

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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2000 DEC 23 PM 2:13

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Administration, Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY: 29-6-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Administrative Rule of the West Virginia Division of Personnel

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

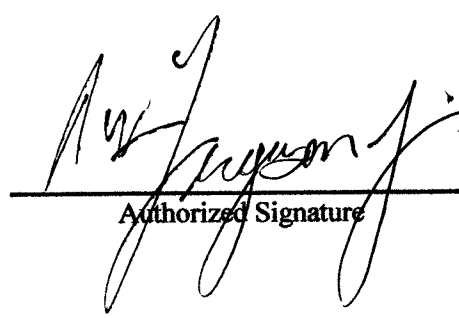
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER
FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE
AS FOLLOWS:

See Attached Exhibit A

Use additional sheets if necessary


Authorized Signature

FACTS AND CIRCUMSTANCES CONSTITUTING AN EMERGENCY RULE FOR THE ADMINISTRATIVE RULE OF THE WEST VIRGINIA DIVISION OF PERSONNEL:

At the beginning of Calendar Year 2008, the WV PEIA was involved with a complete renovation and upgrade to its financial and eligibility systems. This multi-million dollar project had been in development for over a year and a half and PEIA was scheduled to put it into production on January 1, 2008. Delays pushed the implementation to March 2008. During that three month interim period, two employees worked closely with the Microsoft development team to move to full production. Since this was a costly mission critical project both employees were required to be at work. Opportunities for both of them to take annual leave were non-existent. The management of PEIA required them to be on-site the entire time.

In March 2008, the switch to the new accounting and eligibility systems did not go well and this resulted in these two employees having to work extended hours to try and reconcile the accounts while attempting to get our external auditors, Ernst and Young, to sign off on the new system. The complexity of this reconciliation and PEIA's attempt to get a clean audit finding has caused both these employees to work extended hours, weekends and holidays up to today. Again, the PEIA management could not allow either of these two employees to be absent from the workplace while this project was going on.

The PEIA and the Department of Administration have provided additional resources in the form of clerical and accounting staff to resolve this issue but even with those people onsite, the above mentioned employees are critically important in guiding their work.

All this work was, of course, in addition to both employees' daily work that included medical and pharmacy claims reviews and monthly balance sheets for one, and agency RFP procurements and accounts payable for the other.

To add further to the work load, the PEIA was required to move its offices this year and much of the responsibility for ensuring the procurement of the furniture, obtaining the moving company, records transfer, etc. was placed upon the shoulders of one of the two employees.

It is now believed that the reconciliation of accounts and the obtaining of a "clean" external audit will be complete by the end of December 2008. While this is a positive result of all their hard work, the timing for the project completion has not allowed either employee the opportunity to use their annual leave that is in excess of that allowed under the Department of Administration Rule 14.3.(a).

Agency: Department of Administration
Division of Personnel

Title Number: 143

Rule Type: Legislative

Cite Authority: 29-6-10

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The Department of Administration proposes an emergency rule to the Administrative Rule of the West Virginia Division of Personnel. The proposed emergency rules are necessary in order for the fair and just treatment to state employees.

The proposed emergency rules will grant an exception to the provisions of 143-CSR-1 to allow the Public Employees Insurance Agency employees who were not permitted to take their annual leave to carry it over to the next calendar year. Currently, the legislative rules prohibit employees from carrying over more than 30-40 days, depending on length of service. Fairness dictates such an exception be made to this rule. To do otherwise would penalize hardworking employees with demanding jobs due to no fault of their own.

Without having the emergency rules in place, it will cause substantial harm to the public interest as state employees are not being allowed to use their annual leave as a result of an emergency situation as described in Exhibit A. Without the emergency rules the State could be required to expend public funds unnecessarily for the defense of lawsuits which could result in taking away funding for other much needed projects for our citizens.

FILED

TITLE 143
LEGISLATIVE RULE 2008 DEC 23 PM 2:13
WEST VIRGINIA DIVISION OF PERSONNEL
OFFICE WEST VIRGINIA
SECRETARY OF STATE
SERIES 1
ADMINISTRATIVE RULE OF THE
WEST VIRGINIA DIVISION OF PERSONNEL

§143-1-1. General.

1.1. Scope. -- This rule implements the provisions set forth in W. Va. Code §29-6-1 et seq. regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters consistent with W. Va. Code §29-6-1 et seq.

1.2. Authority. -- W. Va. Code, §29-6-10.

1.3. Filing Date. -- May 4, 2007.

1.4. Effective Date. -- July 1, 2007.

§143-1-2. Preamble.

The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in Federal and/or State law.

§143-1-3. Definitions.

3.1. Accrue: To increase or accumulate periodically or by increment.

3.2. Accrual Rate: The grouping by the cumulative years of eligible employment which is used to determine the rate of accrual of annual leave benefits.

3.3. Administrator: Any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as the commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated.

3.4. Agency: Any administrative department of state government, including any authority, board, bureau, commission, committee, council, division, section, office, or any county health department.

3.5. Allocation: The assignment of a position to a class by the Director of Personnel on the basis of the duties performed and responsibilities assumed.

3.6. Annual Leave: An earned employee benefit of paid time off from work with prior approval of the appointing authority or designee.

3.7. Appeal: The complaint to the State Personnel Board to correct or reverse an alleged injustice done or error committed.

3.8. Appointing Authority: The executive or administrative head of an agency who is authorized by statute to appoint employees in the

classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by this rule to persons who satisfy the definition of employee as established in this rule.

3.9. Appointment: The act of hiring an applicant for employment.

3.10. Assembled Examination: An examination which, due to the testing process used, necessitates that applicants come to a testing location.

3.11. Available: The indication, by an eligible, of the employment location and conditions under which employment would be accepted including, but not limited to, salary and starting date of employment.

3.12. Board: The State Personnel Board as provided for in W.Va. Code §29-6-7 whose members are appointed by the Governor with the advice and consent of the Senate.

3.13. Carry Forward Days: The maximum number of annual leave days which can be accredited for use as of the first day of January based on an employee's length of service category.

3.14. Certification: The official list of eligible applicants given to an appointing authority for filling vacancies in the classified service.

3.15. Class or Class of Positions: One or more positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same title, the same qualifications, and the same schedule of compensation and benefits may be equitably applied to each position in the class.

3.16. Classification Action: The actions of allocation, reallocation, classification, and reclassification.

3.17. Classification Plan: The plan by which positions in the classified service and

classified-exempt service have been allocated by class.

3.18. Class Specification: The official description of a class of position which describes the nature of work, provides examples of work performed, and knowledges, skills, and abilities, and states the generally accepted minimum qualifications required for employment.

3.19. Classified Employee: An employee who occupies a position allocated to a class in the classified service.

3.20. Classified-Exempt Service: As established by statute, those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Division of Personnel merit system standards or by the State College System of West Virginia or the University System of West Virginia.

3.21. Classified Service: Those positions which satisfy the definitions for "class" and "classify" and which are covered under the Division of Personnel merit system standards.

3.22. Classify: The process of ascertaining, analyzing, and evaluating the duties and responsibilities of positions to determine the number and kind of classes existing in the service and to group the positions in classes.

3.23. Compensation Plan: The official schedule of pay rates, the range assigned to each class of positions and the salary regulations used in pay administration in the classified service.

3.24. Daily Rate: The usual rate of pay for the pay period divided by the total number of workdays plus paid holidays in the pay period for an employee whose position is assigned to a monthly pay rate.

3.25. Date of Separation: Last day of work of employees separating due to dismissal, voluntary resignation, voluntary retirement, layoff, or sudden death; the date of death of employees who die while on paid or unpaid leave; or the date of

notification by employees resigning or retiring due to disability as verified by a physician.

3.26. Day: Unless otherwise specified, the use of "day" means a calendar day.

3.27. Demotion: A change in the status of an employee from a position in one class to a position in another class of lower rank as measured by salary range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the pay range assigned to the class.

3.28. Director: The Director of Personnel, as provided in W.Va. Code §29-6-6 and §29-6-9, who serves as the executive head of the Division of Personnel, or his or her designee.

3.29. Disability: A physical or mental impairment which substantially limits one or more of a person's major life activities, a record of a physical or mental impairment which substantially limits one or more of a person's major life activities, or regarded as a physical or mental impairment which substantially limits one or more of a person's major life activities.

3.30. Discretionary: Open to individual choice or judgement.

3.31. Dismissal: The separation from employment for good cause of an employee by an appointing authority.

3.32. Division: The Division of Personnel.

3.33. Division of Personnel: The division of the Department of Administration responsible for the system of personnel administration for the classified and classified-exempt service.

3.34. Effective Date: The established date an action takes place.

3.35. Eligible Applicant: An applicant accepted for a Division of Personnel examination who receives a final passing score and whose name is listed on the register established for the

class of position.

3.36. Employee: Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

3.37. Exempt Service: All positions specifically exempted from the classified service by statute or statutory authority.

3.38. Existing Employee: Any person employed by an agency for permanent employment in a classified or classified-exempt position.

3.39. Fitness: suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified.

3.40. Full-time Employee: Any employee who works the full work schedule established for the agency.

3.41. Grievance: Any claim by one or more affected classified or state classified-exempt employees alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which the employees work, filed in accordance with the provisions of W. Va. Code §29-6A-1 et seq.

3.42. Hourly Rate: The total annual salary (excluding annual increment) divided by 2,080 hours for full-time permanent and temporary salaried employees or divided by the actual number of hours worked annually for part-time permanent and temporary salaried employees. For hourly employees, the hourly rate is the actual rate established by the State Personnel Board.

3.43. Immediate Family: Consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-brothers, step-sisters, stepchildren, foster children, individuals in an in loco parentis relationship, and individuals in a legal

guardianship relationship.

3.44. Incapacity: An illness of or injury to an employee which temporarily prevents him or her from performing the essential duties of his or her position.

3.45. Incumbent: Any employee occupying a position.

3.46. Intra-Agency Transfer: Any transfer within a single agency.

3.47. Inter-Agency Transfer: Any transfer from one agency to another.

3.48. Irregular Part-time Employment: Any appointment from a register for employment in a position for which work hours vary from pay period to pay period and are less than the full-time work schedule established by the agency.

3.49. Job Abandonment: The absence from work under such conditions as to be synonymous with resignation.

3.50. Last Day of Pay: The calendar date and hour an employee's pay ceases.

3.51. Last Day of Work: The last calendar date and hour an employee is physically on the job.

3.52. Lateral Class Change: The movement of any employee from one class to another class in the same pay grade.

3.53. Layoff: A reduction in the number of employees caused by a reduced work load, curtailment of funds or reorganization.

3.54. Local Office: Any unit of an agency which provides services to a specified section of the State and has employees reporting to locations other than the state office headquarters.

3.55. Minimum Qualifications: The least experience and/or training required by the State Personnel Board for employment in a class of

position and admission to an examination for that class of position.

3.56. Month: Any of the twelve parts into which the calendar year is divided.

3.57. Occupational Group: A category of job classes grouped by similarity of occupation or profession.

3.58. Open Competitive Examination: An examination which permits the competition of all persons who meet the publicly announced minimum requirements for a class of position.

3.59. Original Appointment: Initial employment of an individual into the classified service as a result of selection from a certification of names from a register established by open competitive examination or from a preference register.

3.60. Part-time Employee: Any person who works less than the full-time work schedule established for an agency.

3.61. Part-time Professional: Any classified-exempt employee engaged in professional services without administrative duties and who works no more than half the agency's full-time work schedule.

3.62. Pay Differential: A type of salary adjustment specifically approved by the Board to address circumstances such as class-wide recruitment and/or retention problems, regionally specific geographic pay disparities, apprenticeship program requirements, shift differentials for specified work periods, and temporary upgrade programs.

3.63. Pay Increment: The percentage increase amounts established by the State Personnel Board to implement pay practices including hiring rates, salary advancements, and pay on promotion..

3.64. Pay Rate: One of the monthly or hourly rates within the pay range established by the State

Personnel Board for each class included in the approved pay plan; the usual rate of pay.

3.65. Per Diem: A daily rate of pay.

3.66. Permanent Employee: Any classified employee who was hired from a register and who has completed the probationary period prescribed by the State Personnel Board for the job class, or any classified-exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the appointing authority's right to terminate the employee for cause or at his or her will.

3.67. Physician/practitioner: A person licensed under the laws of a state to practice medicine or a medical practitioner approved by the Public Employees Insurance Agency.

3.68. Policymaking Positions: A position in which the person occupying it: a) acts as an advisor to or formulates plans for the implementation of broad goals for the executive or administrative head of the agency; b) is in charge of a major administrative component of the agency; and c) reports directly and is directly accountable to the administrative or executive head of the agency.

3.69. Position: An authorized and identified group of duties and responsibilities assigned by the proper authority requiring the full-time or part-time employment of at least one person.

3.70. Position Description: The document prepared by the position supervisor or the employing agency and approved by the appointing authority, which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. Position description forms shall be prescribed by the Director.

3.71. Postmarked: An official United States postal marking showing the mailing date.

3.72. Probationary Period: A specified trial work period prescribed by the State Personnel Board designed to test the fitness of an employee selected from a competitive list of eligibles for the position for which an original appointment has been received.

3.73. Promotion: A change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties and/or responsibilities.

3.74. Provisional Appointment: The hiring of an employee to fill a position pending the administration of an open competitive examination and the establishment of a register.

3.75. Reallocation: Reassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position.

3.76. Reclassification: The revision by the State Personnel Board of the specifications of a class or class series which results in a redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved.

3.77. Register: An official list of currently available eligible applicants for a job class ranked in the order of the final score as a result of the Division of Personnel examination for the class of position for competitive appointment or in seniority order for preference hiring of laid-off permanent classified employees.

