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JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

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Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY: WV Code 29-6-10

AMENDMENT TO AN EXISTING RULE: YES X 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 PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKI REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY T LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WI THE SECRETARY OF STATE.

Gregory A. Bu

Authorized Signature

SCANNED

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WEST VIRGINIA ADMINISTRATIVE RULE
DIVISION OF PERSONNEL

2002 DEC -5 P 3:16

Chapter 29-6-10
Series I
2000 amended

OFFICE WEST VIRGINIA SECRETARY OF STATE

Subject: Administrative Rule of the West Virginia Division of Personnel

Section 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 - This rule is issued under the authority of W.Va. Code, §29-6-10.

1.3. Filing Date - May 25, 2000.

1.4. Effective Date - July 1, 2000.

Section 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. 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.

Section 3. Definitions

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

3.2. Accrual Category: 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 ~~or a political sub-division established by law or executive order~~, 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. Availability: 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 years of tenure.

3.14. Certification: The official list of eligibles given to an appointing authority for filling vacancies.

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 ~~regular salary paid to an employee~~ usual rate of pay for the pay period divided by the total number of ~~work days~~ 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 classification.

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 ~~except for separations~~.

3.35. Eligible: 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. Emergency Appointment: An appointment, for not more than thirty (30) calendar days in any twelve (12) month period, necessitated by a state of emergency.

3.37. 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.

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

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

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

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

3.42. 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.

3.43. 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.

3.44. Immediate Family: Consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-siblings, stepchildren, and individuals in a legal guardianship relationship.

3.45. 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.

3.46. Incumbent: Any employee occupying a position.

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

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

3.49. Intermittent Appointment: Any appointment from a register to a position which requires performance on an irregular or "as needed" basis for no more than 945 hours in a twelve month period.

3.50. 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.

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

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

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

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

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

3.56. Limited Term Employment: Employment of a limited duration including, but not limited to, 90-day exempt, 30-day emergency, temporary, intermittent and student appointments and seasonal employment with a state forest, park or recreational area.

3.57. 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.

3.58. 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.

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

3.60. Ninety-Day Exempt Appointment: Employment for no more than ninety (90) working days in a year.

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

3.62. 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.

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

3.64. 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.

3.65. 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.

3.66. 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..

3.67. Pay Rate: One of the monthly or hourly rates within the pay range established by the State Personnel Board for each classification included in the approved pay plan; the usual rate of pay.

3.68. Per Diem: A daily allowance.

3.69. Permanent Employee: Any employee who was hired from a register and who has completed the probationary period prescribed by the State Personnel Board for the job class.

3.70. 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.

3.71. 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.

3.72. 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.

3.73. 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.

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

3.75. 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.

3.76. 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.

3.77. 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.

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

3.79. 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.

3.80. Register: An official list of currently available eligibles 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.

3.81. 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.

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

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

3.84. 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.

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

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

3.87. 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.

3.88. Service: Total eligible employment time which may be used for determining the rate of accrual of annual leave.

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

3.90. Student Employee: An employee working for a limited period of time under the current Student Exempt Policy approved by the Board.

3.91. 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.

3.92. Temporary Appointment: The hiring of an employee from a register for a period not to exceed 6 months.

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

3.94. 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.

3.95. Title Change: The revision in the title of a class.

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

3.97. Unassembled Examination: An examination procedure which does not require persons being examined to gather at a test site and which does not include a written examination.

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

3.99. 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.

3.100. 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.

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

3.102. ~~Work Week~~ 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.

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

Section 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 classification.

(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 ~~review~~ reconsideration of the action ~~under the procedure established in W.Va. Code §29-6-10(1)~~ 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 classifications 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

(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.

Section 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 ~~mid-point~~ market rate of the salary range, unless otherwise prescribed by the Board. For each 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 ~~mid-point~~ 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 classification 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, or other statutorily required and/or authorized payments, appointing authorities shall make no pay additional to the regular salary to any employee. The rates as provided do not include reimbursements for actual and necessary expenses incurred incident to employment such as travel expense. 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 classification shall receive an increase to the minimum rate of the pay grade for the job classification to which the employee is being promoted. An employee whose salary is within the range of the pay grade for the current classification shall receive an increase of one 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 classification 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 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 increment with the promotion.

