

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY West Virginia Code 829-6-10

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

19.60



Gaston Caperton
Governor

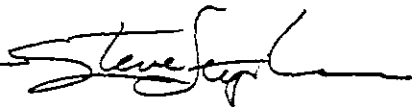
Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STATE
PERSONNEL BOARD
John A. Canfield, Chairman
Rev. Paul J. Gilmer, Member
Sharon H. Lynch, Member
Roger Morgan, Member
Eugene Stump, Member

MEMORANDUM

TO: Chuck Polan, Cabinet Secretary
Department of Administration

FROM: Robert L. Stephens, Jr., Director 

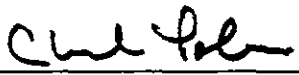
RE: Amendments to Administrative Rule

DATE: August 12, 1994

I am submitting the attached agency approved proposed amendments to the Administrative Rule of the Division of Personnel for your consideration pursuant to the provisions of W.V. Code §5G-2-2. These amendments are proposed to reflect statutory changes as well as to clarify and correct the current provisions.

These amendments were presented to the State Personnel Board at their meeting on May 19, 1994 for approval of the filing with the Secretary of State's Office and a public hearing on the proposed amendments was held on July 19, 1994. After the public hearing, the amendments, as well as any changes resulting from public hearing comments, were submitted to the State Personnel Board at their meeting on July 21, 1994 for filing with the Legislative Rule-Making Review Committee and filing was approved by the Board.

Your approval of the filing of these agency approved proposed amendments to our Administrative Rule is respectfully requested. Thank you.


Chuck Polan, Cabinet Secretary
Department of Administration
August 15, 1994

RLSjr:TMC/

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Administrative Rule of the West Virginia Division of Personnel

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Personnel

Address: 1900 Kanawha Boulevard, East, Building 6, Room 416
Charleston, West Virginia 25305-0139

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To comply with statutory responsibility of the State Personnel Board to promulgate rules as specified in W.V. Code §29-6-10.

Rule Title: Administrative Rule of the West Virginia Division of Personnel

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: 17 June 1994

Signature of Agency Head or Authorized Representative

Chuck Polan

Chuck Polan, Cabinet Secretary
Department of Administration

DATE: August 12, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Robert L. Stephens, Jr., Director

Division of Personnel

LEGISLATIVE RULE TITLE: Administrative Rule of the West Virginia Division
of Personnel

1. Authorizing statute(s) citation W.V. Code 829-6-10

2. a. Date filed in State Register with Notice of Hearing

June 17, 1994

b. What other notice, including advertising, did you give of the hearing?

Copies to all state agencies and affiliated political

subdivisions and employee organizations.

c. Date of Hearing(s) July 19, 1994

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached XX* No comments received

* No persons appeared to comment at the public hearing.

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 15, 1994

f. Name and phone number(s) of agency person(s) to contact for additional information:

Robert L. Stephens, Jr., Director 558-3950

Tari McClintock Crouse 558-3950

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

AMENDMENT TO THE ADMINISTRATIVE RULE
OF THE
WEST VIRGINIA DIVISION OF PERSONNEL

The existing rule is being amended:

1) in compliance with legislation amending W.V. Code §6-13-1 revising the definition of veteran to specifically include certain periods of active and reserve service and disabled veterans in regard to eligibility for veterans' preference on written examinations used to fill nonpartisal merit system positions in state government;

2) to reflect changes necessitated by the structural change in the pay plan for classified employees;

3) in compliance with various federal statutes and regulations including the Americans with Disabilities Act and the Family and Medical Leave Act;

4) to reflect current professional standards and practice in merit selection and certification methods; and,

5) generally, to improve the internal consistency of the rule, correct errors in language, grammar and structure, and make the rule clearer.

WEST VIRGINIA ADMINISTRATIVE RULE

DIVISION OF PERSONNEL

Chapter 29-6-10

Series I

(1993_) amended

Subject: Administrative Rule of the West Virginia Division of
Personnel

Section 1. General

1.01. Scope - This rule implements the provisions set forth in W.V. 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.V. Code §29-6-1 et seq.

1.02. Authority - This rule is issued under authority of W. V. Code, §29-6-10.

1.03. Filing Date - ~~July 6, 1993~~_____.

1.04. Effective Date - ~~August 3, 1993~~_____.

Section 2. Preamble

~~Sec. 2.01. 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

- 1) Accrue: To increase or accumulate periodically or by increment.
- 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) 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 commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated.
- 4) Agency: Any administrative department of state government or a political sub-division established by law or executive order.
- 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.
- 6) Annual Leave: An earned employee benefit of paid time off from work with prior approval of the appointing authority or designee.
- 7) Appeal: The complaint to the State Personnel Board to correct or reverse an alleged injustice done or error committed.
- 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 these Rules.
- 9) Appointment: The act of hiring an applicant for employment.
- 10) Assembled Examination: An examination which, due to the testing process used, necessitates that applicants come to a testing location.
- 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.
- 12) Board: The State Personnel Board as provided for in W.V. Code §29-6-7 whose members are appointed by the Governor

with the advice and consent of the Senate.

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.