3.78. Regular Part-time Employment: Employment in a position for which work hours are the same from pay period to pay period but are less than the full-time work schedule established for the agency.

3.79. Reinstatement: A type of re-employment of a former permanent classified

employee.

3.80. Resignation: Voluntary separation from employment, including job abandonment, by an employee.

3.81. Salary Adjustment: A salary change resulting from a revision of the pay plan, the reassignment of a class to a different pay grade, a Board approved pay differential, a temporary classification upgrade, a general wage increase mandated by the Legislature or the Governor, or the correction of payroll errors.

3.82. Salary Advancement: A discretionary advancement in salary granted in recognition of the quality of job performance.

3.83. Salary Range: The approved monthly and annual salary for a class which includes the minimum, maximum, and intervening steps.

3.84. Salary Schedule: The official schedule of salaries approved by the Governor consisting of multiple pay grades with minimum and maximum rates of pay for each grade.

3.85. Seasonal Employment: Employment exempt from the classified service in state forests, parks, and recreational areas for less than 1,733 hours per calendar year.

3.86. Sick Leave: An earned employee benefit of paid time off as specified by this rule for illnesses, injuries and other circumstances.

3.87. Suspension: Disciplinary action taken by an agency to temporarily relieve an employee of his or her duties and place the employee on leave without pay.

3.88. Temporary Employment: Employment exempt from the classified service for a period not to exceed 720 work hours per twelve month period.

3.89. Terminal Annual Leave: The balance of an employee's accrued and unused annual leave as of that employee's last day of work.

3.90. Termination: Separation from employment by the appointing authority as a result of the expiration of a limited term appointment or at the end of the period of need during limited term employment.

3.91. Transfer: The movement of an employee to a different subdivision or geographic location of the same or a different agency.

3.92. Vacancy: An unfilled budgetary position in the classified service to be filled by original appointment, promotion, demotion, lateral class change, transfer, or reinstatement.

3.93. Veteran: Any person who fulfills the requirements of one of the following conditions:

a. Served on active duty anytime between December 7, 1941, and July 1, 1955. However, any person who was a Reservist called to active duty between February 1, 1955 and October 14, 1976, must meet subdivision b, of this subsection;

b. Served on active duty anytime between July 2, 1955 and October 14, 1976 or a Reservist called to active duty between February 1, 1955 and October 14, 1976 and who served for more than 180 days;

c. Entered on active duty between October 15, 1976 and September 7, 1980 or a Reservist who entered on active duty between October 15, 1976 and October 13, 1982 and received a Campaign Badge or Expeditionary Medal or is a disabled veteran; or

d. Enlisted in the Armed Forces after September 7, 1980 or entered active duty other than by enlistment on or after October 14, 1982 and

1. completed 24 months of continuous active duty or the full period called or ordered to active duty, or was discharged under 10 U.S.C. 1171, or for hardship under 10 U.S.C. 1173 and received or was entitled to receive a campaign badge or expeditionary medal; or

2. is a disabled veteran.

3.94. **Veterans' Preference Points:** An additional 5 points added to the final passing score on an open competitive examination of any veteran as defined by this rule. An additional 5 points are available to those veterans who also have a current and compensable service connected disability or who have received a Purple Heart award. To receive veterans' preference points, separation from active duty must have been under honorable conditions. This includes honorable and general discharges. A clemency discharge does not meet the requirement of this subsection. Active duty for training in the military reserve and national guard programs is not considered active duty for purposes of veteran preference. Veterans' preference points are not added to final passing scores on promotional examinations.

3.95. **Work Schedule:** Designation of the periods of time during which work is performed.

3.96. **Workweek:** The time period of seven consecutive days, beginning and ending at specified days and times, during which work is performed and work hours reported for compliance with applicable federal and state labor laws.

3.97. **Year:** Twelve (12) consecutive month period, unless otherwise specified.

143-1-4. Classification Plans.

4.1. **Preparation of Plans -** The Board, after conferring with the appointing authorities concerned, shall formally adopt and make effective a comprehensive classification plan for all positions in the classified and the classified-exempt service. The plan shall be based on an investigation and analysis of the duties and responsibilities of each position, and each position shall be allocated by the Director of Personnel, after consultation with the appointing authority concerned, to its proper class in the classification plan. When complete, the classification plan shall include for each class of positions an appropriate title, a description of the duties and

responsibilities, and the minimum requirements of training, experience, and other qualifications.

4.2. **Revision of Plans -** The Board may abolish or change existing classes of positions, or may add new classes in the same manner as the classification plans were originally adopted.

4.3. **Incumbents of Reallocated Positions -** When a position is reallocated to a different class, the Board shall not consider the incumbent eligible to continue in the position unless he or she would have been eligible for original appointment, promotion, transfer, or demotion, to a position of the new class while serving in the position as previously allocated. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted by appropriate action in accordance with the provision of this rule as the Director may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.4. **Class Specifications -** The Director shall consider the class specification in allocating positions and shall interpret it as follows:

(a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.

(b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. The Director shall give consideration to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.

(c) A class specification is a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are

nor as limiting the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.

(d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

(e) The statement of minimum qualifications expresses the minimum background in terms of education, experience, and/or licensure generally necessary for a new employee to successfully perform the required duties of positions in the job class.

(f) The Director shall consider class specifications as a primary source of authority for the content of examinations for the class and for the evaluation of qualifications of applicants for examinations. Supplemental job information, obtained through job analysis, may be used as a further basis for examinations and minimum qualification standards. Provisions for the substitution of related experience, education, or other qualifications for specific education and/or experience requirements may be made in specific examination announcements for particular positions, even though these provisions are not part of the class specification. In cases of recruitment difficulties or unique positions requirements, the Director, in cooperation with the appointing authority, may use his or her discretion in interpreting minimum experience, training and/or licensure requirements and in accepting equivalent experience, training and/or licensure.

4.5. Position Descriptions

(a) Position description forms shall be prescribed by the Director.

(b) The position description is an official

record of the duties and responsibilities assigned to a position and shall be used by the Division of Personnel to allocate the position to its proper class.

(c) The position description shall include a current description of assigned duties and responsibilities and other pertinent information concerning a position. In contrast to general definitions of the level of work and responsibilities, the position description shall include specific duties and responsibilities assigned to a position by the appointing authority.

(d) The position description shall not be construed in any way to limit the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.

(e) Position descriptions shall be kept current by the appointing authority for each position under his or her jurisdiction. When the appointing authority significantly alters the duties and responsibilities of a position, the appointing authority shall prepare and forward a revised position description to the Director.

(f) If an appointing authority fails to notify the Director of significant alterations in the duties and responsibilities of a position, the incumbent in the position may file with the Director a written request for a review of his or her position.

4.6. Reclassification

(a) Upon its own initiative, or at the request of an appointing authority, the Board may reclassify positions by the creation or abolishment of classes, or the revision of the definition of the work of the classes brought about by changing work methods, new technology or reorganization.

(b) For each position affected the appointing authority shall provide a current description of the duties and responsibilities assigned.

(c) The employee in the position at the

time of a reclassification is entitled to continue to serve in that position, provided that the employee meets any licensure or certification requirements .

(d) Any incumbent in a position reclassified under this subdivision has the right to a reconsideration of the action by the Director. After filing with the Director a written request for reconsideration in a manner and form prescribed by the Director, the employee shall be given a reasonable opportunity to be heard by the Director. The interested appointing authority shall be given the same opportunity to be heard.

4.7. Position Reallocation - Whenever substantial changes occur in the duties and responsibilities permanently assigned to a position, the Director shall reallocate the position to its proper class. The incumbent or the appointing authority may seek a reconsideration of the allocation action by submitting a written request to the Director within ten (10) calendar days of the effective date of the action. The Director shall not reallocate a position based on temporary changes in the duties and responsibilities assigned to the position.

4.8. Temporary Classification Upgrade. With the approval of the Director, an appointing authority may temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher pay grade due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation. A temporary classification upgrade shall be within the same service, classified or classified-exempt, and, except for classes allocated to the approved hourly pay schedule, shall be for a continuous period of no less than 30 days and no more than six months. The Director, at his or her discretion, may extend the period of a temporary classification upgrade period by increments of three months or less. The Board shall establish salary, qualification, and administrative standards for implementation of this subsection.

4.9. Classification Plan for the

Classified-Exempt Service. All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.

(a) Upon the recommendation of the Director, the Board shall adopt and make effective a classification plan for the classified-exempt service. This plan shall be developed and maintained so that all positions sufficiently similar with respect to type, difficulty, and responsibility of work are included in the same class. The plan shall be based on an analysis of the duties and responsibilities of each position, and each position shall be allocated by the Director of Personnel to its proper class in the plan.

(b) Each appointing authority shall report to the Director the establishment of new positions or any material changes in the duties and responsibilities of existing positions in the classified-exempt service. The Director may at any time require the appointing authority to submit a statement of the duties and responsibilities of incumbents of any position in the classified-exempt service.

(c) The appointing authority shall, on the appropriate specified forms, report to the Director any changes in class title, pay, and status of any employee in the classified-exempt service.

(d) If an appointing authority wishes to request names of applicants for consideration for employment in the classified-exempt service, he or she shall make the request on appropriate forms specified by the Director. In no event shall a classified service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

(e) The employee affected by the allocation of a position to a class may file with the Director a written request for reconsideration and shall be given a reasonable opportunity to be heard by the Director. The appointing authority

shall be given like opportunity to be heard. The employee shall submit the request for reconsideration of a classification action in writing within ten (10) calendar days of the effective date of the classification action.

§143-1-5. Compensation Plan and Salary Administration.

Pursuant to the provisions of the W.Va. Code §29-6-10(2), the following salary regulations in this section apply to classified employees.

5.1. Purpose and Intent - To attract qualified employees and retain them in the classified service, the Board shall endeavor to provide through the pay plan adequate compensation based on the principles of equal pay for equal work among the various agencies and on comparability to pay rates established in other public and private agencies and businesses.

5.2. Preparation of the Plan - After consultation with the appointing authorities and State fiscal officers and after a public hearing, the Director and the Board shall prepare and submit to the Governor for his or her approval any revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum and maximum rates of pay for each grade and a plan of implementation. The pay plan shall also include a market rate for each grade which shall be established by the Director to approximate the market midpoint pay level among southeastern state governments selected by the Director. The Board may make periodic amendments to the pay plan in the same manner.

5.3. Adoption of the Plan - The plan becomes effective only after it has been approved by the Governor. The approved pay plan constitutes the official schedule of salaries for the classified service.

5.4. Implementation of Plan

(a) Assignment of Classes - The Board shall assign each class of positions to an appropriate pay grade consistent with the duties

outlined in the class specification. No salary shall be approved by the Director of Personnel unless it conforms to one of the pay rates in the pay grade assigned to the employee's class of position.

(b) Entry Salary - The entry salary for any employee shall be at the minimum salary for the class including any applicable Board approved pay differential. However, an individual possessing pertinent training or experience above the minimum required for the class, as determined by the Director, may be appointed at a pay rate above the minimum, up to the market rate of the salary range, unless otherwise prescribed by the Board. For each pay increment above the minimum, the individual must have in excess of the minimum requirements at least six months of pertinent experience or equivalent pertinent training. The Director may authorize appointment at a rate above the market rate where the appointing authority can substantiate severe or unusual recruiting difficulties for the job class.

(c) Standard Rates of Pay - The compensation plan applies to all classes of positions in the classified service unless specifically excepted by statute or statutory authority. It provides standard pay rates for full-time employees for regularly established working hours in all offices and departments. The salary or wage paid is determined by the pay grade to which the class of the position has been allocated. All employees, including those serving in positions on a part-time basis, shall be paid in proportion to the actual time worked.

(d) Additional Pay - Except for authorized overtime, Board approved pay differentials and monetary incentives, or other statutorily required and/or authorized payments, appointing authorities shall make no pay in addition to the regular salary to any employee. Additional duties imposed or volunteered are not an exception to this rule.

(e) Availability of Funds - Before an agency makes salary adjustments and advancements in accordance with this rule, its fiscal officer shall certify that funds for this

purpose are available.

(f) Salary Adjustments

1. New Plan

a. Upon adoption of a new pay plan the Board shall require and may approve or modify a plan of application which assures as nearly as possible that all incumbents in the classified service receive equal treatment in terms of pay.

b. An incumbent whose salary falls below the minimum rate of the new range shall have his or her salary adjusted to the new minimum.

c. An incumbent whose salary falls above the maximum rate of the new range shall maintain his or her current salary and is ineligible for salary advancements.

2. Pay on Reclassification

a. Higher minimum

1. When a class is reassigned by the Board to a salary range having a higher minimum, the salaries of those incumbents below the new minimum shall be adjusted to the new minimum.

2. Where the salary of the incumbent coincides with a pay rate in the new range, the salary shall remain unchanged.

b. Lower Minimum

1. When a class is reassigned by the Board to a salary range having a lower minimum, the salaries of those incumbents which are within the new range shall remain unchanged.

2. Where the salary of the incumbent is above the maximum rate of the new range, the salary shall remain unchanged and the incumbent is ineligible for salary advancements.

c. The Board, by formal action,

may approve or modify a plan of application on reclassification other than those described in subparagraphs 5.4.(f)2.a. and 5.4.(f)2.b. of this rule based on documented recruitment and/or retention difficulties or consideration of equal treatment in terms of pay for reclassified employees.

3. Pay on Position Reallocation - When a position is reallocated to a different class, the salary of the incumbent shall be adjusted in accordance with salary regulations for promotion, demotion and lateral class change.

