this practice require the permission of the Personnel Director.

17.11.k. The interview team will meet prior to interviewing candidates to discuss strategy, goals, and to develop an appropriate line of questioning. The Department reserves the right to test applicants on their skills, abilities, and education related to the position for which they are a candidate.

17.11.l. All interview questions and tests will be

reviewed by the Personnel Director prior to the interview. Test approval will be made in writing by the Personnel Director.

17.11.m. A standard interview form, distributed by the Personnel Director, will be used as the basis for interviews. The interview form is to be completed and signed by each interviewer. The completed interview forms are confidential and are to be kept with candidate files. The interview forms for a successful candidate will be placed in the employee's personnel file.

17.11.n. Interviews should only contain questions and conversation that is directly related to the specific duties, responsibilities, and requirements of the position. Questions and conversation should remain consistent among all candidates for a position.

17.11.o. The interview team will meet following the conclusion of all interviews to rank candidates and to present a written recommendation to hire to the Commissioner, which ranks the candidates and lists reasons for the recommendation.

17.11.p. Applicants must provide work or personal references before being employed by the Department. The Personnel Director will conduct a reference check for the top two recommended candidates at the conclusion of the interviews.

17.11.q. The Commissioner will make all final hiring decisions. No one may be added to the Department payroll without the written concurrence of the Commissioner or his or her designee.

17.11.q.A. The Personnel Director will keep a copy of the Commissioner's written approval for the permanent records in the employee's personnel file.

17.11.r. Upon the Commissioner's approval to hire, the Personnel Director will so notify the interview committee and will communicate the offer of employment to the approved candidate. This communication may be written or oral, but in all cases, an employment offer must be made in writing to the candidate prior to the first day of employment.

17.12. Employment Separation

17.12.a. The Commissioner must approve all termination actions in writing. The Commissioner or his or her designee will provide written notification of termination to the employee. The notification will list reasons for termination. The notification will list the terms of separation, including date and status of employee benefits.

17.12.a.A. An employee may be subject to a non-disciplinary, involuntary termination in connection with a shortage

of funds, abolition of a position, or the lack of need for the work performed by an employee or group of employees. The Commissioner will give an employee as much advance notice of the termination as conditions permit.

17.12.b. Termination (or dismissal) for disciplinary reasons is discussed in section 13 of this rule.

17.12.c. Employees who resign are encouraged to provide as much notice as possible to the Commissioner to allow the smooth transition of the resigning employee's workload and responsibilities.

17.12.d. Check-out upon separation

17.12.d.A. Employees who leave the employment of the Department will be required to turn in any Department property to their supervisor not later than their final workday.

17.12.d.B. Employees may not collect their final paycheck until their supervisor confirms the return of all Department property.

17.12.d.C. An exit interview may be required of employees upon separation from employment. The purpose of the exit interview is to provide the opportunity for the employee to evaluate his or her time of employment with the Department and to suggest improvements. The Personnel Director will conduct exit interviews.

§61-24-18. Hospitality and Promotions.

18.1. For the purposes of this section of the rule, "promotion" means expenditures by the Department for display booths, promotional items at trade shows or similar events, promotion or exposure of service(s) provided, enhancement of professional (not personal) image, and/or the attraction of business and/or clientele; as referenced in WV Division of Finance and Administration Policy Number 13.

18.2. Any hospitality or promotional expenditures require the prior written approval of the Division Director. Expenditures exceeding twenty-five dollars (\$25.00) must also have the prior approval of the Commissioner or his or her designee. Events estimated to cost \$5000 or greater require the advance approval by the Department of Administration.

18.3. In the conduct of day-to-day business it is not anticipated that the Department will need to incur meal or other hospitality related expenses involving its employees. However the following examples represent some circumstances in which the

Department, using prudent judgement, may incur expenses involving employees:

18.3.a. An event hosted by the Department and specifically planned for participants (guests and/or employees) of a conference, seminar, workshop, or similar event where state employees are attending this event as registered and/or paying attendees, as host/hostess, or other assigned supporting positions.

18.3.b. Employees meeting with state employees from other geographic areas for a specific business purpose.

18.3.c. Entertainment of guests and authorized employees related to economic development in the State by employees.

18.4. Food and beverages purchased for a hospitality event or function, regardless of the dollar amount are exempt from bidding procedures.

18.5. Abuses of hospitality expenses by employees will result in disciplinary action under the provisions of section 13 of this rule.

18.6. Expenditure requests relating to hospitality or promotions should contain the following information:

18.6.a. purpose;

18.6.b. anticipated cost;

18.6.c. funding source (account number);

18.6.d. payee;

18.6.e. date of event; and

18.6.f. the anticipated benefit of expenditure.

§61-24-19. Sexual Harassment.

19.1. It is the intent of the Department to provide a work environment free from sexual harassment whereby no employee is subjected to unsolicited and unwelcomed sexual overtures or conduct, either verbal or physical. Employees have the right to be free from sexual harassment on the job, from either co-workers, supervisors, persons receiving/providing services or the general public. Such conduct or harassment will not be tolerated within the workplace and is prohibited by State and federal anti-discrimination laws where: (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment, (2) submission to or rejection of such conduct by an individual is

used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Conduct of this nature will result in appropriate disciplinary action up to and including dismissal.