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

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 titles, the same qualifications, and the same schedule of compensation and benefits may be equitably applied to each position in the class.

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

17) Classification Plan: The plan by which positions in the classified service and classified-exempt service have been allocated by class.

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

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

20) Classified-Exempt Service: 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.

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.

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.

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.

24) Daily Rate: The regular salary paid to an employee for the pay period divided by the total number of work days plus holidays in the pay period.

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

267) Demotion: A change ~~for cause~~ 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 step rate in the pay range assigned to the classification. ~~The two types of demotions are: a) Disciplinary Demotion - A reduction in pay 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. b) Demotion Without Prejudice - A change in classification of an employee to a lower classification or a reduction of pay due to work necessity.~~

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

289) Disabled: A person who has a physical or mental impairment which substantially limits one or more of a person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

2930) Discretionary: Open to individual choice or judgement.

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

312) Division: The Division of Personnel.

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

334) Effective Date: The established date an action takes place except for separations.

3425) Effective Date of Separation: Last day of work of employees separating due to dismissal, voluntary resignation, voluntary retirement or sudden death; date of death of employees who die while on paid or unpaid leave; date of notification by employees resigning or retiring due to disability as verified by a physician.

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.

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.

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.

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

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

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

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

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 such employees work, ~~including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of their employer; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees. Any pension matter or other issue relating to public employees insurance in accordance with W.V. Code §5-16-1 et seq., retirement, or any other matter in which authority to act is not vested with the employer shall not be the subject of any grievance filed in accordance with the provisions of W.V. Code §29-6A-1 et seq.~~

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.

434) Immediate Family: Consists of the ~~father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandfather, grandmother, granddaughter, grandson, stepmother, stepfather, and parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-siblings, stepchildren, and individuals in a legal guardianship relationship.~~

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

4565) Pay Increment: ~~one of a series of regular consecutive increases between the minimum and maximum rates of a pay grade in an approved salary schedule the percentage pay differentials established by the State Personnel Board to implement pay practices including hiring rates, salary advancements, pay on promotion, and longevity increases.~~

46) Incumbent: Any employee occupying a position.

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

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

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.

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

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

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

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

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

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

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.

567) 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.

578) 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.

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

5960) Ninety-Day Exempt Appointment: Employment for no more than ninety (90) working days in a year.

601) Original Appointment: Initial employment of an individual into the classified service as a result of selection from a certification of names from a register.

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

623) 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.

~~63) Salary Schedule: The official schedule of salaries approved by the Governor consisting of multiple pay grades with minimum, maximum, and intervening rates of pay for each grade.~~

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

646) Pay Rate: One of the fixed steps or increments monthly or hourly rates within the pay range established by the State Personnel Board for each classification included in a the approved pay plan.

657) Per Diem: A daily allowance.

668) 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.

679) 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.

6870) 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.

6971) 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.

702) Position Description: The document prepared by the employee or the employing agency and approved by the position supervisor and 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.

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

724) 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.

735) 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.

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

757) 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 difficulty of duties and responsibilities assigned to the

~~position or to correct a position misclassification.~~

768) Reclassification: The revision by the State Personnel Board 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.

779) 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.

7880) Regular Part-time Employment: Employment in a position for which work hours are the same from payperiod to payperiod but are less than the full-time work schedule established for the agency.

7981) Reinstatement: A type of re-employment of a former permanent classified employee.

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

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

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

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

86) 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.

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

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

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

8790) Suspension: Disciplinary action taken by an agency to temporarily relieve an employee of duties and place the employee on leave without pay.

8891) Temporary Appointment: The hiring of an employee from a register for a period not to exceed 6 months.

8992) Temporary Total Disability Benefits: Benefits paid by the Workers' Compensation Fund to claimants who have sustained compensable injuries which disable the claimant for more than three days.

9093) Terminal Leave: The balance of an employee's accrued and unused annual leave as of that employee's last day of work.

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

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

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

947) 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.

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

969) Veteran: Any person who ~~has served in the armed forces of the United States of America during World War I (April 6, 1917-November 11, 1918), World War II (December 7, 1941-December 31, 1946), the Korean Conflict (June 27, 1950-January 31, 1955), the Vietnam Conflict (August 5, 1964-May 7, 1975), or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person, and who has received a discharge under honorable conditions from such service~~ 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 condition b, below;

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 were 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.

97100) Veterans' Preference Points: An additional 5 points added to the final passing score of any veteran as defined by this rule. An additional 5 points are available to such 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. Active duty for training in the military reserve and national guard programs is not considered active duty for purposes of veteran preference.

98101) Work Schedule: Designation of the periods of time during which work is performed.

99102) Work Week: 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.

100103) Year: Twelve (12) consecutive month period, unless otherwise specified.

Section 4. Classification Plans

4.01. 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. 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.

4.02. 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.

4.03. 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 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 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 is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.04. Class Specifications - The Board 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. Consideration shall be given 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 shall be construed as 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 power of the appointing authority now or hereafter vested with the right 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, skills and knowledge which would be required of any new appointee to a position in the class as partial evidence of ability to perform the work properly and is to be so construed.