4. Pay Differentials - The Board, by formal action, may approve the establishment of pay differentials to address circumstances such as class-wide recruitment and retention problems, regionally specific geographic pay disparities, shift differentials for specified work periods, and temporary upgrade programs. In all cases, pay differentials shall address circumstances which apply to reasonably defined groups of employees (i.e. by job class, by participation in a specific program, by regional work location, etc.), not individual employees.

5. Separation from Employment - Salary adjustments are not given to employees separating from State employment whose last day of work occurs prior to the effective date of a new pay plan and who are continued on the payroll beyond that date for payment of terminal annual leave.

5.5. Pay on Promotion - When an employee is promoted, the employee's pay shall be adjusted as follows:

(a) Minimum Increase - An employee whose salary is at the minimum rate for the pay grade of the current class shall receive an increase to the minimum rate of the pay grade for the job class to which the employee is being promoted. An employee whose salary is within the range of the pay grade for the current class shall receive an increase of one pay increment, as established by the State Personnel Board, per pay grade advanced to a maximum of 3 pay grades, or an

increase to the minimum rate of the pay grade for the job class to which the employee is being promoted, whichever is greater. In no case shall an employee receive an increase which causes the employee's pay to exceed the maximum for the pay grade to which he or she is being promoted.

(b) Exceptions

1. If the salary of an employee being promoted is at or above the maximum rate of the pay grade to which the employee is being promoted, or, if his or her salary is within one pay increment, as established by the State Personnel Board, of the maximum rate of the pay grade to which he or she is being promoted, the employee shall receive an increase of one pay increment with the promotion.

2. If an employee has been demoted or reallocated to a class at a lower pay grade and is promoted or reallocated within the next twenty-four months within the same agency, the following procedure shall be used when calculating pay on promotion as provided in subdivisions 5.5(a) and (b) of this rule: The promotional increase shall be calculated based on the pay grade of the employee's position prior to the demotion, using the employee's current rate of pay plus any amount by which the employee's pay was reduced at the time of the demotion. If, based on this procedure, no promotional increase is due, the employee's pay shall be increased by the amount his or her pay was reduced, if any, at the time of the demotion.

(c) Additional Increase - The appointing authority may grant additional incremental increases, as established by the State Personnel Board, to an employee being promoted if the employee has sufficient qualifications in excess of the minimum required for the new class. The employee must possess at least six months of pertinent experience or an equivalent amount of pertinent training for each additional incremental increase granted. In no case shall the additional incremental increase cause the employee's pay to exceed the maximum for the pay grade to which he or she is being promoted.

5.6 Pay on Demotion

(a) The appointing authority has the discretion to reduce or not reduce the pay rate of any employee who is demoted if the employee's pay rate is within the pay range of the job class to which the employee is demoted.

(b) The appointing authority shall reduce the pay rate of an employee who is demoted if the employee's current pay rate is above the maximum pay rate for the job class to which the employee is demoted. The reduction may be to any pay rate within the pay range of the job class to which the employee is demoted as long as the pay rate does not exceed the maximum pay rate of the pay range. If the demotion is to a formerly held job class and the employee's current pay rate is above the maximum pay rate for the job class, the reduction may be to any pay rate within the pay range of the job class to which the employee is demoted or to his or her last pay rate in the formerly held job class, even if the last pay rate is above the maximum pay rate for the job class.

5.7. Pay on Lateral Class Change - Any employee who receives a lateral class change shall be paid the same salary received prior to the change except in cases where the change is to an agency or job class for which the Board has approved, or the Legislature has authorized, a higher pay range for the pay grade.

5.8. Pay on Reinstatement - The salary for an employee who is reinstated shall be at the minimum salary for the class including any applicable Board approved pay differential. However, an individual possessing pertinent training or experience above the minimum required for the class, as determined by the Director, may be appointed at a pay rate above the minimum, up to the market rate of the salary range, unless otherwise prescribed by the Board. For each pay increment above the minimum, the individual must have in excess of the minimum requirements at least six months of pertinent experience or equivalent pertinent training. The Director may authorize reinstatement at a rate above the market rate where the appointing

authority can substantiate severe or unusual recruiting difficulties for the job class, or where the reinstated employee's last salary as a classified employee was above the market rate.

5.9. Salary Advancements

(a) Basis - All salary advancements shall be based on merit as evidenced by performance evaluations and other recorded indicators of performance.

(b) Eligibility - Salary advancements are limited to permanent employees.

(c) Amount - Salary advancements are limited to a maximum established and subject to change by the State Personnel Board, and shall not cause the new salary to exceed the maximum of the pay grade to which the employee's class is allocated. The State Personnel Board shall establish the maximum for salary advancements by policy on implementation of the pay plan [i.e. as of 5/1/94, no more than 10% in any 12-month period] as specified in subsection 5.2. of this rule.

(d) Exceptions - An employee with seven years of total state service who has attained the maximum or above in the range, or for whom a salary advancement would result in his or her salary exceeding the maximum in the range for the class is eligible for a salary advancement. The salary advancement is limited to the difference between two pay increments [i.e. as of 5/1/94, two pay increments equal 10%] and the total percentage of all other increases in pay in the immediately preceding twelve month period except general wage increases mandated by the Legislature.

(e) Effective Dates - Salary advancements for permanent employees are effective on or after the date on which the employees become eligible for the salary advancements.

5.10. Annual Increment Increase - The Board, by formal action, may establish uniform procedures which shall be followed by all State

agencies and spending units for compensating eligible employees of the State and its spending units for the annual increment increase provided for in W.Va. Code §5-5-2.

§143-1-6. Applications and Examinations.

6.1. Character of Examinations

(a) Examinations for appointment to a position in the classified service shall be conducted on an open competitive basis. Examinations shall be practical in nature, shall be constructed to reveal the capacity of the applicant for the particular position for which he or she is competing, and shall be rated objectively.

(b) Examinations shall, to the extent possible, be developed on the basis of objective analysis of the job and with the participation of appropriate job experts in the affected agencies and may include: written tests, performance tests, ratings of training and experience, oral examinations, job simulations, or other assessment procedures shown to be related to the content of the job and/or to be predictive of successful job performance.

(c) All examination scoring procedures shall be objective. Test weights shall be established to reflect the relative importance of duties performed in the job class. Test weighting and scoring procedures shall be applied consistently to the examinations of all applicants.

6.2. Notice of Examinations

(a) The Director shall give public announcement of all open competitive examinations at least 15 days in advance of the closing date for receipt of applications. He or she shall make every reasonable effort to attract qualified persons to compete in these examinations. Notices of examinations and other publicity may be restricted to the places where additional eligibles are needed. Public announcement of examinations shall specify the title and salary range of the class of position, the

duties to be performed, the minimum qualifications required, the final date on which applications will be accepted, and all other conditions of competition. The announcement shall also include any special minimum or substitute position qualification standards which will be used in evaluating applicants. The Director shall develop all announced qualifications for examination on the basis of information contained in class specifications as well as job analysis information obtained with the participation of appropriate job experts in affected agencies.

6.3. Filing Applications

(a) All applications shall be made on forms prescribed by the Director and must be filed with the Division on or prior to the closing date specified in the announcement or postmarked before midnight of that date. The applications shall be completed in full and may require the inclusion of documents verifying pertinent education, training, licensure, eligibility for veterans' preference points, or any other information which the Director may consider necessary. All applications shall be signed and sworn to or affirmed by the applicant. The Director may verify any information provided on or with an application.

(b) The Director may provide for continuous receipt of applications and for holding examinations as needed.

6.4. Disqualification of Applicants

(a) The Director may refuse to examine an applicant, or after examination, may disqualify the applicant or remove his or her name from a register or certification, or refuse to certify any eligible on a register if:

1. he or she is found to lack any of the preliminary requirements established for the examination or by statute for the class of position;

2. he or she has a disability and is incapable of performing the essential functions of

positions in the class with or without reasonable accommodation;

3. he or she has been convicted of an infamous crime or other crime involving moral turpitude which has a reasonable connection to the position/class for which he or she is applying;

4. he or she has made a false statement of material fact or has misrepresented his or her qualifications in his or her application;

5. he or she has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;

6. he or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

7. he or she has directly or indirectly obtained information regarding examinations to which he or she was not entitled;

8. he or she has failed to submit his or her application correctly or within the prescribed time limits;

9. he or she has taken part in the compilation, administration, or correction of the examination;

10. he or she has taken the same examination less than 60 days prior to the date of the current examination;

11. at least three former employers state that they would not re-employ him or her, or otherwise indicate that his or her services as an employee were unsatisfactory or that he or she is lacking in character and fitness for the position he or she applied for;

12. the register from which he or she is certified is for a class for which oral skills are essential and an oral examination was not a part of the examination process, and at least two agencies have interviewed him or her and report that he or she is not considered to be suitable for a position

in the class he or she was interviewed for;

13. he or she is not eligible to work in the United States;

14. he or she fails to comply with any other reasonable requirements established by the Director for the position; or

15. he or she has otherwise violated provisions of this rule.

(b) In order to be admitted to an open competitive examination, an applicant shall have satisfied all publicly announced minimum qualifications of the position for which he or she has requested an examination, except that he or she may be admitted if he or she is qualified in all respects except for: (1) a deficiency of no more than six months of qualifying training and, at the time of application, he or she is engaged in educational pursuits that will qualify him or her; or (2) a deficiency of no more than one month of qualifying experience and, at the time of application, he or she is employed in work that will qualify him or her. An applicant admitted to an examination with deficiencies in minimum qualifications who passes the examination, is not eligible for employment until the minimum qualifications have been satisfied. The applicant is responsible for furnishing evidence of subsequently satisfying the minimum qualifications.

(c) The Director shall notify a disqualified applicant of his or her disqualification, and shall notify an applicant who is not admitted to an examination because of failure to meet the preliminary requirements by letter to his or her last-known address. The Director may permanently disqualify from examination any applicant disqualified under the provisions of paragraphs 6.4 (a) 3, 4, 5, 6, 7, and 14 of this rule.

(d) Any applicant whose application for examination has been rejected may request that the Director reconsider his or her qualifications. The Director shall consider the request if it is

submitted in writing and received not later than fifteen (15) calendar days following the date the rejection notice was postmarked. The Director may admit an applicant to an examination pending the outcome of the written request for reconsideration. Admission to an examination under these circumstances shall not constitute assurance of a passing grade with respect to any portion of the examination process.

(e) Within thirty (30) calendar days after a properly submitted request for reconsideration is received, the Director shall report his or her decision in writing to the applicant. The Director shall determine that uniform rating or review procedures have been applied. A rating in any part of an examination shall not be changed unless the Director finds that an error has been made. Any correction resulting from the reconsideration shall not affect a certification or appointment that has already been made from a register.

6.5. Conduct of Examinations

(a) Written tests shall be conducted in as many places as are necessary for the convenience of the applicants, as are practicable for proper administration, and when found necessary by the Director to administer more effectively a continuous recruitment program as provided for in subdivision 6.3(b) of this rule. The Director may designate such monitors as may be necessary to conduct examinations under instructions prescribed by him or her, and may also arrange for the use of public buildings in which to conduct the examinations. The Director shall provide for the compensation of monitors and assistants in accordance with the approved budget for that purpose.

(b) Applicants taking competitive assembled examinations shall present personal identification which includes a signature or photograph prior to admission to an examination. Applicants without proper identification shall not be admitted to examinations.

6.6. Scoring Examinations

(a) The Director shall determine a final score for each applicant's examination, computed in accordance with the weights for the several parts established by the Director. Failure in any part of an examination may disqualify the applicant in the entire examination and may disqualify him or her from participation in subsequent parts of the examination. All applicants for the same position shall be accorded uniform and equal treatment in all phases of the examination procedures.

(b) Any veteran (as defined in Section 3 of this Rule) who claims veteran's preference and who has made a passing grade in an open competitive examination shall have five points added to his or her final earned score. An additional five points shall be added to the augmented earned score of any veteran with a compensable service-connected disability or who has been awarded the purple heart. Any person claiming veteran's preference or disability preference shall submit satisfactory proof of his or her service or disability to the Director of Personnel. Veterans' preference points are not added to final passing scores on promotional examinations.

(c) The Director shall utilize appropriate scientific techniques and procedures in rating the results of examinations and in determining the final scores of competitors.

6.7. Rating Training and Experience - If training and experience form a part of the total examination, the Director shall determine a procedure for the evaluation of the training and experience qualifications of the various applicants. The formula used in the evaluation may include an appraisal of the recency and quality as well as quantity of experience and the pertinency of the training.

6.8. Oral Examinations - When an oral examination forms part of a total examination for a position, the Director shall appoint one or more oral examination boards as needed. Any person actively engaged in the work of any political organization, or any person holding political

office, shall not serve as a member of any of the boards.

6.9. Notice of Examination Results - Each applicant passing all parts of the examination shall be notified by mail by the Director of his or her final score as soon as practical after the scoring of the examination has been completed and the register established. An eligible, upon request and presentation of proper identification, is entitled to information concerning his or her relative position on a register. The Director shall notify an applicant who fails any part of the examination or the total examination.

6.10. Special Examination - The Director may modify examination procedures to afford reasonable accommodation to otherwise qualified disabled applicants. The modifications may include changes in the existing testing procedures or the use of specific evaluations of the applicants' observable job skills and/or the applicants' record of past performance, experience and training.

6.11. Correction of Errors - If, within thirty days after receipt of his or her score notice, an applicant notifies the Director of a manifest error in the scoring of an examination or other evaluation of the applicant's qualifications, the Director shall, after verification of the error, promptly correct that error. The Director shall send formal written notice of the correction to the applicant. These corrections of errors shall not invalidate any certifications or appointments made prior to corrections of the errors.

6.12. Examination Records - The Director is responsible for the maintenance of all records pertinent to the examination program in accordance with official retention schedules and shall hold the records in confidence as specified in W. Va. Code §§29B-1-1 et seq. and 5A-8-21 and 5A-8-22.