19.2. The purpose of this policy is to ensure that the employees of the Department of Agriculture and its affiliated political subdivisions work in an environment which is free from sexual harassment. This policy also establishes the procedures for reporting, investigating, and resolving complaints of alleged sexual harassment.

19.3. Courts, generally, have identified sexually harassing behavior as a range of verbal and physical conduct which includes, but is not limited to, the following:

19.3.a. sexually explicit propositions;

19.3.b. improper questions about an employee's private life;

19.3.c. sexually discriminatory ridicule or insults;

19.3.d. undesired, intentional touching (e.g., embracing, patting, pinching);

19.3.e. remarks directed against one's sex as a class or group;

19.3.f. threat of rape, or attempted or actual sexual assault;

19.3.g. repeated sexually explicit comments or obscene and suggestive remarks that are objectionable or discomfiting to the employee; and

19.3.h. offers of employment benefits in exchange for sexual favors, or threats or reprisals for negative responses to sexual advances.

19.4. Other actionable forms of conduct have been found to evolve from situations that, on their face, seem normal or harmless but which, in fact, constitute sexual harassment. Such situations have involved, for example:

19.4.a. Jokes, graffiti, and posters: Telling "off-color" jokes does not necessarily constitute sexual harassment. Employers should be aware, however, that if employees complain that jokes are offensive, the jokes may be said to contribute to a hostile or offensive work environment and should be stopped.

Similarly, pornographic photographs and sexually explicit graffiti, posters, and calendars are prohibited in the workplace.

19.4.b. Behavior at off-site social events:

19.4.b.A. If a supervisor approaches an employee at an employer-sponsored event and the employee gives in to unwelcome sexual advances, either through fear of losing the job or endangering career advancement, the foundation is set for a subsequent sexual harassment claim.

19.4.b.B. If an employee is approached at an employer-sponsored event and the employee objects to the sexual advances, the sponsoring employer official in charge shall take appropriate action to ensure the protection of the employee's rights.

19.4.c. Suggestive clothing requirements: Requiring employees to wear revealing or suggestive uniforms or costumes that they find demeaning may be considered discriminatory under Title VII of the U.S. Civil Rights Act of 1964.

19.5. Procedure

19.5.a. Employees who believe that they have been harassed shall notify the Personnel Director of incidents of sexual harassment within ten working days of the incident. The Department recognizes that employees may be reluctant to come forward with allegations of sexual harassment. Thus, the Personnel Director may elect to waive the deadline expressed in the previous sentence, if;

19.5.a.A. the allegations appear to be well-grounded; and

19.5.a.B. such a waiver is necessary to promote the best interests of both the Department and those employees involved.

19.5.a.C. If the Personnel Director is the subject of an employee's grievance, that employee shall notify the Deputy Commissioner. In such a case, the Deputy Commissioner shall act in the Personnel Director's capacity in pursuing the employee's complaint.

19.5.b. The aggrieved employee, the accused party or parties, or both, may be temporarily re-assigned or placed on administrative leave while the investigation is underway, if the Personnel Director determines that such action is necessary to;

19.5.b.A. facilitate employee productivity,

19.5.b.B. facilitate the mental and emotional well-being of employees, or

19.5.b.C. to protect the physical well-being of the aggrieved employee, the accused party or parties, or both.

19.5.b.D. No conclusion of wrongdoing or guilt shall be implied by such a reassignment or administrative leave.

19.5.c. Upon receiving an employee's complaint, the Personnel Director shall convene a committee to investigate the alleged incident(s) of sexual harassment, as soon as reasonably possible, but not later than fifteen days after receiving the complaint.

19.5.c.A. This committee shall be composed of the Personnel Director (or designee) and two employees-at-large. The Personnel Director shall chair the investigation committee. The employees-at-large shall be designated by the Personnel Director. The employees-at-large shall not be parties with a stake in the outcome of the grievance and shall have as little prior knowledge of the alleged incident as possible.

19.5.c.B. The Investigation Committee shall be composed in the following manner:

19.5.c.B.(a). If the aggrieved employee is female, the Investigation Committee shall be comprised of two females and one male.

19.5.c.B.(b). If the aggrieved employee is male, the Investigation Committee shall be comprised of two males and one female.

19.5.d. If the Investigation Committee feels the employee's allegations are well-grounded, it shall confidentially inform the accused party or parties that a complaint has been filed and that a confidential investigation into the alleged incident(s) is underway.

19.5.e. The Investigation Committee is not intended to imitate a court of law, however, fairness and due process will be the guiding principles. The Committee shall have the power to take statements and hear testimony from:

19.5.e.A. the aggrieved employee;

19.5.e.B. the accused party or parties;

19.5.e.C. witnesses to the alleged incident(s); and

19.5.e.D. any other persons offering testimony which would tend to corroborate or refute the allegations. This type of testimony includes, but is not limited to, allegations that the accused party or parties acted in a similar manner on other

occasions.