(f) Qualification requirements in the specification for any class, as interpreted in this rule, shall constitute the basis and source of authority for the tests to be included in examinations for the class and for the evaluation of the qualifications of applicants, and for the acceptance or rejection of applications of examinees for the class.

4.05. Position Descriptions

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

(b) The position description shall serve as an official record of the duties and responsibilities assigned to a position and shall be used 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 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 jurisdiction. When the appointing authority significantly alters the duties and responsibilities of a position, a revised position description shall be forwarded 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 position.

4.06. 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 any licensure or certification requirements are met.

(d) Any incumbent in a position reclassified under this section shall have the right to a review of the action under the procedure established in W.V. Code §29-6-10(1).

4.067. Position Reallocation - Whenever substantial changes occur in the duties and responsibilities assigned to a position ~~or to correct a position misclassification~~, 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 .

Section 5. Compensation Plan and Salary Regulations

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

5.01. 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. ~~The intent of the Board is to recommend to the Governor a pay plan with annual adjustments for cost-of-living increases and additional funds for merit increases.~~

5.02. Preparation of 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 approval any annual revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum, ~~intervening~~, and maximum rates of pay for each grade and a plan of implementation. The Board may make periodic amendments to the pay plan in the

same manner.

5.03. Adoption of 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.

5.04. 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. 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 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 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 shall be 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, ~~or~~ Board approved pay differentials, or other statutorily required/authorized payments, no pay additional to the regular salary shall be made 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 shall not constitute an exception to this rule.

(e) Availability of Funds - Before a department 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, each incumbent's salary is adjusted to the pay rate in the new plan corresponding to his pay rate in the old plan. If it is impossible due to budgetary restrictions to adjust an incumbent's pay on a corresponding basis,~~ the Board shall require and may approve or modify a plan of application which assures as nearly as possible that the pay of 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 salary adjusted to the new minimum.

bc. An incumbent whose salary falls above the maximum rate of the new range maintains his 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 are adjusted to the new minimum.

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

~~3. Where the salary of the incumbent falls within the new range and does not correspond with a pay rate in the range, the salary is adjusted to the next higher rate in the new range.~~

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 ~~coincide with a pay rate in~~ are within the new range remain unchanged.

~~2. Where the salary of the incumbent falls within the new range and does not coincide with a pay rate in the range, the Board shall approve a plan of application which assures as nearly equal treatment of the incumbent's pay as possible.~~

32. Where the salary of the incumbent is above the maximum rate of the new range, the salary remains unchanged and the incumbent is ineligible for salary advancements.

3. Pay on Position Reallocation - When a position is reallocated to a different class, the salary of the incumbent is 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, apprenticeship program requirements, 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.

45. 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 annual leave payment of terminal leave.

5.05 Pay on Promotion - When an employee is promoted, his pay shall be adjusted as follows.

(a) Minimum Increase - ~~The salary of an employee who is promoted is adjusted to the minimum pay rate of the new class. If the incumbent's current pay rate is at or above the minimum pay rate for the new class, but coincides with a pay rate in the new range, the salary is adjusted one increment in the range. Where the pay rate does not coincide with a pay rate in the new range, the salary is adjusted to the next higher rate which provides at least a full increment increase.~~ Salaries at the minimum rate of the current classification shall be adjusted to the minimum rate for the job classification to which the employee is being promoted. Salaries within the range of the current classification shall be increased by one increment, as established by the State Personnel Board, per pay grade advanced to a maximum of 3 pay grades or to the minimum rate of the higher pay grade, whichever is greater.

(b) 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.

(c) Exceptions - If an employee has been demoted or reallocated to a class at a lower pay grade with no reduction in pay and is promoted 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 sections 5.05(a) and (b).

5.06 Pay on Demotion - The pay of an employee who is demoted and whose current pay rate is above the maximum pay rate for the new classification is reduced to at least the maximum pay rate of the new classification. The employee's salary may remain the same if his pay is within the pay range of the new classification, or his pay may be reduced to a lower pay rate in the new range. ~~If the employee's salary before demotion falls within the range for the lower class, but does not coincide with a pay rate in that range, his salary is reduced at least to the next lower pay rate in the new range.~~

5.07. Pay on Lateral Class Change - Any employee who receives a lateral class change is paid the same salary received prior to the change. ~~Where the pay rate does not coincide with a pay rate in the new range, the salary is adjusted to the next higher pay rate.~~

5.08. Salary Advancements

(a) Basis - All salary advancements are based on merit as reflected evidenced by performance evaluations and other recorded measures of performance e.g. quantity of work, quality of work, and attendance.

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

(c) Amount - Salary advancements are limited to no more than two increments [i.e. 10% total as of 4/1/94 and subject to change by the State Personnel Board], as established by the State Personnel Board, in any twelve (12) month period and shall not cause the new salary to exceed the maximum of the pay grade to which the employee's class is allocated.

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

5.09. Longevity Increases - An employee with seven years of total state service who has attained the maximum or above in the range, or is within 5% of the maximum in the range and the proposed salary advancement would result in the employee's salary exceeding the maximum in the range for the class, without a salary anyincrease in salary in the immediately preceding twelve months is eligible for a longevity increase as prescribed in the

adoption of a new pay plan.