§143-1-7. Registers.

7.1. Establishment of Registers -

(a) Competitive registers: After each

examination, the Director shall prepare a register of persons with passing grades. The names of these persons shall be placed on the register in the order of their final ratings starting with the highest.

(b) Preference registers: After the layoff of permanent classified employees, the Director shall prepare registers of qualified permanent classified employees who have been laid off. The names of these employees shall be arranged on the register in order of seniority.

7.2. Duration of Registers

(a) Competitive Registers: The life of scores on a register shall be one year from the date of establishment, but this period may be reduced by the Director. If the Director reduces the life of a register, he or she shall notify each eligible remaining on the register to this effect by mail to his or her last-known address.

(b) Preference Registers: A laid off permanent classified employee is eligible for employment from a preference register for no longer than one year and the eligibility ceases immediately upon employment in a classified position.

(c) Notice of Vacancies: It is the duty of the appointing authority to notify the Director as far in advance as possible of vacancies which may occur in the agency. The Director is responsible for determining the adequacy of existing registers and for the establishment and maintenance of appropriate registers for all positions exclusive of exempt positions.

(d) The Director shall nullify a register for any of the following reasons:

1. Changes in the minimum qualifications or classification standards of a class of positions;

2. Abolishment of the class for which the register was established; or

3. Substantial revision of the examination used to establish the register.

(e) When a register is declared null and void by the Director, he or she shall notify the affected persons of the action in writing at their last known address.

7.3. Removal of Names from Registers

(a) Competitive Registers: The Director may remove the name of an eligible from a register:

1. for any of the causes stipulated in subdivision 6.4(a) of this rule;

2. on evidence that the eligible cannot be located by letter to his or her last known address;

3. on receipt of a statement from the eligible declining an appointment and stating that he or she no longer desires consideration for an appointment; or,

4. if he or she declines an offer of a probationary appointment for the class for which the register was established in a location for which he or she has declared himself or herself available.

(b) Preference Registers: The Director may remove the name of an eligible from a preference register:

1. for any of the causes stipulated in subdivision 7.3(a) of this rule;

2. upon appointment of the eligible to a classified position; or

3. on evidence that the eligible does not meet the applicable standards of qualifications and fitness for a position.

(c) The Director shall notify the eligible by mail to his or her last-known address that his or her name has been removed from the register and

the reasons for the removal. All notices of changes of address shall be filed in writing by eligibles with the Director.

(d) Any person whose name has been removed from a register allegedly for reasons specified in this rule may appeal to the Board for reconsideration. The appeal must be filed in writing with the Director within fifteen (15) calendar days after the date on which notification to the applicant was postmarked. The appeal shall state the reasons why the applicant should not be removed from the register.

(e) The Board shall review all relevant information to determine if the action appealed was taken in accordance with this rule. Within thirty (30) calendar days after a properly submitted appeal is received, the Director shall report the Board's decision in writing to the applicant.

7.4. Reinstatement to Register

(a) A person who has had his or her name withdrawn from a register at his or her request may have his or her name reinstated on the currently effective register for the same position class provided that the original register is still in effect and that his or her examination score is still valid. His or her rank on the register shall be determined by his or her final earned examination score.

(b) Reinstatement to a register as provided for in the previous subdivision is subject to the following conditions:

1. The person petitioning the reinstatement shall make his or her request to the Director in writing and shall furnish whatever information the Director may require.

2. No person may be reinstated to a register who does not satisfy the current minimum qualifications for the position class for which the register is maintained. The Director may require that he or she pass an appropriate examination in the case of position classes requiring special

skills,

3. No person may be reinstated to a register from which he or she has been or may be disqualified under subsections 6.4, 7.3, or 8.2 of this rule.

§143-1-8. Certification of Eligibles.

8.1. Request for Certification - If a vacancy occurs in any position in an agency or if new positions are established and new employees are needed, requisitions shall be submitted by the appointing authority to the Director upon a prescribed form. This requisition shall state the number of positions to be filled in each class, identifying each class title and all other pertinent information.

8.2. Certification Methods

(a) Upon receipt of a requisition, the Director shall first certify and submit to the appointing authority the names of available persons from the appropriate preference register. If no appropriate preference register exists, the Director shall then certify and submit to the appointing authority the names of available persons from the appropriate competitive register established as a result of open competitive examination for the class of position. The number to be certified and submitted will be governed by this subdivision. Nothing in this subdivision shall be construed as altering the exhaustion point of a register as described in subdivision 7.2(a) of this rule.

1. The Director shall first certify and submit the names of all available eligibles from the appropriate preference register. If there are no available qualified eligibles on the appropriate preference register, then the Director shall certify the top ten names or the names of any persons scoring at or above the ninetieth percentile on the open competitive examination. The Director may certify additional names at his or her discretion.

2. If the competitive register established as a result of a Division of Personnel

examination for a specific class of position is exhausted, the Director may certify names from the register, or registers, most appropriate. If there is no register which the Director considers appropriate, then the Director may certify and submit names from a register established as described in subsection 7.1 of this rule.

3. Appointments may be made from a certification anytime within six months of the date of the certification. Six months after the date of the certification, the certification shall be null and void.

(b) If an eligible receives a probationary or permanent appointment, the appointment constitutes for its duration, a waiver of his or her right to certification from any other register on which his or her name appears for a class of position, the salary of which is either equal to or lower than that salary covered by his or her appointment, unless at the time of the appointment he or she requests in writing that his or her name be retained for certification from the register or registers. If a laid-off permanent classified state employee receives a probationary or permanent appointment to a classified position, that employee is no longer eligible for appointment from any preference register.

(c) The name of each employee whose name appears on a register for a class of position with a higher salary range than the salary range of his or her present class of position shall be certified and submitted by the Director and given consideration by the agency for the higher class of position if his or her name is reached.

(d) If in the exercise of his or her choice provided under subsection 9.2 the appointing authority passes over the name of an eligible on a competitive register in connection with three separate appointments he or she has made from the register, written request may be made of the Director that the name of the eligible be omitted from any subsequent certification of the same appointing authority from the same competitive register. The name of the eligible shall thereafter not be certified to the appointing authority from

that register for future vacancies in that class of position, or from subsequent registers established for that class of position. However, upon change of the person occupying the position of appointing authority, the Director shall reinstate the name of that person for certifying purposes and shall inform the agency of the reinstatement. If, subsequently, the eligible is interviewed by the agency and rejected once for the same position, his or her name shall not again be certified for that position to that agency during the tenure of the then incumbent appointing authority.

(e) An eligible may be considered not available by the Director if he or she fails to reply to a written inquiry after five days or to telecommunication within 48 hours in addition to the time required for the transmission of the inquiry to his or her last-known address and the reply to the inquiry.

8.3. Selective Certification - Any certification may limit consideration to only those individuals who possess specific qualifications determined to be essential for performance of the duties of a specific position. Selective certification must be approved by the Director.

(a) If a specific position requires special qualifications that are not common to all positions in that class, the appointing authority may request that certification be limited to candidates possessing those qualifications. Eligibles shall have adequate opportunity for special qualification consideration. The specific criteria for the restriction of certification shall be based on the duties of the position as verified by job analysis or by an official position description and written justification.

(b) The Director of Personnel may approve a request for selective certification by gender if the appointing authority provides written justification which clearly shows that only persons of the required gender can perform the duties of the position and the Director has conferred with the Human Rights Commission.

(c) The Director of Personnel may limit

certification to candidates available to work at the location of the job. The Director of Personnel may further limit certification geographically when the duties of the position require rapid response to unscheduled emergencies during off duty hours. The appointing authority shall provide written justification of any request for geographic selective certification based on essential duties of the position. The Director shall establish the boundaries of the acceptable geographic areas based on the specific location and demands of the job. The appointing authority shall consider candidates living outside the boundary if they are willing to relocate to the area.

(d) Except for preference certifications, the Director may determine, for certain unskilled or semiskilled job classes for which no previous education, training, or experience is required, that eligibles may be selected for certification by lot. In those cases, all eligibles shall have equal opportunity for certification. No rank order shall be established for the register. Selection for certification by lot will be determined as vacancy requests are received. Once the certification has been made for a particular vacancy, a new certification shall not be issued for the same class and location for sixty days. The employing agency shall offer opportunities for interviews to candidates in the order in which they appear on the certification. It is the responsibility of the employing agency to insure, to the extent practicable, that appointments from the certifications are made based on job-related merit and fitness.

8.4. Corrections of Errors

(a) In the event that a name is certified in error and the error is discovered before one of the named applicants is notified that he or she is appointed, the Director shall withdraw the erroneous certification and make a correct certification. If a certification is to fill more than one position, the Director shall withdraw only that portion of it pertaining to positions for which applicants have not been notified that they are appointed.

(b) In the event a name is certified in error and the error is discovered after one of the named applicants is notified that he or she is appointed but prior to the effective date of the appointment, the Director shall withdraw the certification and appointment as in subdivision (a) of this subsection unless:

1. Acceptance of the appointment caused the named applicant to change his or her place of residence; or,

2. Acceptance of the appointment caused the named applicant to resign from a position that cannot be regained.

(c) In the event a name is certified in error and the error is discovered after the effective date of the appointment of one of the named applicants, the appointment shall continue.

Section 9. Appointments

9.1. Appointees in Positions Added to the Classified Service

(a) When additional state agencies or parts of state agencies are added to the classified service by executive order of the Governor with the consent of the Board and the appointing authority concerned, and when additional county or municipal agencies are added to the classified service by agreement between the local government and the Director with the approval of the Board, a date for the addition shall be fixed by agreement.

(b) All appointments made on and after that date to the positions added to the classified service shall be made in accordance with this rule.

(c) The Director shall administer qualifying examinations to any person employed in a position added to the classified service who has been employed in that position continuously for six months immediately prior to the addition. If recommended by the appointing authority, the Director may admit the employee to a qualifying examination regardless of the minimum

qualifications for the class to which his or her position is allocated. The appointing authority shall appoint each person passing the qualifying examination for probationary or permanent employment. The qualifying examinations shall be held within six months after the date of addition of the position to the classified service. The examinations shall include appropriate written and performance tests where these tests are included in open competitive examinations for the class. The appointing authority shall, within thirty days after the examination, separate from employment any employee who fails to pass the qualifying examination unless there are no available eligibles on the register for the class, in which case his or her employment may be continued but he or she must be separated from employment within thirty days after certification of available eligibles.

(d) The appointing authority shall, within thirty days of the date of affiliation, separate from employment any person employed in a position added to the classified service for less than six months preceding that date of affiliation unless there are no available eligibles on the register for the class. If there are no available eligibles, his or her employment may be continued but he or she must be separated from employment within thirty days after certification of available eligibles. He or she may be given a probationary appointment if he or she has passed an open competitive examination for the class and is eligible for appointment within the provisions of subsection 9.2 of this rule.

(e) In making the appointments provided for in subdivisions 9.1(c) and (d) of this rule the appointing authority may count employment in the agency immediately prior to the appointments as part or all of the probationary period required under Section 10 of this rule. The appointing authority shall promptly report to the Director his or her decision for the records.

9.2. Original Appointments

(a) Appointing authorities shall make all original appointments to classified positions in

accordance with this rule. An appointing authority shall select for each position first from the eligibles on an appropriate preference register in accordance with subdivision 12.4 (j) of this rule. Upon exhaustion of the preference register, the appointing authority shall select for each position from the top ten names on the register, including any persons scoring the same as the tenth name, or any persons scoring at or above the ninetieth percentile on the open competitive examination, as provided by subsection 8.2 of this rule. The appointing authority may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the appointing authority offers an objection in writing based on subsection 6.4 of this rule and the objection is sustained by the Director.

(b) In selecting persons from among those certified, the appointing authority shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the appointing authority to the Director and shall include a statement by the appointing authority or his or her designee certifying that the person charged with making the selection: complied with the requirements of this subdivision; did not make the selection based on favoritism shown or patronage granted; and, considered all available eligibles for the position.

(c) If the eligible selected declines the appointment, the appointing authority shall transmit evidence of declination and other data to the Director for the permanent record. The Director may consider an eligible as having declined appointment if the eligible fails to reply after five days in addition to the time allowed for transmission of the letter and return of reply, or 48 hours, if notified by telegram. If an eligible accepts an appointment but fails to present himself or herself for duty at the time and place specified without giving reasons for the delay satisfactory to the appointing authority and the Director, he or she shall be considered to have declined the appointment.

9.3. Provisional Appointments

(a) If there are urgent reasons for filling a position and there is no appropriate preference register and there are fewer than three available eligibles on the competitive register established as a result of an examination for the position, and no other appropriate register exists, the appointing authority may submit to the Division of Personnel the name of a person to fill the position pending examination and establishment of a register. If that person's qualifications have been certified by the Director as meeting the minimum qualifications as to training and experience for the position, that person may be provisionally appointed to fill the existing vacancy until an appropriate register is established and appointment made from the register. The position must be classified and minimum qualifications established for the position in accordance with this rule before provisional appointments may be made. No provisional appointment shall be continued for more than thirty days after an appropriate register has been established for the class of position and in no event for more than 6 months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

(b) Time spent on a leave of absence without pay shall not extend the period of a provisional appointment.

9.4. Temporary Employment - Appointing authorities may employ individuals for a limited period of time not to exceed 720 hours in any twelve-month period in accordance with the provisions of this Rule and W.Va. Code §29-6-1 et seq. Individuals employed under the provisions of this subsection are exempt from the classified service.