19.5.f. The Investigation Committee shall make its own determinations on the admissibility and/or relevance of offered evidence and testimony; and on the respective credibility of conflicting testimony.

19.5.g. After examining the evidence before it, the Investigation Committee shall specifically determine whether the alleged incident(s) occurred.

19.5.h. There are three basic factors that the Investigation Committee will examine to determine sexual harassment:

19.5.h.A. has unwelcome or offensive behavior occurred;

19.5.h.B. is the interest one sided or mutual; and

19.5.h.C. what is the employment relationship of the parties involved? (supervisory, peer).

19.5.i. If the alleged incident(s) is(are) determined to have occurred, the employee-at-large members of the Investigation Committee shall inform the Personnel Director of disciplinary action they deem appropriate for the violation. The Personnel Director will then forward the recommendations of the Committee to the Commissioner with comment.

19.5.j. After getting comments from the Commissioner, the Personnel Director will then inform the accused employee(s) about any recommendations made by the Committee.

19.5.k. The Commissioner may take the recommendations of the Investigation Committee into account when deciding what disciplinary action should be taken, but such recommendations shall neither be binding or determinative. The Commissioner alone shall determine what disciplinary action is appropriate in each case.

19.5.l. When disciplining employees for violations of the Department's sexual harassment policy, the Commissioner may elect to invoke any of the disciplinary options available under the provisions of section 13 of this rule.

19.5.m. Employees may appeal any disciplinary action taken against them for sexual harassment by sending a written request for appeal to the Commissioner within three working days of receiving such decision for disciplinary action. The request must include an explanation of the reasons that the employee feels that the disciplinary action is incorrect.

19.5.m.A. The Commissioner may respond to this request for an appeal by scheduling an appeal hearing or by refusing to hear the appeal.

19.5.n. Both aggrieved and accused employee(s) may have another employee assist him-her in the investigation process. The assisting employee must not be an attorney.

19.5.n.A. The Department seeks to discourage the participation of lawyers in the Department's internal investigation of sexual harassment allegations. Rather, the department seeks to resolve these matters in an open, participative manner among employees.

19.5.n.B. In any instance where a legal counsel who has been retained to represent a party in the process contacts employees involved in the internal investigation in any way, that person must relay this information immediately to the Personnel Director.

19.6. No reprisals of any kind shall be taken by the Department of any supervisor against any party, any representative, any participant, or any assisting party in the internal investigation procedures because of such participation. This includes anyone who may participate in the internal investigation procedures as a witness or as a member of the Investigation Committee.

19.6.a. Conversely, the internal investigation process represents a serious attempt to solve sexual harassment problems that arise in the workplace in a strong and swift manner. Persons who use the process flippantly or without consideration may be disciplined.

19.7. Confidentiality

19.7.a. Because of the sensitive and potentially damaging results of unproven accusations against individuals, the Department regards confidentiality as the key element in keeping the process fair to all involved.

19.7.b. It is the policy of the Department that the utilization of these procedures to remedy instances of sexual harassment shall not be made a matter of record unless the aggrieved party requests it be added to their own personnel file, nor shall it jeopardize the aggrieved employee in any way.

19.7.b.A. If sexual harassment is determined to have occurred, the records of actions taken will be made part of the personnel files of employees who are disciplined.

19.7.c. Any employee who is accused of violating the

Department's sexual harassment policy, but is later cleared of the allegations, shall not have those allegations or the subsequent investigation made a matter of record, unless the accused party requests it be added to their own personnel file.

19.7.d. Any employee of the Department who violates the confidence associated with participation in the internal investigation process may be subject to disciplinary action under the provisions of section 13 of this rule.

19.8. The Department's confidential employee assistance program is also available for counseling and advice should an employee be uncomfortable discussing these matters within the Department. Contacting the Employee Assistance Program does not relieve the employee of the obligation to report sexual harassment when and if it occurs using the procedures outlined in this section of the rule.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R. DOUGLASS,
COMMISSIONER

July 14, 1994

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, WV 25305

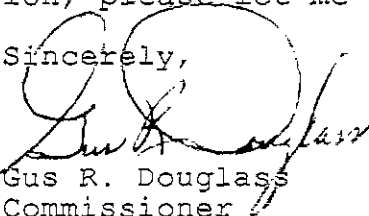
Dear Mr. Secretary:

This serves to inform you of our intent to make a minor change in a procedural rule regarding the Department of Agriculture's personnel regulations.

I call your attention to pages 12 and 13 of the attached draft copy of the rules. Under section 5.2.c.C. regarding pregnancy, the regulation will be changed to allow the Commissioner of Agriculture to grant 12 weeks of unpaid maternity leave without requiring the employee to first exhaust accumulated sick and annual leave. A Notice of Comment Period is also attached.

If you need further information, please let me know.

Sincerely,


Gus R. Douglass
Commissioner

GRD:jlf

Attachments