Section 6. Applications and Examinations

6.01. Character of Examinations

(a) Examinations for entrance in the classified service will 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 is competing, and shall be rated objectively. Examinations may be either assembled or unassembled at the discretion of the Director and depending on the specific requirements of the job class.

(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 also include: ~~a rating of training and experience for the more responsible professional, technical, supervisory and administrative positions; and, an oral examination for positions requiring frequent contact with the public or which involve important supervisory or administrative duties~~ 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.

6.02. Notice of Examinations

(a) The Director shall give public announcement of all open competitive examinations for at least 15 days in advance of the closing date for receipt of applications. He 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.

~~(b) In order to be eligible to be admitted to examinations, applicants must be eligible to work in the United States and (a) have been born in West Virginia or (b) have been legal residents of or domiciled in West Virginia for at least one year~~

~~prior to the date of examinations, or (c) have maintained a legal residence and domicile in West Virginia for at least 10 years of his life. The Director, at his discretion, may waive residence requirements.~~

6.03. 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 has the right to 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.

6.04. Disqualification of Applicants

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

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

2. he is so disabled as to be rendered unfit for the performance of the duties of the class;

~~3. he is addicted to the use of narcotics or intoxicating liquors;~~

43. he 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 is applying;

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

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

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

87. he has directly or indirectly obtained information regarding examinations to which as an applicant he was not entitled;

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

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

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

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

132. the register from which he 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 and report that he is not considered to be suitable for a position in the class he was interviewed for;

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

14. he has otherwise violated provisions of this rule.

(b) In order to be admitted to an open competitive examination, an applicant must have satisfied all minimum qualifications of the position for which he has requested an examination, except that he may be admitted if he 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 is engaged in educational pursuits that will qualify him; or (2) a deficiency of no more than one month of qualifying experience and, at the time of application, he is employed in work that will qualify him. An applicant so admitted, and 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) A disqualified applicant shall be promptly notified of such action, and an applicant who is not admitted to an examination because of failure to meet the preliminary requirements shall be notified by letter to his last-known address. Applicants disqualified under provisions of 6.04(a) 4, 5, 6, and 7 shall be permanently disqualified from applying.

6.05. Conduct of Examinations

(a) Written tests shall be conducted simultaneously in as many places as are necessary for the convenience of the applicants, and as are practicable for proper administration. The requirement for simultaneous conduct of examinations may be deviated from as may be found necessary by the Director to administer more effectively a continuous recruitment program as provided for in Section 6.03(b) of this rule. The Director may designate such monitors as may be necessary to conduct examinations under instructions prescribed by him, 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) Persons taking competitive assembled examinations shall present personal identification which includes a signature/photograph prior to admission to an examination. Applicants without proper identification shall not be admitted to examinations.

6.06. 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 ~~as set forth in the announcement~~. Failure in any part of an examination may disqualify the applicant in the entire examination and may disqualify him 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 examination shall have five points added to his 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 must submit satisfactory proof thereof to the Director of Personnel

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

6.07. 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 to the

pertinency of the training.

~~6.08. Investigations - Before rating training and experience or prior to certification from the register, the Director shall, to the extent practicable, investigate the applicant's training and experience to verify the statements contained in his application form and to adduce evidence regarding his character and fitness. If this investigation produces information affecting the rating of training or experience, the Director shall rate or re-rate the applicant's record accordingly, and make the necessary adjustments in the register. He shall also promptly notify the applicant of the re-rating.~~

6.098. 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 such board.

6.109. Notice of Examination Results - Each applicant passing all parts of the examination shall be notified by mail by the Director of his final rating as soon as practical after the rating 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 relative position on a register. An applicant who fails any part of the examination or the total examination shall be notified of his failure.

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

6.11. Adjustment of Errors - If, within thirty days after receipt of his score notice, an applicant notifies the Director of a manifest error in the rating of an examination or other evaluation of the applicant's qualifications, that error shall be corrected promptly. Formal written notice of the correction shall be sent 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.V. Code §29B-1-1 et seq.

Section 7. Registers

7.01. Establishment of Registers -

(a) Competitive registers: After each examination, the Director shall prepare a register of persons with passing grades. The names of those 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 such employees shall be arranged on the register in order of seniority.

7.02. Duration of Registers

(a) Competitive Registers: The life of scores on a register shall be no longer than three years from the date of establishment, but this period may be reduced by the Director. A register may be determined by the Director to be exhausted if fewer than three available eligibles remain on the register. Upon the exhaustion of a register, or if the Director reduces the life of a register, he shall notify each eligible remaining on the register to this effect by mail to his 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) 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.

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

(e) When a register is declared null and void by the director the affected persons shall be notified of the action in

writing at their last known address.

7.03. 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 Section 6.04(a) of this rule.

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

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

4. if an offer of a probationary appointment for the class for which the register was established in a location for which he has declared himself available has been declined by the eligible.

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

1. for any of the causes stipulated in Section 7.03(a) of this rule.

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

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 last-known address of this action and the reasons therefor. All notices of changes of address shall be filed in writing by eligibles with the Director. An eligible's name shall be reinstated 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 Section 13.02 of this rule.

Section 8. Certification of Eligibles

8.01. 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.