9.5 Posting of Job Openings - Whenever a job opening occurs in the classified service, the appointing authority shall post a notice within the building, facility or work area and throughout the agency that candidates will be considered to fill the job opening. Posting of job openings using

electronic or other communications media shall satisfy the requirement to post a notice provided that the appointing authority makes regular and convenient access to the media used available to each classified employee in the agency, or otherwise provides notice to each classified employee in the agency. The notice shall be posted for at least ten (10) working days before making an appointment to fill the job opening. The notice shall state that a job opening has occurred, describe the duties to be performed, and the class to be used to fill the job opening.

(a) The term job opening refers to any vacancy to be filled by original appointment, promotion, demotion, lateral class change, reinstatement, or transfer, except any vacancy filled as a result of an employee exercising his or her bumping rights as provided in subdivision 12.4.(g) of this rule, and to any position to be filled by reallocation. Posting of a position to be filled by reallocation may be limited to the organizational unit in which the position exists, and the posting shall specify that consideration for the position is limited to employees of the organizational unit.

(b) The posting notice shall include a description of the duties to be performed by the person selected, the minimum qualifications for the position, the job class to be used in filling the job opening, the salary level or range that will be considered, the full-time equivalent for the position, and the job location.

(c) An established closing date, if any, for the receipt of applications shall allow sufficient time to ensure that the job vacancy circulation has been posted throughout the agency for ten (10) working days. The naming of an individual to fill the position is the appointment and is not altered by the fact that the individual will not assume the duties until a later date. Therefore, the agency shall not make an appointment to a position prior to the deadline for receipt of applications as listed on the posting.

(d) The appointing authority shall give due consideration to those employees who apply

and are eligible for the posted vacancy.

(e) If a posted vacancy is not filled within six months of the established closing date, the appointing authority must re-post the vacancy prior to an appointment to the vacant position.

(f) Any employee in the classified service who believes that the posting time and notice requirements of this subdivision have been violated or who is denied consideration for the job opening has the right to initiate a grievance as provided for in W.Va. Code §29-6A-1 et seq.

(g) The vacancy posting requirements in this subdivision shall apply to all classified position vacancies except vacancies filled as a result of employees exercising bumping rights, demotions with prejudice and/or transfers for cause.

§143-1-10. Probationary Period.

10.1. Nature, Purpose, and Duration

(a) The probationary period is a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency. It is an integral part of the examination process and the appointing authority shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work.

(b) Appointing authorities shall make all original appointments to permanent positions from officially promulgated registers for a probationary period of not more than one year. The Board shall fix the length of the probationary period for each class of position. The appointing authority shall notify the Director of Personnel when a probationary period has been completed and permanent status has been granted. This subdivision shall not be construed to prohibit application of time served in a provisional status to completion of a probationary period. The

period of provisional appointment may apply toward completion of the probationary period only for that part served continuously, in the same class, and immediately prior to an original appointment. However, it is the responsibility of the appointing authority to state in writing at the time permanent status is being granted that the time served in a provisional status has been applied toward completion of a probationary period.

(c) Time spent by probationary employees on a leave of absence without pay extends the probationary period.

10.2. Conditions Preliminary to Permanent Appointment

(a) Four weeks prior to the end of the probationary period, the appointing authority shall obtain from the probationary employee's supervisor a statement in writing recommending that the employee be continued or not be continued in service. This statement shall include an appraisal of the employee's services and should include a service rating in conformity with the system of performance evaluation prescribed by the Director. If the appointing authority determines that the services of the employee shall be retained, the appointing authority shall notify the employee and the Director of Personnel of the action no later than the last day of the probationary period.

(b) In the event the appointing authority takes no action on the status of a probationary employee before the expiration of the probationary period, either to retain or terminate, the employee shall be considered as having attained permanent status. Permanent status begins the first day following the expiration of the probationary period.

10.3. Demotions during Probation - The serving of a probationary period shall not, of itself, prevent an employee from being demoted to a position in a lower class, provided he or she meets the minimum qualifications of the lower class. However, the appointing authority may not

take this action until the employee has been presented with the reasons in writing and has been given a reasonable time to reply in writing, or to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall not take this action until the employee has completed one-third of the probationary period and the appointing authority has obtained the approval of the Director of Personnel. The probationary period for the class of position to which the employee is demoted begins with the date of demotion.

10.4. Transfers during Probation - An appointing authority shall not transfer an employee during his or her probationary period to a position in another class. An appointing authority shall not transfer an employee, certified to a vacancy on a geographic selective certification in accordance with the provisions of subsection 8.3 of this rule, from that geographic area to any other geographic area or class.

10.5. Dismissal during Probation

(a) If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with subsection 12.2. of this rule. If the appointing authority gives the fifteen calendar days notice on or before the last day of the probationary period, but less than fifteen calendar days in advance of that date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status. This extension shall not apply to employees serving a twelve month probationary period.

(b) The Director may restore the name of a dismissed probationary appointee who has been dismissed to the register from which he or she was certified, in accordance with the procedure described in subsection 12.7 of this rule, but the Director shall not in the future certify the name of that person to the same appointing authority from the same register.

§143-1- 11. Promotions, Demotions and Transfers.

11.1. Method of Making Promotions

(a) In filling vacancies, appointing authorities shall make an effort to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. Whenever practical and in the best interest of the service, an appointing authority may fill a vacancy by promotion, after consideration of the eligible permanent employees in the agency or in the classified service based on demonstrated capacity and quality and length of service.

(b) The Director must certify that a candidate for promotion possesses the qualifications for the position as set forth in the specifications for the class of position for which he or she is a candidate, and the appointing authority may require the candidate to qualify for the new position by a promotional competitive or non-competitive examination administered by the Director.

11.2. Promotion by Competitive Examination

(a) If it is determined by the appointing authority to fill vacancies in a particular class of position by promotion by competitive examination, the examination shall be given under the direction of the Director. To be eligible for promotion, an employee must, at the time the promotion is effective, have permanent status and must meet the minimum qualifications as to training and experience for the class of position. A promotional competitive examination shall consist of any combination of the following: written tests, ratings on training and experience, evaluation of recorded service ratings and seniority, performance tests and oral examinations. The combination in each case and the procedure for the determination of the passing grade shall be announced by the Director in advance of the examination, and shall take into consideration approved practices.

(b) The Director shall place the names of all employees who receive a passing grade on a promotional register for the class of position in order of their examination ratings.

(c) If a promotional and an original register exist, the Director shall certify the same number of names from each register in accordance with Section 8 of this rule. The appointing authority may make his or her selection from the names submitted from either register, giving such preference to present employees as the good of the service will permit.

11.3. Promotion by Noncompetitive Examination - If it is determined by the appointing authority to fill a vacancy by a non-competitive promotional examination, an employee proposed for promotion shall be examined by the Director in accordance with subsection 11.2 of this rule, and if found to qualify for the class will be certified.

11.4. Demotions - There are two types of demotion, demotion with prejudice and demotion without prejudice. A demotion with prejudice is a reduction in pay and/or a change in job class to a lower job class due to the inability of an employee to perform the duties of a position or for improper conduct. A demotion without prejudice is a change in job class of an employee to a lower job class, a transfer of an employee to a lower job class, or a reduction in the employee's pay due to business necessity. Prior to the effective date of the demotion, the appointing authority or his or her designee shall: meet with the employee in a predetermination conference and advise the employee of the contemplated demotion; give the employee oral notice confirmed in writing, or written notice of the specific reason or reasons for the demotion; and, give the employee a minimum of fifteen calendar days advance notice of the demotion to allow the employee a reasonable time to reply to the demotion in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall file the reasons for the demotion and the reply, if any, with the Director of Personnel. A predetermination conference and

fifteen days notice are not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied. An appointing authority may demote a probationary employee as provided for in subsection 10.3 of this rule.

11.5. Lateral Class Change - An appointing authority may move a permanent employee from a position in one class to a vacant position in another class in the same pay grade if the employee is found by the Director to qualify for the vacant position.

11.6 Transfers

(a) Except as otherwise provided in subsection 10.4 of this rule, appointing authorities may transfer a permanent employee from a position in one organizational subdivision of an agency to a position in another organizational subdivision of the same or another agency at any time. In the case of inter-agency transfers, an appointing authority shall transfer all hours of accumulated annual and sick leave and all service credit with the employee. An appointing authority shall not treat an inter-agency transfer as a resignation and shall not require an employee transferring inter-agency to submit a resignation letter except when the employee is resigning from a classified position to accept employment in a classified-exempt position.

(b) Appointing authorities shall report all inter and intra-agency transfers within a class to the Director on appropriate forms at the time of the transfer. The Director shall approve transfers to comparable classes prior to the transfers and shall require that the employee meet the minimum qualifications of the new class.

§143-1-12. Separations, Suspension, and Reinstatement.

12.1. Resignations - An employee who resigns shall present the reasons for the resignation in writing to the appointing authority. The appointing authority shall forward a copy of

the resignation to the Director of Personnel who shall record the resignation. If a written resignation cannot be obtained, the appointing authority shall notify the Director of Personnel in writing of the resignation of the employee and the circumstances of the resignation. The appointing authority shall not treat an intra-agency nor an inter-agency transfer as a resignation except when the employee is resigning from a classified position to accept employment in a classified-exempt position.

12.2. Dismissals

(a) An appointing authority may dismiss any employee for cause. Prior to the effective date of the dismissal, the appointing authority or his or her designee shall: meet with the employee in a predetermination conference and advise the employee of the contemplated dismissal; give the employee oral notice confirmed in writing, or written notice of the specific reason or reasons for the dismissal; and, give the employee a minimum of fifteen calendar days advance notice of the dismissal to allow the employee a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall file the reasons for dismissal and the reply, if any, with the Director of Personnel. A predetermination conference and fifteen days notice are not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct. An appointing authority may dismiss an employee after oral notice stating specific reasons, confirmed in writing, when the dismissed employee's action(s) constitute a threat to the safety or welfare of persons or property.

(b) An appointing authority may require that an employee dismissed for cause immediately vacate the workplace, or an employee dismissed for cause may elect to do so. If the appointing authority requires a dismissed employee to immediately vacate the workplace in lieu of working during the notice period, or if an employee who receives notice of dismissal for cause elects to immediately vacate the workplace,

the employee is entitled to receive severance pay attributable to the time he or she otherwise would have worked, up to a maximum of fifteen calendar days after vacating the workplace. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal.

(c) An appointing authority may dismiss an employee for job abandonment who is absent from work for more than three consecutive workdays without notice to the appointing authority of the reason for the absence as required by established agency policy. The dismissal is effective fifteen calendar days after the appointing authority notifies the employee of the dismissal. Under circumstances in which the term job abandonment becomes synonymous with the term resignation, an employee dismissed for job abandonment is not eligible for severance pay.

(d) In providing any employment verification or reference for a dismissed employee, the appointing authority must disclose that the separation was due to dismissal and that the employee did not leave employment in good standing, and must comply with the disclosure requirements of West Virginia Code §55-7-18a.

12.3. Suspension - An appointing authority may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job. The suspension shall be for a specific period of time, except where an employee is the subject of an indictment or other criminal proceeding. Accrued leave shall not be paid to employees during any period of suspension. Prior to the effective date of the suspension, the appointing authority or his or her designee shall: meet with the employee in a predetermination conference and advise the employee of the contemplated suspension; give the employee oral notice confirmed in writing, or written notice of the specific reason or reasons for the suspension; and, give the employee a minimum of three working days advance notice of the suspension to allow the employee being suspended a reasonable

time to reply in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. A predetermination conference and three working days advance notice are not required for employees in certain cases when the public interests are best served by withholding the notice. The appointing authority shall file the statement of reasons for the suspension and the reply, if any, with the Director of Personnel.

12.4. Layoff

(a) When it becomes necessary by reason of shortage of work or funds, abolition of position, material changes in duties or organization, or to permit reinstatement of employees released from periods of military service in the armed forces of the United States or to implement the provisions of this subdivision, the appointing authority may initiate a layoff in accordance with the provisions of this rule.

(b) **Organizational Unit.** The appointing authority shall submit to the State Personnel Board for approval a description of the unit or units to which a layoff will apply. The organizational unit may be an entire agency, division, bureau, or other organizational unit.

(c) Prior to the separation or demotion without prejudice of any employee by layoff, the appointing authority shall file with the Director a proposed plan which shall include:

1. a statement of the circumstances requiring the layoff;
2. the approved organizational unit(s) in which the proposed layoff will take place; and,
3. a list of the employees in each class affected by the layoff in order of retention.

(d) It is the duty of the Director to verify the details on which the lists are based and to notify the appointing authority in writing of the plan's approval.

(e) The plan followed by the appointing authority shall be available, upon request in writing, to any employee or adversely affected former employees.

(f) **Order of Separation.** After the appointing authority has determined the number of positions to be abolished and the Board has approved the organizational unit to which the layoff will apply, the order of separation shall be applied in the following manner:

1. employees without permanent status in the same class or classes identified for layoff in the following order: emergency, ninety-day exempt, student, seasonal, contract, intermittent, temporary, exempt part-time professional, provisional, and probationary.

2. permanent employees by job class on the basis of tenure as a permanent employee of a state agency or in the classified service regardless of job class or title. No tenure credit accrues for periods during which terminal annual leave is paid nor for periods during which an employee is not paid a wage or salary except for military leave, educational leave, or periods during which the employee is paid temporary total disability benefits under the provisions of WV Code §23-4-1 for a personal injury received in the course of and resulting from covered employment as a permanent employee of a state agency or in the classified service, or unless otherwise provided by State or Federal statute. In the event of a tie in the order of separation, the appointing authority or his or her representative and those employees who are tied shall agree on a means of breaking the tie by either a coin toss or lot drawing and shall notify the Director in writing of the agreement and the results.