2. If an employee has been demoted or reallocated to a class at a lower pay grade with no reduction in pay and is promoted or reallocated within the next twenty-four months within the same agency, no consideration shall be given to the pay grade(s) reduced in the demotion or reallocation when calculating pay on promotion as provided in subdivisions 5.5(a) and (b) of this rule.

(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 - The appointing authority shall reduce the pay of an employee who is demoted and whose current pay rate is above the maximum pay rate for the new classification to at least the maximum pay rate of the new classification or, if the demotion is to a formerly held classification, his or her last pay rate in the formerly held classification, whichever is greater. The employee's salary may remain the same if his or her pay is within the pay range of the new classification, or his or her pay may be reduced to a lower pay rate in the new range.

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.

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 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.

~~5.8.~~ 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 increments [i.e. as of 5/1/94, two increments equal 10%] and the total percentage of all other increases in pay in the immediately preceding twelve month period.

(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.

~~5.9.~~ 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.

Section 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; or,

14. 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 available 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) 4, 5, 6, and 7 of this rule.

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 veterans with a compensable service-connected disability or those who are awarded the purple heart. Persons claiming veteran's preference or disability preference shall submit satisfactory proof of their 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.

Section 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. The Director shall reinstate an eligible's name on the register upon showing of cause satisfactory to the Director or in accordance with a decision of the Board upon appeal as provided in subsection 13.2 of this rule.

Section 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 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 classification, 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 classifications 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 (i) 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 which is sustained by the Director.

(b) In selecting persons from among those certified, the appointing authority 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.

(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) Employees not covered by subsection 9.2 of this rule and all appointments made without a register subsequent to the effective date of this rule but prior to the holding of examinations shall be regarded as provisional appointments.

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

9.4. Intermittent Appointments

(a) The Director shall prepare lists of names of persons who have successfully passed an examination for intermittent positions. The lists shall consist of the names of the successful candidates arranged in the order of final scores on the examination. Appointing authorities shall make their selection for each position from the ten highest available names on the list or from the names of any persons scoring at or above the ninetieth percentile. Once a person has received an intermittent appointment in accordance with this subdivision he or she may be given successive intermittent appointments without regard to standing on the list.

(b) In no case shall intermittent employment of an individual continue for more than 945 hours worked and/or hours of paid sick and/or annual leave in any twelve-month period beginning with the date of the original intermittent appointment, nor shall an intermittent appointment be preceded or followed by a temporary appointment or any other limited term employment within the twelve-month period.

9.5. Temporary Appointments

(a) If an employee is needed for a temporary period, the Director shall make a certification of the names of those eligibles who have indicated a willingness to accept temporary employment in the order of their places on an appropriate competitive register. The Director shall make the certification in the manner prescribed in Section 8 of this rule. Appointing authorities shall make temporary appointments in the same manner as prescribed in this rule for probationary appointments.

(b) The duration of a temporary appointment shall be limited to the period of the need and in no event shall a temporary appointment continue for more than 6 consecutive months in any twelve-month period. The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or his or her eligibility for a probationary appointment. Successive temporary appointments to the same position shall not be made nor shall an employee receive continued temporary appointments in the same agency, nor shall a temporary appointment be preceded or followed by an intermittent appointment or any other limited term employment within the twelve-month period.

9.6. Limited Term Employment - Appointing authorities may employ individuals for a limited period of time in accordance with the provisions of this Rule and W.Va. Code §29-6-1 et seq. Limited term employment

includes, but is not limited to, 30-day emergency, 90-day exempt, temporary, intermittent, and student appointments and seasonal employment with a state forest, park or recreational area.

9.7. 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. 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 classification 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.

(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 classification 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 of 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 demotions with prejudice and/or transfers for cause.

Section 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 ~~working~~ day following the last day 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. 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 ~~12.8~~ 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.

Section 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 ~~to compete~~ 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, ~~involuntary and voluntary~~ with prejudice and without prejudice. ~~An involuntary~~ A demotion with prejudice is a reduction in pay and/or a change in classification to a lower classification due to the inability of an employee to perform the duties of a classification or for improper conduct. A ~~voluntary~~ demotion without prejudice is a change in classification of an employee to a lower classification, a transfer of an employee to a lower classification, or a reduction in pay due to business necessity. An appointing authority may demote a permanent employee after presenting the employee with the reasons for the demotion stated in writing, and allowing the employee a reasonable time to reply 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 statement of reasons for the demotion and the reply with the Director of Personnel. An appointing authority may demote a probationary employee as provided for in subsection 10.4 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.