8.02. 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 the following sub-paragraphs. Nothing in the following sub-paragraphs shall be construed as altering the exhaustion point of a register as described in Section 7.02(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. The Director may certify additional names at his 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 Section 7.021 of this rule.

(b) If an eligible receives a probationary or permanent appointment, the appointment constitutes for its duration, a waiver of his right to certification from any other register on which his name appears for a class of position, the salary of which is either equal to or lower than that salary covered by his appointment, unless at the time of the appointment he requests in writing that his 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 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 name is reached.

(d) If in the exercise of his choice provided under Section 9.02 the appointing authority passes over the name of an eligible

on a competitive register in connection with three separate appointments he has made from the register, written request may be made of the Director that the name of such 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 him 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 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 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 last-known address and reply thereto.

~~(f) Selective Certification by gender is permissible if the request with a justification in writing is approved by the Director of Personnel. Justification must clearly show that only employees of the required gender can perform the duties.~~

8.03. ~~Local Office Certification~~

~~(a) Eligibles for positions in state and local offices shall be certified in the manner described in Section 8.02 except that in filling a position in a local office, the appointing authority may request the certification of eligibles who are residents of the area established by the Agency for the local office. Upon receipt of a requisition, the Director shall certify the names of eligibles as provided in Section 8.02 of this rule except that the Director shall certify the names of the highest available eligibles who are residents of the area established by the Agency for the local office in which the vacancy exists.~~

~~If the Director finds that there are fewer than five such eligibles who are residents of the local-office area, he shall certify the names of the eligibles who are residents.~~

~~If no appointment is made from these eligibles, or if there is no local eligible, then certification to the vacancy in the local office shall be made from a list of eligibles in the next larger administrative area of the agency.~~

~~If there are then insufficient eligibles, certification~~

~~shall be made on a statewide basis.~~

Selective Certification - Any certification may limit candidate appointment consideration to identify specific qualifications found necessary for job performance. 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 must have adequate opportunity for special qualification consideration. The specific criteria for the restriction of certification must be clearly stated in the class specification.

(b) A request for selective certification by gender may be approved by the Director of Personnel if written justification clearly shows that only persons of the required gender can perform the duties of the position and the request has been positively viewed by the Human Rights Commission.

(c) Certification may be limited to candidates available to work at the location of the job. Certification may be further geographically limited when the duties of the position require rapid response to unscheduled emergencies during off duty hours. Any request for geographic selective certification must be justified in writing and based on essential duties of the position. The boundaries on the acceptable geographic areas are established by the specific location and demands of the job. Candidates living outside the boundary must be considered if they are willing to relocate to the area.

(d) When determined appropriate by the Director, for certain unskilled or semiskilled job classifications for which no previous education, training, or experience is required, eligibles may be selected for certification by lot except for preference certifications. In such cases, all will have equal opportunity for certification. No rank order will 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 be required to offer opportunities for interviews to candidates in the order in which in which they appear on the certification. It is the responsibility of the interviewing agency to insure, to the extent practicable, that appointments from such certifications are made based on job-related merit and fitness.

8.04. 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 erroneous certification will be withdrawn and a correct certification made. If a certification is to fill more than one position, only that portion of it pertaining to positions for which applicants have not been notified that they are appointed will be withdrawn.

(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 certification and appointment will be withdrawn as in sub-section (a) of this section unless:

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

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

9.01. 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) A person employed in such a position continuously for six months immediately preceding that date may take a qualifying examination administered by the Director and may be given a probationary or permanent appointment in the position if he passes the examination. If recommended by the appointing authority, he may be admitted to an examination regardless of the minimum qualifications for the class to which the position is allocated. 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. An employee who fails to pass the qualifying examination shall be separated

within thirty days after the examination unless there are no available eligibles on the register for the class, in which case his employment may be continued but he must be separated within thirty days after certification of available eligibles.

(d) A person employed in such a position for less than six months preceding that date of affiliation shall be separated within thirty days after that date unless there are no available eligibles on the register for the class, in which case his employment may be continued but he must be separated within thirty days after certification of available eligibles, provided, however, that he may be given a probationary appointment if he has passed an open-competitive examination for the class and is within reach on the register for certification and original appointment.

(e) In making the appointments provided for in Section 9.01(c) and (d) of this rule it is optional with the appointing authority whether to 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 decision on this matter for the records.

9.02. Original Appointments

(a) All original appointments to positions exclusive of exempt positions shall be made in accordance with this rule. Selection shall be made for each position first from the eligibles on appropriate preference registers. Upon exhaustion of the preference register, selection shall be made for each position from the top ten names including any persons scoring the same as the tenth name or any persons scoring at or above the ninetieth percentile on the register, as determined by Section 8.02 of this rule exclusive of the names of those who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing based on Section 6.04 of this rule which objection 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 interview them. Final selection shall be reported in writing by the appointing authority to the Director.

(c) If the eligible selected declines the appointment, evidence of declination and other such data shall be transmitted to the Director for the permanent record. An eligible may be considered by the Director as having declined appointment if he fails to reply after five days in addition to the time allowed for transmission of letter and return of reply, or 48 hours, if

notified by telegram. If an eligible accepts an appointment but fails to present himself for duty at the time and place specified without giving reasons for the delay satisfactory to the appointing authority and the Director, he shall be considered to have declined the appointment.