(g) **Bumping Rights.** A permanent employee who is to be laid off may request a lateral class change or an demotion without prejudice to a job class in a lower pay grade in the occupational group in the same unit approved by the Board for reduction in force unless the results would be to cause the layoff of another permanent employee who possesses greater seniority than the

employee who is exercising the request for lateral class change or demotion without prejudice. The employee requesting the lateral class change or demotion without prejudice must be available for the work schedule and at the work location of the job to which he or she has requested the change or demotion. A permanent employee who is laid off under these provisions as a result of another employee having a greater seniority requesting a lateral class change or demotion with prejudice has the same bumping rights as provided for in this procedure. The Director shall develop the occupational groups in the classified service based on similarity of work and required knowledges, skills and abilities.

(h) **Salary Reductions for Layoff.** Salary reductions resulting from provisions of this subdivision shall follow subsection 5.6 of this rule for pay on demotion.

(i) **Recall.** Recall of a permanent employee shall be to the agency as a whole and in reverse order of the layoff to the class from which the employee was laid off or any lower class in the class series or to any class previously held in the occupational group. A permanent employee shall remain on the recall list for the length of his or her tenure on the date of the layoff or for a period of two years, whichever is less. The agency shall first consider for reemployment those former permanent employees whose names appear on the recall list for the class in which a vacancy has occurred and no original appointment of a new employee or reinstatement of a former permanent employee shall be made to the class until all former permanent employees on the recall list have been given first chance of refusal of the vacancy. A permanent employee shall be recalled to jobs within the county wherein his or her last place of employment is located or within a contiguous county. The agency shall notify any laid off permanent employee who is eligible for recall to a position under these provisions by certified mail of the vacancy. It is the responsibility of the employee to notify the agency of any change in mailing address.

(j) **Preference Hiring.** When filling

vacancies at agencies, appointing authorities shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to those laid-off qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities. This preference shall not supersede the recall rights of employees who have been laid off in the agency. Preference hiring shall be accomplished by original appointment .

(k) **Reporting.** The appointing authority shall report the names of all employees who are to be laid off to the Director in writing no later than the date notification of the layoff is mailed to the employee.

(l) **Appeals.** Employees shall file appeals from layoffs in accordance with W.Va. Code §29-6A-1 et seq.

12.5. **Like Penalties for Like Offenses -** In dismissals for cause and other disciplinary actions, appointing authorities shall impose like penalties for like offenses.

12.6. Reinstatement

(a) A former employee who had attained permanent status under the Division of Personnel who has resigned or who has been laid off is eligible for reinstatement, provided that he or she has been certified by the Director as meeting the current minimum qualifications as to training and experience of the class of position to which he or she is being appointed. Prior to making the certification, the Director may require the employee to pass a qualifying examination. The Director may refuse to reinstate a former employee for any of the causes stipulated in subdivision 6.4.(a) of this rule.

(b) Appointing authorities shall reinstate all qualifying employees who left state service to enter the armed forces of the United States to their former positions or to positions of like class, seniority and pay within two weeks of their requests provided that such employees satisfy the eligibility standards set forth in Federal law

commonly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA). Appointing authorities shall also reinstate, at the end of their recovery periods, all qualifying employees who are hospitalized for, or convalescing from, illnesses or injuries incurred in, or aggravated during, the performance of military service provided that such employees satisfy the eligibility standards set forth in USERRA. Appointing authorities may permit qualifying employees to return to work at less than full duty, but the terms of return are subject to the same conditions specified in subdivision 14.4(h) of this rule.

(c) Any qualifying employee who is reinstated to state employment under the provisions of subdivision 12.6.(b) shall be granted all within-grade salary adjustments and may be granted salary advancements he or she would have received had he or she remained in active status in the classified service. He or she shall be credited with all annual and sick leave accumulated and unused at the time the military leave began. The appointing authority shall uniformly apply the provisions in this subdivision to all qualifying employees who are reinstated to state employment under the provisions of subdivision 12.6.(b).

§143-1-13. Reconsideration. - Any applicant or employee may request that the Director reconsider a decision which directly affects the applicant or employee. Unless otherwise specified in this rule, the request must be submitted in writing within fifteen days of the applicant's or employee's notification of the decision. Within thirty days of receipt of the applicant's or employee's request for reconsideration, the Director shall notify the applicant or employee of his or her decision.

§143-1-14. Attendance and Leave. In compliance with West Virginia Code §21-5C-1 et seq., §2-2-1 et seq., §15-5-15a, and §29-6-10 the following provisions apply to classified employees.

14.1. Official Holidays

(a) Employees shall be released from

work with pay in observance of the following official holidays: New Year's Day, the first day of January; Martin Luther King's Birthday, the third Monday of January; Presidents' Day, the third Monday of February; Memorial Day, the last Monday in May; West Virginia Day, the twentieth day of June; Independence Day, the fourth day of July; Labor Day, the first Monday of September; Columbus Day, the second Monday of October; Veterans' Day, the eleventh day of November; Thanksgiving Day, the fourth Thursday of November; Lincoln's Day, the fourth Friday of November; Christmas Day, the twenty-fifth day of December; any day on which a Primary or General election is held throughout the State, and, such other days as the President, Governor or other duly constituted authority proclaim to be official holidays or days of special observance or thanksgiving, or days for the general cessation of business.

(b) When a holiday falls on a Sunday, the following Monday shall be observed as the official holiday. When a holiday falls on a Saturday, the previous Friday shall be observed as the official holiday. When Christmas or New Year's Day occurs on Tuesday, Wednesday, Thursday, or Friday, the last half of the scheduled workday immediately preceding the holiday will be given as time off not to exceed four hours. When an agency must modify holiday observances to accommodate around-the-clock shifts or other special needs, the agency shall notify employees in advance of the modification and shall schedule alternate holiday observances on days as close as possible to the holidays. The total amount of paid time off for holidays shall not exceed eight hours per full day holiday.

(c) Part-time employees are entitled to receive time off with pay for holidays, regardless of whether the holidays fall within the employees' regular work schedules, in proportion to the amount of time worked as compared to the employer's standard workweek for a full-time employee.

(d) To receive pay for any holiday, an employee must, at a minimum, work or be on

approved paid leave for his or her full scheduled workday immediately preceding the holiday and at least one quarter hour of his or her scheduled workday immediately following the holiday or vice versa. An employee is not eligible to be paid for any holiday that occurs prior to his or her first day of work or after his or her date of separation as defined in subsection 3.25.

(e) Appointing authorities shall make reasonable accommodation to an employee's religious holidays as required by law.

(f) An appointing authority shall, if necessary, allow any employee required to work on any election day ample and convenient time and opportunity to cast his or her vote. Upon receipt of a written request at least three work days prior to an election, an appointing authority shall give any employee who has less than three hours of time away from work during hours polling places are open, up to three hours of paid time off between the opening and closing of the polls, to vote. The appointing authority shall schedule such time off to avoid impairment or disruption of essential services and operations.

14.2. Agency Work Schedules - Each appointing authority shall establish the work schedule for the employees of his or her agency. The work schedule shall specify the number of hours of actual attendance on duty for full-time employees during a workweek, the day and time that the workweek begins and ends, and the time that each work shift begins and ends. The work schedule may include any work shifts the appointing authority determines to be appropriate for the efficient operation of the agency, including work shifts comprising work days of more than eight hours and/or work weeks of less than five days. The work schedules and changes must be submitted to the Director within fifteen (15) calendar days after employees commence work under the schedule.

14.3. Annual Leave

(a) Amount, Accrual - Except as otherwise noted in this rule, each permanent,

probationary, and provisional employee is eligible to accrue annual leave with pay and benefits. The table below lists the rates of accrual according to the employee's length of service category and the number of hours of annual leave that may be carried forward from one calendar year to another. Annual leave is accrued at the end of each pay period or on the last workday for separating employees. It may be prorated for employees granted a medical leave of absence or satisfying the conditions for approval of a medical leave of absence in accordance with subdivision 14.8(c) of this rule. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period based on the proper length of service category. Annual leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours. Provided, however, employees on unpaid leave who are receiving workers' compensation temporary total disability benefits continue to accrue annual leave while receiving such benefits.

(a) (1) Emergency waiver for West Virginia Public Employee Insurance Agency's complete renovation and upgrade to its financial and eligibility systems for calendar year 2008- The provision in 14.3 (a) concerning the number of hours of annual leave that may be carried forward from one calendar year to another is waived for those classified employees directly involved in the WV PEIA complete renovation and upgrade to its financial and eligibility systems which occurred during the 2008 calendar year.

Length of Service Category	Accrual Rate: Hours Equal To	Carry-forward Rate: Hours Equal To
Less than 5 years of qualifying service	1.25 days/month	30 days
5 years but less than 10 years of qualifying service	1.50 days/month	30 days
10 years but less than 15 years of qualifying service	1.75 days/month	35 days
15 years or more of qualifying service	2.00 days/month	40 days

(b) Service to Qualify - Qualifying service for length of service category is based on State employment or employment in the classified service. No service credit accrues for periods during which an employee is not paid a wage or salary unless otherwise provided by State or Federal statute. Provided, however, employees on unpaid leave who are receiving workers' compensation temporary total disability benefits continue to accrue service credit while receiving such benefits.

(c) Requesting, Granting - Accrued annual leave shall be granted at those times that will not materially affect the agency's efficient operation or when requested under the provisions of W.Va. Code §21-5D-1 et seq., the Parental Leave Act and 29 U.S.C. §2601-2654, The Family and Medical Leave Act of 1993. The employee shall request annual leave in advance of taking the leave except as noted elsewhere in this subdivision. Annual leave may not be granted in advance of the employee's accrual of the leave. Agencies are encouraged to grant annual leave when hazardous conditions make going to and from work difficult.

(d) Coverage

1. All full-time and part-time permanent, probationary, and provisional employees shall accrue annual leave.

2. Temporary and seasonal employees shall not accrue annual leave.

3. Annual leave accrued by provisional employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period not to exceed the full-time work schedule of the employer. A provisional employee must take his or her accrued annual leave prior to the expiration of the period of appointment, unless immediately followed by an appointment from the register, or the leave is forfeited.

4. Annual leave accrued by part-time employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period based on the proper length of service category.

(e) Minimum Charge - The minimum charge against annual leave shall be one quarter ($\frac{1}{4}$) hour. Additional leave shall be in multiples of a quarter hour.

(f) Separation from Employment - The appointing authority shall pay an employee who separates from employment for any reason for all accrued and unused annual leave. An employee does not accrue annual leave after his or her date of separation. The payment shall be made according to one of the following methods:

1. An employee may elect to be paid in semi-monthly installments at his or her usual rate of pay as if employment were continuing until the pay period during which the accrued annual leave is exhausted. If the last day for which leave payment is due falls before the day on which the pay period ends, terminal annual leave payment for those days within that pay period shall be calculated using the daily rate for the half-month in which the last day on payroll occurs. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. No deductions may be made for contributions toward retirement from the payment for terminal annual leave;

2. Any eligible employee as defined in W.Va. Code §5-5-1 who is separated from employment by resignation, layoff, dismissal, retirement, death, or termination, may be paid in a lump sum, at his or her option, for accrued and unused annual leave. Terminal annual leave payment for an employee who selects a lump sum payment shall be calculated as if employment were continuing until the pay period during which the accrued annual leave is exhausted in accordance with paragraph one of this subdivision. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. The lump sum payment shall be made by the time of what would have been the employee's next regular pay day had his or her employment continued. No deductions may be made for contributions toward retirement from the lump sum payment; or

3. An employee who retires may elect not to receive payment for any or all terminal annual leave and may apply the balance towards extended insurance coverage under guidelines established by the Public Employees Insurance Agency or to acquire additional credited service in the appropriate state retirement system.

(g) Transfer of Annual Leave

1. When a classified employee

transfers or otherwise changes employment from one agency to another, all service credit and hours of accrued annual leave shall be transferred. The previous employer shall provide written documentation of the employee's annual leave balance to the other agency within thirty (30) calendar days after the employee commences work.

2. Annual leave accrued while in exempt or classified-exempt permanent employment shall be transferred to classified employment.

(h) When Sick Leave Exhausted - Annual leave, if requested, shall be granted in circumstances when sick leave or the sick leave allowance for an employee's immediate family is exhausted. The provisions of subdivision 14.4.(g) of this rule regarding the necessity for a physician's statement when sick leave is used apply when annual leave is used under these circumstances.

14.4. Sick Leave

(a) Accrual - Except as otherwise provided in this rule, each permanent, probationary, and provisional employee shall receive accrued sick leave with pay and benefits. Sick leave is computed on the basis of hours equal to 1.5 days per month for full-time employees. Sick leave is accrued at the end of each pay period or on the last workday for separating employees. It may be prorated for employees granted a medical leave of absence or satisfying the conditions for approval of a medical leave of absence in accordance with subdivision 14.8(c) of this rule. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period. Sick leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours. There is unlimited accumulation of sick leave.

(b) Coverage

1. All full-time and part-time

permanent, probationary, and provisional employees shall accrue sick leave.

2. Temporary and seasonal employees shall not accrue sick leave.

3. Provisional employees shall accrue sick leave in proportion to normal hours worked and/or hours of paid sick and/or annual leave in the pay period. The leave accrued by a provisional employee expires at the termination of the period of employment unless immediately followed by an appointment from the register for a permanent position.

4. Part-time employees shall accrue sick leave with pay and benefits in proportion to hours they are employed to work annually.

(c) Minimum Charge - The minimum charge against sick leave is one quarter ($\frac{1}{4}$) hour. Additional leave is charged in multiples of one quarter hour.

(d) Maximum Charge - The maximum charge against sick leave is one work year per substantially continuous absence. The appointing authority may at his or her discretion grant additional accrued sick leave if the employee's disability, with or without accommodation, as verified by a physician, is not of such a nature as to render the employee permanently unable to perform the essential duties of the position.