Section 12. Separations, Tenure 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) Fifteen (15) calendar days after notice in writing to an employee stating specific reasons, the appointing authority may dismiss any employee for cause. The appointing authority shall 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. Fifteen days notice is 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 any advance notice of discharge, 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 ~~work days~~ 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.

12.3. Suspension - Eight (8) calendar days after oral notice confirmed in writing or by written notice, the appointing authority may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a rational nexus to the employee's performance of his or her job. The suspension shall be for a specific period of scheduled work 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. The appointing authority shall 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. The eight (8) calendar day notice is 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, 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 involuntary demotion 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 §23-4-1for 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 involuntary demotion 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 involuntary demotion. The employee requesting the lateral class change or involuntary demotion 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 has the same right of demotion or reassignment 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) 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. ~~An~~ 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. ~~An~~ 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.

(i) 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 .

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

(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 punishments, appointing authorities shall impose like penalties for like offenses.

12.6. Reinstatement ~~to Previous Class of Position~~

(a) An employee with permanent status under the Division of Personnel or a comparable system of personnel administration existing in the agency prior to the agency's affiliation with the Division of Personnel, who has resigned while in good standing 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 ~~status~~ 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.

(b) Appointing authorities shall reinstate provisional, probationary, or permanent employees who leave the classified service to enter the armed forces of the United States in time of war or national emergency or under compulsory provisions of law of the United States in time of peace to their former positions or to positions of like class, seniority and pay within 30 days following application provided that within 90 days after release from active military service the employees indicate in writing or in person to the agency their readiness and ability to return to classified employment. Veterans hospitalized immediately on release from the armed services due to service-connected disabilities must apply for reinstatement within 90 days of their release from hospitalization.

(c) Any veteran who has been in the armed services of the United States and who has been granted military leave from one of the agencies and who returns to the agency 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 veterans within an agency having had military leave and who return to the agency.

12.7. 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.

Section 13. ~~Appeals~~ Reconsideration and Appeal

13.1. ~~Appeal for~~ Reconsideration of Examination Rejection

(a) ~~Appeal~~ Reconsideration Request - Any applicant whose application for examination has been rejected may ~~appeal to~~ request that the Director ~~for reconsideration of~~ reconsider his or her qualifications. The Director shall consider the ~~appeal~~ 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 ~~appeal~~ 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.

(b) Decision - Within thirty (30) calendar days after a properly submitted ~~appeal~~ 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 ~~appeal~~ reconsideration shall not affect a certification or appointment ~~which~~ that has already been made from a register.

13.2. Appeal for Removal from Register

(a) Appeal Request - 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.

(b) Decision - 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 his or her decision in writing to the applicant.

Section 14. Attendance and Leave. In compliance with W.Va. Code §21-5C-1 et seq., §2-2-1 et seq., and §29-6-10 the following provisions apply to classified employees.

14.1. Official Holidays

(a) Employees shall be released from work 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; Lincoln's Birthday, the twelfth day of February; Washington's Birthday, 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; Christmas Day, the twenty-fifth day of December; any day on which an election (Primary, General, or Special) 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 ~~work day~~ workday immediately preceding the holiday will be given as time off. When an agency must modify holiday schedules to accommodate around-the-clock shifts or other special needs, the agency should notify employees in advance of altered holiday work schedules and should schedule altered holidays on days as close as possible to the normal holidays. The total payment of paid time off for holidays shall not exceed eight hours per full day holiday.

(c) Part-time employees are entitled to receive payment for holidays in proportion to the amount of time worked as compared to the employer's standard workweek.

(d) An employee must either work or be on approved paid leave for either the full scheduled workday before or after the holiday and either work or be on approved paid leave for any fraction of the scheduled workday before or after the holiday to receive pay for the holiday. No employee is entitled to payment for any holiday ~~which~~ that occurs prior to the first day of work or after the ~~effective~~ date of separation (sub-section 3.25).

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

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 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 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 ~~work day~~ 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 ~~work week~~ workweek which shall not exceed 40 hours.

Length of Service Category	Accrual Rate: Hours Equal To	Carry-forward Hours: Hours Equal To
Less than 5 years of regular employment	1.25 days/month	30 days
5 years but less than	1.50 days/month	30 days

10 years of regular employment		
10 years but less than 15 years of regular employment	1.75 days/month	35 days
15 years or more	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.

(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. 30-day emergency, per diem, student, seasonal, or 90-day exempt employees shall not accrue annual leave.