9.03. Provisional Appointments

(a) If, in the opinion of the appointing authority, 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 therefrom. No provisional appointment shall be made until the position has been classified and minimum qualifications established therefore in accordance with this rule. 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 Section 9.02 of this rule and all appointments made without 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.

9.04. 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 candidate arranged in the order of final scores on the examination. Selection shall be made 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 sub-section he 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 in any twelve-month period beginning with the date of the original intermittent appointment, nor shall an intermittent employment appointment be preceded or followed by a temporary employment appointment or any other limited term employment within the twelve-month period.

9.05. Temporary Appointments -

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

(b) The duration of a temporary appointment is 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 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 employment appointment be preceded or followed by an intermittent employment appointment or any other limited term employment within the twelve-month period.

9.06. Limited Term Employment - Individuals may be employed for a limited period of time in accordance with the provisions of this Rule and W.V. 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.

9.067. 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, 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 vacancy must be re-posted 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 Section have been violated or who is denied consideration for the job opening has the right to initiate a grievance as provided for in W.V. Code §29-6A-1 et seq.

(g) The vacancy posting requirements apply to all classified position vacancies except demotions with prejudice and/or transfers for cause.

Section 10. Probationary Period

10.01. 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 position and to adjust himself to the organization and program of the agency. It is an integral part of the examination process and shall be utilized for the most effective adjustment of a new employee and the elimination of those who do not meet the required standards of work.

(b) All original appointments to permanent positions shall be made 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. The provision 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. Permanent appointment of a probationary employee shall begin with the date ending the probationary period.

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

10.02. 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. In the event it is determined 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.

10.03. 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 meets the minimum qualifications of the lower class. However, such action may not be taken until the employee has been presented with the reasons in writing and has been given a reasonable time to reply thereto in writing, or to appear personally and reply to the head of the department or his deputy. Neither shall such action be taken prior to completion of one-third of the probationary period, and the probationary period for the class of position to which the employee is demoted shall begin with the date of demotion.

10.04. Transfers during Probation - An employee shall not be transferred during his probationary period to a position in another class ~~for which a preference or competitive register~~

~~exists, nor may an employee, certified to a vacancy in a local office on a strictly local-area basis on a geographic selective certification in accordance with the provisions of Section 8.03 of this rule, be transferred from that local office geographic area to any other office geographic area or class for which a preference or competitive register exists.~~

10.05. Dismissal during Probation

~~(a) If at any time during the probationary period, it is determined the services of the employee are unsatisfactory, the employee may be dismissed from the service, but such action shall take place only after the person to be dismissed has been presented with the reasons for the dismissal stated in writing, and has been allowed a reasonable time to reply thereto in writing or upon request to appear personally and reply to the head of the department or his deputy. The statement of reasons and the reply shall be filed as a public record with the Director. Notification of the dismissal shall be given to the employee 15 calendar days prior to the effective date of his dismissal, and no further salary shall be paid to him except in payment for accrued annual leave in accordance with Section 12.02. of this Rule. If the fifteen calendar days notice is given 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. Fifteen days notice shall not be required for employees in certain classes where the Board holds by formal action that the public interests are best served by withholding the notice, and is at the discretion of the appointing authority for employees in any class when the cause of dismissal is gross misconduct.~~

(b) The Director may restore the name of a probationary appointee who has been dismissed to the register from which he was certified, in accordance with procedure described in Section 12.08 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

11.01. Method of Making Promotions

(a) Whenever practical and in the best interest of the service, a vacancy will be filled by promotion, after consideration of the eligible permanent employees in the agency or in the career service upon the basis of the employees' demonstrated capacity and quality and length of service. In filling vacancies, an effort should be made to achieve a balance

between promotion from within the service and the introduction into the service of qualified new employees.

(b) A candidate for promotion must be certified by the Director to possess the qualifications for the position as set forth in the specifications for the class of position for which he is a candidate, and he may be required by the appointing authority to qualify for the new position by a promotional competitive or non-competitive examination administered by the Director.

11.02. Promotion by Competitive Examination

(a) If it is determined by the appointing authority to fill vacancies in a particular class of position by promotion competitive examination, the examination shall be given under the direction of the Director. An employee to be eligible to compete for promotion must 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) All employees who receive a passing grade shall be placed 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 same number of names shall be certified from each register in accordance with Section 8 of this rule. The appointing authority may make his selection from the names submitted from either register, giving such preference to present employees as the good of the service will permit.

11.03. 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 Section 11.02 of this rule, and if found to qualify for the class will be so certified .

11.04. Demotions - There are two types of demotion, involuntary and voluntary. An involuntary demotion 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 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. A permanent employee may be demoted for cause after being presented with the reasons for the demotion stated in writing, and being allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his deputy. The statement of reasons for the demotion and the reply shall be filed with the Director of Personnel. A probationary employee may be demoted as provided for in Section 10.04 of this rule.

11.05. Lateral Class Change - A permanent employee may be moved from a position in one class to a vacant position in another class in the same pay grade if found by the Director to qualify for the vacant position.