(e) Separation from Employment - Sick leave does not accrue after the date of separation as defined in this rule.

1. Retirement - An employee eligible to retire at the time of separation from employment may use unused sick leave to purchase extended insurance coverage upon retirement under guidelines established by the Public Employees Insurance Agency or upon retirement to acquire additional credited service in the state retirement system under guidelines established by the Consolidated Public Retirement Board.

2. All Other Separations - All

accumulated sick leave shall be cancelled as of the date of separation. If an employee returns to eligible employment, as provided in subdivision (b) of this subsection, within twelve (12) calendar months, including the first working day the reinstatement could be accomplished, all cancelled sick leave shall be restored. However, if the employee returns to eligible employment after more than twelve (12) calendar months from the effective date of separation of employment, no more than thirty (30) days of cancelled sick leave shall be restored. If an employee who has been laid off is re-employed in eligible employment, all cancelled sick leave shall be restored.

(f) Granting - Sick leave may not be granted in advance of the employee's accrual of the leave. Appointing authorities shall grant accrued sick leave requested by employees for the following reasons:

1. Illness - Sick leave shall be granted in the event of an employee's illness or injury which incapacitates him or her from performing his or her duties ;

2. Death in the immediate family of the employee - Sick leave shall be granted up to 3 days to an employee for the death of any member of his or her immediate family as defined in this rule;

3. Exposure to Contagious Disease - Sick leave shall be granted in the case of exposure to a contagious disease when a physician determines and states in writing that the employee's presence on duty may jeopardize the health of others;

4. Pregnancy - An incapacity due to pregnancy shall be charged to sick leave under the same conditions applying to any illness;

5. Routine Dental and Medical Appointments-Employee- Routine dental and medical appointments for treatment or examination of the employee shall be charged to sick leave. Reasonable travel time for the appointments may also be charged to sick leave not to exceed a total

of three hours per occurrence ;

6. Illness and/or Routine Dental and Medical Appointments-Immediate Family - Absence for illness or routine medical and dental appointments of a member of an employee's immediate family as defined in this rule shall be charged to accrued sick leave, not to exceed 40 hours per calendar year. Reasonable travel time for the appointments may also be charged to sick leave not to exceed a total of three hours per occurrence; or,

7. Work related illness or injury - An employee may elect to use sick leave due to a personal injury received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code §23-4-1. However, an employee who elects not to use sick leave under this paragraph must apply for a medical leave of absence without pay as provided under part 14.8(c)1.a.2 of this rule.

(g) Physician's Statement

1. The Director shall prescribe a physician's statement form to be supplied by all agencies to its employees. All agencies shall use this form or an alternate form or method, approved by the Director, to obtain the necessary information.

2. Any employee requesting sick leave for an absence of more than three consecutive work days must, within two days of his or her return to work, provide a prescribed physician's statement from the attending physician for the entire absence. If the employee's physician/practitioner has placed restrictions or limitations on the employee's work activities, the employee must furnish the prescribed physician's statement immediately upon return to work. The physician's statement form shall specify the period of incapacity and state that the employee was unable to perform his or her job or that the employee's absence was due to reasons provided in Paragraph 14.4(f)6 of this rule for a member of the employee's immediate family.

3. In the absence of a prescribed physician's statement form, the entire absence shall be charged to unauthorized leave as provided in subsection 14.6 of this rule, and the employee's pay shall be docked the following pay period for the entire period of absence. The appointing authority shall notify the employee in writing that his or her pay is being docked. If the physician's statement from the attending physician specifies a period of incapacity that is less than the entire absence, only the period of incapacity shall be charged to sick leave and the remaining absence shall be charged to annual leave, if annual leave is available to the employee and is not otherwise restricted.

4. For extended periods of sick leave, a prescribed physician's statement form confirming the necessity for continued leave must be submitted within thirty (30) calendar days of the commencement of the sick leave and must indicate a date the physician will release the employee to return to work or a date the physician will re-evaluate the employee's medical condition. For employees being re-evaluated, an additional physician's statement must be submitted upon re-evaluation. Failure to produce the required statement is grounds to terminate further sick leave benefits and the appointing authority shall immediately place the employee on unauthorized leave and notify the employee in writing of such action as provided in subsection 14.6 of this rule. This written notice shall allow the employee fifteen days to submit the required physician's statement. Failure of the employee to submit the required statement within the fifteen day notice period, except for satisfactory reasons submitted in advance to the appointing authority, is cause for dismissal. The necessity for absence because of exposure to contagious disease must be verified on a prescribed physician's statement form regardless of the length of absence.

(h) Return At Less Than Full Duty -

1. The appointing authority may permit an employee to return to work from sick leave at less than full duty for a period of no more than thirty days, provided that the terms of the

return shall be in writing. An employee may request to continue to work at less than full duty beyond the period permitted by the appointing authority. The request must be submitted to the appointing authority at least five days before the end of the period. The appointing authority shall consider the request in the same manner as the original request.

2. The appointing authority, after receiving approval of the Director, may deny the request to return or continue to work at less than full duty under conditions including, but not limited to, the following:

(a) the employee cannot perform the essential duties of his or her job with or without accommodation;

(b) the nature of the employee's job is such that it may aggravate the employee's medical condition;

(c) a significant risk of substantial harm to the health or safety of the employee or others cannot be eliminated or reduced by reasonable accommodation; or,

(d) the approval of the request would seriously impair the conduct of the agency's business.

3. Prior to making a decision on an employee's request to return or continue to work at less than full duty, the appointing authority and/or the Director may require additional information from the employee's physician or other physician regarding the employee's ability to perform the essential duties of his or her job, with or without accommodation.

(i) Transfer of Sick Leave

1. When a classified employee transfers or otherwise changes employment from one agency to another, all hours of accrued sick leave shall be transferred. The previous employer shall provide written documentation of the sick leave balance to the other agency within thirty (30)

calendar days after the employee commences work.

2. At the discretion of the appointing authority, sick leave accrued while in other State employment may be transferable to covered agency employment.

(j) Illness While on Annual Leave - 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 shall request that action immediately upon return to work and shall provide a physician's statement or hospital statement listing the specific dates of hospitalization or emergency room services. Sick leave may be charged only for the period of time the employee is hospitalized or in the emergency room. The remainder of the time shall be charged to annual leave.

14.5. Suspected Misuse of Leave - When an employee appears to have a pattern of leave use that is inconsistent with the reasons provided in subdivision 14.4(f) of this rule, including such frequent use of sick leave as to render the employee's services undependable, the appointing authority may request appropriate substantiation of the employee's claim for leave, for example, verification of an illness of less than three days. The appointing authority shall give the employee prior written notice of the requirement for appropriate substantiation.

14.6. Unauthorized Leave - When an employee is absent from work without authorization for sick or annual leave, the appointing authority shall dock the employee's pay in the next pay period for an equal amount of time paid during which no work was performed. The appointing authority shall notify the employee in writing that his or her pay is being docked and that the unauthorized leave is misconduct for which discipline is being imposed. The appointing authority shall use unauthorized leave only in cases when the employee fails to obtain the

appropriate approval, according to agency policy, for the absence. The appointing authority shall transmit notice of the action in writing to the Director of Personnel.

14.7. Overtime Work and Holiday Work - An appointing authority or his or her designated representative may require an employee to work in excess of the prescribed working hours or on holidays when the work is considered necessary to the public interest. Compensation shall be made in accordance with the Federal Fair Labor Standards Act and relevant Federal regulations and W.Va. Code §21-5C-1 et seq.

14.8. Leave of Absence Without Pay

(a) **Personal Leave -** An appointing authority may grant a permanent, probationary, or provisional employee a leave of absence without pay for a specific period of time which normally should not exceed one year. The employee shall apply for the leave of absence in writing to the appointing authority. If the appointing authority approves the request, the approval shall be in writing. A leave of absence without pay may exceed the normal one year limitation and the appointing authority may grant the leave of absence at his or her discretion based on the agency's personnel needs. Time spent by provisional employees for leaves of absence does not extend the provisional period limitation. Written approval of the appointing authority is required in all cases. Approval of personal leave is discretionary with the appointing authority.

(b) **Family Leave -** The Board, by formal action, may establish uniform procedures, which shall be followed by all appointing authorities, for granting leave to eligible employees under the provisions of W.Va. Code §21-5D-1 et seq., the Parental Leave Act, and 29 U.S.C. § 2601-2654, the Family and Medical Leave Act of 1993.

(c) **Medical Leave; Notice to Employee**

1. An injured or ill permanent employee upon written application to the appointing authority shall be granted a medical

leave of absence without pay not to exceed six (6) months within a twelve month period provided:

a. The employee (1) has exhausted all sick leave and makes application no later than fifteen (15) calendar days following the expiration of all sick leave or (2) has elected not to use sick leave for a personal injury received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code §23-4-1 and makes application no later than fifteen (15) calendar days following the date on which the employee filed a claim for Worker's Compensation;

b. The employee's absence is due to an illness or injury which is verified by a physician/practitioner on the prescribed physician's statement form stating that the employee is unable to perform his or her duties and giving a date for the employee's return to work or the date the employee's medical condition will be re-evaluated;

c. A prescribed physician's statement form is submitted each time the employee's condition is re-evaluated to confirm the necessity for continued leave; and,

d. The disability, as verified by a physician/practitioner on the prescribed physician's statement form, is not of such nature as to render the employee permanently unable to perform his or her duties.

2. The appointing authority shall, at least 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 informing him or her that the leave will not be granted if he or she fails to apply within the time limits specified in subparagraph 14.8(c)1.a. of this rule.

(d) **End of Leave**

1. At the expiration of a leave of absence without pay, the employee shall be

returned to duty to either 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.

2. If the leave of absence without pay was granted due to personal illness, the employee must furnish from the attending physician/practitioner a prescribed physician's statement form indicating the ability of the employee to return to work. The appointing authority 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 are subject to the same conditions specified in subdivision 14.4(h) of this rule.

3. Failure of the employee to report to work promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance to the appointing authority, is cause for dismissal.

(e) Reporting Procedures - The appointing authority must report a leave of absence without pay to the Director. The appropriate forms must include the provision of this Rule under which the leave is being granted, the employee's last date on the payroll, and the specific anticipated date for return to duty.

14.9. Military Leave

(a) State Active Duty and Reserve Military Service - In accordance with the provisions of West Virginia Code §15-1F-1(a), all officers and employees of the State who are members of the National Guard or of any of the reserve components of the armed forces of the federal government are entitled to a leave of absence from employment without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades, or for examination to determine fitness for duty, inactive duty training, funeral honors duty for the State or federal government, active duty for training or active service for the State all to include reasonable travel time to and from the duty location, for a maximum period of thirty working

days in any one calendar year when ordered or authorized by proper authority. The term "without loss of pay" means that the employee continues to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation during the same period. An employee need not exhaust all annual leave or sick leave. Furthermore, the leave of absence is considered as time worked for the agency in computing seniority, eligibility for salary increase and experience with the agency. The terms of this subdivision do not apply under the provisions of any military selective service act. An employee shall provide to the appointing authority advance written or verbal notification of an obligation or intention to perform military duty and such written orders or other documentation, if available, in support of the request for military leave. None of the unused days of military leave for which an officer or employee is eligible under this subdivision may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in this subdivision only in the year he or she is called to active duty, and in subsequent years only after he or she has been discharged from military duty and returned to State employment.

(b) Federal Active Duty - In accordance with the provisions of West Virginia Code §15-1F-1(b), all officers and employees of the State who are ordered or called to active duty by properly designated federal authority are eligible for an additional leave of absence from employment without loss of pay, status, or efficiency rating for a maximum period of thirty working days for each single call to active duty, active duty for training, initial active duty for training, or full-time National Guard duty, all to include reasonable travel time to and from the duty location. All officers and employees of the State called to federal active duty or full-time National Guard duty who have not used all or some portion of the thirty working days of military leave granted by subdivision (a) of this subsection are eligible to use those unused days in the same calendar year prior to using the thirty days for which they are eligible under this subdivision, up to a maximum

of sixty days for a single call to active duty. None of the unused days for which an officer or employee is eligible under subdivision (a) may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in subdivision (a) of this subsection only in the year he or she is called to active duty, and, in subsequent years, only for a subsequent call to duty and only after he or she has been discharged from military duty and returned to State employment. The term "without loss of pay" means that the employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from federal or state sources during the same period.

(c) Other than as provided in subdivision (b) of this subsection, any employee hired for permanent employment 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 shall be granted a leave of absence from his or her service with the agency. Upon completion of and discharge from the armed services and within the applicable time period prescribed by federal statute, rule, or regulation regarding return to employment, the employee has the right to resume his or her service with the agency without any prejudice to his or her status, merit rating or standing by reason of the absence, in accordance with subdivision 12.6(b) of this rule. An employee shall be credited with all annual leave and sick leave not used at the commencement of his or her military leave in accordance with subdivision 12.6(c) of this rule. This subdivision shall not be construed:

1. As 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 previously existed;

2. As providing that the salary paid by the agency 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 the services with the armed forces of the United States; or,

3. As having precedence over the provisions of any applicable federal statute, rule, or regulation regarding military leave or re-employment rights with which this subdivision is inconsistent or in conflict including, but not limited to, the Uniformed Services Employment and Reemployment Rights Act.

14.10. Court, Jury, and Hearing Leave

(a) Upon application in writing, an employee hired for permanent employment 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. This subdivision shall not apply in cases where the employee or a member of his or her immediate family is a plaintiff, defendant or other interested party or has a personal, financial, or vested interest in the outcome of the proceeding. This subdivision shall not be construed:

1. to deprive, prohibit, or infringe upon the rights of any employee who is a party to, or a witness in, a grievance proceeding or a court of law proceeding resulting from the course of his or her State and/or classified employment; or,

2. to deprive, prohibit, or infringe upon the rights of any employee in his or her pursuit of personal legal matters or civic responsibilities while on annual leave or a personal leave of absence.