2. Annual leave accrued by provisional, intermittent, irregular part-time and temporary (appointed from the register) 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. These employees must take their 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.

3. 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 (¼) 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 ~~using the daily rate of pay for the half-month(s) or portion of the month which the~~

~~accrued and unused annual leave covers~~ 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 accrued 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 subdivision, each 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 ~~work day~~ 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 ~~work week~~ workweek which shall not exceed 40 hours. There is unlimited accumulation of sick leave.

(b) Coverage

1. Sick leave shall not be accorded 30-day emergency, 90-day exempt, student, or per diem employees.

2. Provisional, temporary (appointed from the register), irregular part-time and intermittent 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 expires at the termination of the period of employment unless immediately followed by an appointment from the register for a permanent position.

3. Part-time, probationary, and permanent 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 (¼) 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, 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 Service - Sick leave does not accrue after the date of separation as defined in this rule.

1. Retirement - Unused sick leave may be used to purchase extended insurance coverage upon retirement under guidelines established by the Public Employees Insurance Agency or to acquire additional credited service in the state retirement system.

2. All Other Separations - All accumulated sick leave shall be cancelled as of the date of separation. If the employee returns to work 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 work 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 is recalled from a layoff 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. Accrued sick leave shall be granted to employees for the following reasons:

1. Illness - Sick leave shall be granted in the event of an illness of, or injury to, an employee 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 a 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, including reasonable travel time, if requested, not to exceed a total of three hours per occurrence, shall be charged to accrued sick leave, not to exceed 40 hours per calendar year ; 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. Within two days of return to work, an employee shall furnish a prescribed physician's statement form from the attending physician/practitioner for all consecutive days of sick leave granted beyond three working days. 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.

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 promptly submit the required statement at the expiration of 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 - The appointing authority may permit an employee to return to work from sick leave at less than full duty, but the terms of return the shall be in writing and are subject to review by the Director. The review may include the requirement of additional information from a physician regarding the employee's ability to perform the essential duties of his or her job.

1. Any denial of an employee's request to return to work at less than full duty must be approved by the Director.

2. The Director may deny the request to return 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;

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

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

3. Approval of a return to work at less than full duty shall be granted for no longer than 30 days. Requests to continue at less than full duty for more than 30 days shall fall under the same requirements as an original request.

(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 Leave Abuse - When an employee appears to have a pattern of leave abuse, 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 Fair Labor Standards Act of 1986 and W.Va. Code §21-5(C)-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 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. An extension of a leave of absence must also be reported.

14.9. Military Leave

(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 duty without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades during business hours ordered by proper authority, or for field training or active service for the State for a maximum period of thirty working days in any one calendar year 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 Selective Training and Service Act. An employee shall submit an official order from the appropriate military officer in support of the request for military leave.

(b) All officers and employees of the State who are ordered or called to active duty by ~~the President of the United States~~ 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 a single call to active duty. All officers and employees of the State called to active duty who have not used all or some portion of the thirty working days of military leave granted by subdivision (a) are eligible to add the number of unused days from the same calendar year to 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. 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.

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 is a litigant, defendant or other principal party or has a personal or familial interest in the case or 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 their pursuit of personal 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. 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.

14.13. 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.

14.14. Leave Records - Each agency shall maintain a current leave record of its employees' accrued and used leave. Each employee shall have access to his or her leave records subject to the appropriate agency's established rules . Supervisors and employees shall attest to the accuracy of the records on a periodic basis, but not less than twice annually.

Section 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.

Section 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 or religious opinions or affiliations or race. 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 ~~be placed on~~ 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 - Employees whose principal employment involves an activity which is financed wholly or in part by loans or grants made by the United States or a Federal agency are subject to applicable provisions of the Hatch Act for State and Local Government Employees, 5 USC 1501-8. These provisions shall be made known to classified employees by the appointing authority concerned and they 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.

Section 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.

Section 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.

Section 19. Records and Reports

Each agency shall establish and maintain a service 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.

Section 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. Examination scoring keys, applicant and employee residential addresses and phone numbers and applicant and employee medical information 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.

Section 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 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 in accordance with W.Va. Code §29-6-1 et seq. 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.

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.

Section 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.

Section 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 classification, 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 classifications in all agencies. Employee selection for the training and development opportunities shall be consistent with established agency and Division of Personnel nomination procedures.

Section 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.

Section 25. 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.