11.06 Transfers

(a) Except as otherwise provided in Section 10.05 of this rule, a transfer of a permanent employee from a position in one organizational sub-division of an agency to a position in another organizational sub-division of the same or another agency may be made at any time by the appointing authorities concerned. In the case of inter-agency transfers, annual and sick leave and all seniority rights shall be transferred with the employee.

(b) All inter and intra-agency transfers within a class shall be reported to the Director on appropriate forms at the time of the transfer. Transfers to comparable classes shall require prior approval of the Director who shall require that the employee must meet the minimum qualifications of the new class.

Section 12. Separations, Tenure and Reinstatement

12.01. Resignations - An employee who resigns shall present the reasons therefor in writing to the appointing authority. A copy of the resignation shall be forwarded by the agency to the Director of Personnel and shall be recorded by him. If a written resignation cannot be obtained, the appointing authority shall notify the Director of Personnel in writing of the separation of the employee and the circumstances of the separation.

12.02. Dismissals - The appointing authority, fifteen (15) calendar days after notice in writing to an ~~permanent~~ employee stating specific reasons therefor, may dismiss any employee for cause. The employee shall be allowed a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing authority or his ~~deputy~~ designee. The reasons for dismissal and the reply, if any, shall be filed with the Director of Personnel. Fifteen days notice is not

required for employees in certain cases when the public interests are best served by withholding the notice, ~~and is at the discretion of the appointing authority for employees in any case~~ or when the cause of dismissal is gross misconduct. An employee may be dismissed after oral notice, confirmed in writing, when the dismissed employee's action(s) constitute a threat to the safety or welfare of persons or property.

12.03. Suspension - The appointing authority, eight (8) calendar days after oral notice confirmed in writing or by written notice, may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a ~~job related adverse impact~~ rational nexus to the employee's performance of his job. The suspension must be for a specific period of time, except where an employee is the subject of an indictment or other criminal proceeding. The person being suspended shall be allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or deputydesignee. 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.

12.04. 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 subsection, 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 organization unit may be an entire agency, division, bureau, or other organization 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 number of positions to be abolished has been determined and the organizational unit has been approved, the order of separation shall be applied in the following manner:

1. ~~non-status~~ employees without permanent status in the same class or classes identified for layoff in the following order: emergency, ninety-day exempt, student, seasonal, intermittent, temporary, 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. Time spent on leave without pay or on terminal annual leave shall not be counted, but educational and military leave shall be counted.

(g) Bumping Rights. A permanent employee who is to be laid off may request an involuntary demotion to any class in the occupational group in the same organizational unit unless the results thereof would be to cause the layoff of another permanent employee who possesses greater seniority than the employee who is exercising the request for involuntary demotion. A permanent employee who is laid off under these provisions as a result of another employee having a greater seniority shall have 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 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 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 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 employee shall be made to the class until all former employees on the recall list have been given first chance of refusal of the vacancy. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous thereto. Any laid off employee who

is eligible for recall to a position under these provisions shall be notified 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 ~~may~~ shall be accomplished by ~~either original appointment or reinstatement.~~

(j) Salary Reductions for Layoff. Salary reductions resulting from provisions of this subsection shall follow the salary regulations 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 ~~of the layoff.~~

~~(l) Appeals shall be. An employee has the right to appeal a layoff action in accordance with W.V. Code §29-6A-1 et seq.~~

12.05. Like Penalties for Like Offenses - In dismissals for cause and other punishments, like penalties shall be imposed for like offenses.

12.06. Tenure of Office - The tenure of office of every permanent employee shall be during good behavior and the satisfactory performance of his duties as recorded by his performance evaluation. This provision, however, shall not be interpreted to prevent the release of an employee for cause, or the release of an employee because of lack of funds or curtailment of work, when made the release is in accordance with this rule.

12.07. 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 released without prejudice is eligible for reinstatement, provided he 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 is being appointed. Prior to making the certification, the Director may require the employee to pass a qualifying examination.

(b) 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 shall be reinstated 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 would have received had he remained in active status in the classified service, and he shall be credited with all annual and sick leave accumulated and unused at the time the military leave began. It is understood that the provisions in this subsection shall be uniformly applied to all veterans within an agency having had military leave and who return to the agency.

12.08. Reinstatement to Register

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

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

1. The person petitioning the reinstatement shall make his 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 that person 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 has been or may be disqualified under Sections 6.04, 7.03, or 8.02 of this rule.

Section 13. Appeals

13.01. Appeal for Examination Rejection

(a) Appeal Request - Any applicant whose application for examination has been rejected may appeal to the Director for reconsideration of his qualifications. The Director shall consider such appeal if submitted in writing and received not later than fifteen (15) calendar days following the date the rejection notice was postmarked. Pending the outcome of the written appeal, applicants may be admitted to an examination. Admission to an examination under such circumstances shall not constitute assurance of a passing grade with respect to the other portions of the examination process.

(b) Decision - Within thirty (30) calendar days after a properly submitted appeal is received, the Director shall report his 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 shall not affect a certification or appointment which has already been made from a register.

13.02. 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 the decision in writing to the applicant.