(b) The employee shall furnish such written confirmation of the absence as is required by the Director.

14.11. Education Leave.

(a) Subsidized by Agency - An agency authorized by law to subsidize advanced educational training for classified employees may

grant to selected employees educational leave subject to conditions stipulated by that agency. The procedures for granting educational leave and compensatory payment shall be filed with the Director of Personnel. The leave shall be considered as continuous employment, except that employees while on educational leave shall not accrue sick leave or annual leave, nor are the employees eligible for salary advancements.

(b) Non-subsidized by Agency - A personal leave of absence may be granted for educational purposes in conformance with the requirements of subdivision 14.8(a) of this rule.

14.12. Disaster Service Leave - Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave with pay, subject to the approval of the employee's immediate supervisor, in accordance with the provisions of West Virginia Code §15-5-15a.

14.13. Supplemental Attendance and Leave Regulations - Each agency shall prepare supplemental rules as may be required. The rules shall not enhance nor diminish the benefits afforded by this subsection. Copies of all rules shall be filed with the Director who may approve, amend or disapprove the supplemental rules.

14.14. Distribution of Regulations - Each agency shall make available to each of its employees a copy of this attendance and leave rule together with the agency's own supplemental attendance and leave rules.

14.15. Leave Records - Each appointing authority shall maintain a current leave record of the agency's employees' accrued and used leave. The appointing authority shall provide each employee access to his or her leave records subject to established rules and on a regular basis of no less than once each pay period. To the extent practical, each appointing authority shall use electronic or other communications media to provide employees with access to their leave records, provided that the appointing authority makes regular and convenient access to the media

used available to each employee in the agency, or otherwise provides access to each employee in the agency. Supervisors and employees shall attest to the accuracy of the records on a periodic basis, but not less than twice annually.

§143-1-15. Performance Evaluations.

The Director of Personnel, after consultation with the appointing authorities, and with the approval of the Board, shall establish and make effective a system of performance evaluation designed to provide a valid evaluation of the quality and quantity of work performed by employees. Insofar as practicable the system of performance evaluation in the classified service shall be standardized. The appointing authority shall prepare and record evaluations for all permanent employees at regular intervals not to exceed twelve months. The appointing authority shall consider performance evaluations as well as other recorded indicators of performance in determining salary advancements and in making promotions, demotions, and dismissals. The appointing authority shall notify an employee of his or her performance evaluation in writing and shall retain copies of performance evaluations in the employee's personnel record.

§143-1-16. Political Activities.

16.1. Prohibition of Political Activities

(a) An appointing authority shall not appoint, promote, demote, or dismiss any person in the classified service or in any way favor or discriminate against any person with respect to such employment because of his or her political opinions or affiliations. Nothing in this subdivision shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use,

directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(d) No employee in the classified service or member of the Board or the Director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of the West Virginia Code, no employee in the classified service shall:

1. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

2. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

3. Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee for a political party, or a financial agent or treasurer within the meaning of the provisions of W.Va. Code §3-8-3, 4, or 5(e). Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subdivision (d) of this

subsection, are permitted.

(f) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances or activities are not prohibited by the provisions of this subdivision.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this subdivision shall request and receive a leave of absence without pay for the period of the candidacy, commencing upon the filing of the certificate of candidacy. If the employee withdraws his or her candidacy, he or she shall return from the leave of absence immediately upon such withdrawal. If the employee is not elected, he or she shall return from the leave of absence immediately after the official canvass of votes. At the expiration of the leave of absence without pay, the employee shall be returned to duty to either 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. If elected, the employee shall resign or be dismissed from the position in the classified service to be effective no later than the date of assuming the elective office.

16.2. Application of the Hatch Act - Any classified or classified-exempt employee who, as a normal and foreseeable incident of his or her principle activity, performs duties in connection with programs financed wholly or in part by loans or grants made by the United States or a federal agency is subject to provisions of the Hatch Act for State and Local Government Employees restricting political activity, 5 USC 1501-8. Each appointing authority shall inform all classified and classified exempt employees of these provisions and employees shall adhere to these provisions.

16.3. Additional Prohibition for Highways Employees - No person may be appointed or employed in any capacity by the Division of Highways who is a candidate or holds any public office or is a member of any political party committee. An employee of the Division of Highways may not be a candidate for or hold any public office or be a member of any political party

committee. An employee of the Division of Highways who becomes a candidate for or holds any public office or becomes a member of any political party committee shall resign or be dismissed from his or her position with the division immediately on the date of the filing of candidacy or the date of assuming the public office or the political party committee membership.

16.4. Additional Prohibition for Rehabilitation Services Employees - No employee engaged in the administration of the Vocational Rehabilitation program shall take an active part in the management of political campaigns or participate in any political activity, except that he or she shall retain the right to vote as he or she may please and to express his or her opinions as a citizen on all subjects. They shall not solicit or receive, nor shall they be obliged to contribute or render any service, assistance, subscription, assessment, or contribution for any political purpose.

§143-1-17. Employment Conflicts.

17.1. Other Employment. No employee shall hold other public office or have conflicting employment while in the classified service. Determination of the conflict shall be made jointly by the appointing authority and the Board, or may be specifically delegated by the Board to the appointing authority, who shall consider whether the other employment: (1) will be in conflict with the interests of the agency; (2) will interfere with the performance of the employee's official duties; (3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or, (4) may reasonably be regarded as official action.

17.2. Nepotism. No appointing authority shall influence or attempt to influence the employment or working conditions of his or her immediate family. It is the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.

No employee shall directly supervise a

member of his or her immediate family. More specifically, no employee shall review or audit the work of a member of his or her immediate family, or take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his or her immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his or her immediate family, the situation shall be resolved within thirty calendar days. Resolution may be made by transfer, reassignment, resignation, etc. of one of the involved employees or by other accommodation which protects the interests of the public.

§143-1-18. Payroll Certification.

(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of the pay bears the certification of the Director, or of his or her authorized agent, that the persons named in the voucher or account have been appointed and employed in accordance with the provisions of this rule. The Director may for proper cause withhold certification from an entire payroll or from any specific item or items on the payroll. The Director may, however, provide that certification of payrolls may be made once every six months, and the certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his or her payroll. In the latter case no voucher for payment of salary to the employee shall be issued or payment of salary made without further certification by the Director.

(b) If the Director wrongfully withholds certification of the payroll voucher or account of any employee, the employee may maintain a proceeding in the courts to compel the Director to certify the payroll voucher or account.

143-1-19. Records and Reports.

19.1. Each agency shall establish and

maintain a personnel record for each employee, showing the employee's name, title, organizational unit, salary, changes in status, performance evaluations, and such other personnel information as may be considered pertinent. The Director shall maintain applications for examination for at least one year after the date of the application. All personnel records shall be open to the inspection of the Board but shall otherwise be held confidential by each agency and the Director in accordance with section 21 of this rule.

19.2. Neither this section nor any other provision of this rule shall interfere with the right of the Legislature, its committees, administrative units and staff to have access to agency personnel records under the common law, or pursuant to the provisions of W. Va. Code §§4-2-5, 4-3-4, 4-5-3, 4-10-5, or any other statutory provision giving a legislative agency or subunit access to records of a state agency. The Legislature, its committees, administrative units and staff having access to these records shall maintain the confidentiality of the records, to the extent reasonably possible.

§143-1-20. Confidentiality.

The business of the division shall be conducted in such a manner as to ensure the privacy rights of all applicants and employees, in accordance with West Virginia Code §29B-1-1 et seq., the State Freedom of Information Act and §5A-8-1 et seq., the Public Records Management and Preservation Act. Examination scoring keys, applicant and employee residential addresses and phone numbers, applicant and employee medical information, and other information which the Director may deem confidential shall be maintained under strictest confidentiality and released only upon proper written authorization of the applicant or employee or by order of a court of competent jurisdiction.

§143-1-21. Duties of State Officers; Legal Proceedings to Secure Compliance; Penalties.

21.1. Duties of State Officers - Pursuant to W. Va. Code §29-6-12, all agencies' officers and employees of the state shall comply with and aid

in all proper ways in carrying out the provisions of W. Va. Code §29-6-1 et seq., and the rules and orders promulgated thereunder. All officers and employees shall furnish any records or information which the Director or the Board may request for any purpose of W. Va. Code §29-6-1 et seq. All officers and employees shall comply with all rules, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by the rules or orders. All officers and employees shall furnish any proposed agreement and any records or information which the Director or Board may require in regard to any proposed agreement between an agency and an individual who is a current or former employee regarding the terms and/or conditions of the individual's employment with the agency. Any such agreement must be certified by the Director as being in compliance with W. Va. Code §29-6-1 et seq. or with an order of a court of competent jurisdiction before it can be effective.

21.2. Legal Proceedings to Secure Compliance - Pursuant to W. Va. Code §29-6-12, the Director may institute and maintain any action or proceeding at law or in equity which he or she considers necessary or appropriate to secure compliance with W. Va. Code §29-6-1 et seq., and the rules and orders promulgated under the code.

21.3. Penalties

(a) Any person who willfully violates any provision of W. Va. Code, §29-6-1 et seq. or of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned. Jurisdiction under this subdivision shall be in a court of record exercising criminal jurisdiction within the county where the offense is committed.

(b) Any person who is convicted of a misdemeanor under W. Va. Code §29-6-1 et seq. is, for a period of five years, ineligible for appointment to or employment in a position in the

classified or classified-exempt service, and if he or she is an officer or employee of the state, shall forfeit his or her present office or position.

§143-1-22. Grievance Procedure - An employee hired for permanent employment may file a grievance with the Education and State Employees Grievance Board as provided for in W. Va. Code, §29-6A-1 et seq.

§143-1-23. Training and Development.

23.1. Each agency is responsible for providing functional training to employees of the agency based upon the agency's needs and resources and the employee's needs and capabilities. Selection of employees for training and development shall ensure equal opportunity and shall not discriminate on the basis of race, sex, age, religion, national origin, political affiliation, disability or any other non-job related factors.

23.2. The Director of Personnel shall make available to the agencies technical assistance in the areas of organization and human resource development, needs assessment, determination of appropriate development strategies, course design, training techniques, training evaluation and coordination of training among the agencies.

23.3. The Director shall provide training courses on specific aspects of personnel administration under Division of Personnel law and this rule, and shall designate employees by class, or by duties, who must attend each type of course.

23.4. The Director shall make available to the agencies training and development opportunities that are broadly applicable to many classes in all agencies. Employee selection for the training and development opportunities shall be consistent with established agency and Division of Personnel nomination procedures.

§143-1-24. Employee Representative Organization Bulletin Boards.

A bulletin board of a limited size shall be

provided for posting notices of employee representative organizations. The bulletin boards shall be placed in convenient and generally accessible locations in all workplaces where the members of the organizations are employed. Provisions shall be made for separate bulletin boards for each employee representative organization. The cost of the bulletin boards shall be assumed by the requesting employee or the employee's representative organization. The boards shall be used exclusively by the employee representative organization and for organization purposes only.

§143-1-25. Authority of the Board.

The State Personnel Board is authorized to interpret the application of this rule to any public body or entity and to establish by formal action programs and projects for a maximum of one year outside of the provisions of this rule, including, but not limited to, programs or projects designed to respond to public disaster or emergency.

§143-1-26. Amendments.

If and when it appears desirable in the interests of good administration, the State Personnel Board, after public notice and public hearing and legislative approval, may amend the rules as it becomes necessary.

EMERGENCY RULE QUESTIONNAIRE

DATE: December 22, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Donna Lipscomb, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East, Room E-119

Charleston, WV 25305

304-558-3392

EMERGENCY RULE TITLE: Department of Administration, Personnel Division

1. Date of filing December 23, 2008

2. Statutory authority for promulgating emergency rule:

WV Code § 29-6-10 -

3. Date of filing of proposed legislative rule: December 23, 2008

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopts new language

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

If the proposed emergency rule is not effective by December 31, 2008, the affected employees will lose annual leave pursuant to 143 CSR 1-14(a). For more specific facts as why the employees should not lose their leave see Exhibit A.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision,

federal statute or regulation and time limit established therein.

Not applicable

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See response to number 6 above which outlines the need for these emergency rules.

FISCAL NOTE FOR PROPOSED EMERGENCY RULES

Rule Title: 143 - CSR - 1, Administrative Rule of the West Virginia Division of Personnel

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East
Capitol Building, Room E-119
Charleston, WV 25305

Phone Number: 304-558-3392 Email: donna.m.lipscomb@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The promulgation of the attached emergency rules in regard to Administrative Rule for the West Virginia Division of Personnel will have no fiscal impact on the State of West Virginia. The rules are necessary in order to assure state employees are given benefits they were entitled to and unable to exercise due to no fault of their own. The Statute already sets forth the benefits and the proposed emergency rules simply allow employees to carry over that benefit from one year to the next. Further, they are only able to carry the leave for three months after which time unused leave will be lost. If the emergency rules are not authorized it could have a negative fiscal impact to the state as the state could be sued or grieved and would be required to expend public funds to defend the suit and pay damages if awarded. Therefore, there would be no fiscal impact as a result of the promulgation of the proposed emergency rules but could have a negative fiscal impact if not authorized.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2007 Increase/Decrease (use "-")	2008 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			

Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: 143-CSR-1, Administrative Rule of the West Virginia Division of Personnel

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There will be no fiscal impact as a result of the proposed emergency rules if authorized

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 12/23/08

Signature of Agency Head or Authorized Representative