Section 14. Classified-Exempt Service

14.01. Classification Plan for the Classified-Exempt Service - 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 and are filled by the same means of recruitment. 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.

14.02. Report of Duties and Responsibilities - 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.

14.03. Report of Employees - 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.

14.04. Certification of Names for Filling Vacancies - If an appointing authority wishes to request names of applicants for consideration for employment in the classified-exempt service, he shall make the request on appropriate forms specified by the Director. To reduce the impact on hiring in classified service, the Director may send names irrespective of the order of scores and may delay filling the request until certifications for the classified service are complete. In no event shall a classified service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

14.05. Request for Reconsideration - 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 appeal of a classification action in writing within ten (10) calendar days of the effective date of the classification action.

Section 15. Attendance and Leave

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

15.01. Official Holidays

(a) Employees shall be released from work in observance of the following official holidays : New Year's Day, first day of January; Martin Luther King's Birthday, third Monday of January; Lincoln's Birthday, twelfth day of February; Washington's Birthday, third Monday of February; Memorial Day, last Monday in May; West Virginia Day, twentieth day of June; Independence Day, fourth day of July; Labor Day, first Monday of September; Columbus Day, second Monday of October; Veterans' Day, eleventh day of November; Thanksgiving Day, fourth Thursday of November;

Christmas Day, twenty-fifth day of December; any day on which an election (Primary or General) is held throughout the State, and, such other days as the President, Governor or other duly constituted authority shall proclaim to be legal holidays.

(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 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 occurs prior to the first day of work or after the effective date of separation.

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

15.02. Agency Work Schedules - Each appointing authority shall establish the work schedule for the employees of his 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 thereto must be submitted to the Director within fifteen (15) calendar days after employees commence work under the schedule.

15.03. Annual Leave

(a) Amount, Accrual - Except as otherwise noted in this rule, each employee is entitled to annual leave with pay and benefits. The table below lists 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 cannot be accrued for hours not paid nor for hours worked beyond the normal work week 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 10 years of regular employment	1.50 days/month	30 days
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 ~~(Section 3.1)~~ is based on State employment or employment in the classified service.

(c) Requesting, Granting - Accrued annual leave shall be granted at such times as will not materially affect the agency's efficient operation or when requested as paid leave under the provisions of state or federal family/medical leave statutes. The employee shall request annual leave in advance of taking such leave except as noted elsewhere in this Section. 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. Annual leave shall not be accorded ~~temporary~~, 30-day emergency, per diem, student, seasonal, or 90-day exempt employees.

2. Annual leave accorded provisional, intermittent, irregular part-time and temporary (appointed from the register) employees shall be computed in proportion to hours worked during the pay period not to exceed the full-time work schedule of the employer. The leave must be taken prior to the expiration of the period of appointment, unless immediately followed by an appointment from the register, or be forfeited.

3. Annual leave accorded part-time employees shall be computed in proportion to hours worked during the pay period based on the proper length of service category.

(e) Minimum Charge - The minimum charge against annual leave shall be one half ~~(1/2)~~ quarter (1/4) hour. Additional leave shall be in multiples of a half quarter hour.

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

1. An employee may elect to be paid in ~~bisemi~~-monthly installments as if employment were continuing until the pay period during which the accrued annual leave is exhausted. If the last day for which terminal leave payment is due falls before the day on which the pay period ends, terminal 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 leave.

2. Any eligible employee as defined in W.V. Code §5-5-1, as amended, who is separated from employment by resignation, layoff, dismissal, retirement, death, or termination, may be paid in lump sum, at his option, for accrued and unused annual leave. Terminal 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. 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 employment continued. No deductions may be made for contributions toward retirement from the lump sum payment.

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 from one agency to another, all service credit and accrued annual leave shall be transferred. The previous employer must 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 used granted in circumstances when sick leave or the sick leave allowance for an employee's immediate family is exhausted. ~~The immediate family includes only the employee's father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandchildren, stepmother, stepfather, and stepchildren.~~ The same rules regarding the necessity for a physician's statement when sick leave is used apply when annual leave is used under these circumstances.

15.04. Sick Leave

(a) Accrual - Except as otherwise provided in this section, 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. There is unlimited accumulation of sick leave.

(b) Coverage

1. Sick leave shall not be accorded ~~temporary~~, 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 hours worked 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 employed to work annually.

(c) Minimum Charge - The minimum charge against sick leave is one ~~half (1/2)~~ quarter (1/4) hour. Additional leave is charged in multiples of one ~~half (1/2)~~ 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 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 effective 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 effective 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 - Accrued sick leave shall be granted to employees for the following reasons:

1. Illness - Sick leave ~~may~~ shall be granted in the event of an illness of, or injury to, an employee which incapacitates him from performance of his duties. ~~An employee who elects not to utilize sick leave under this section must apply for a medical leave of absence without pay under Section 15.08(c) of this rule.~~

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 immediate family as defined in this rule. ~~The immediate family includes only the father, mother, son, daughter, brother, sister, husband or wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, and stepchildren.~~

3. Exposure to Contagious Disease - Sick leave ~~may~~ shall be granted in the case of exposure to 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 ~~may~~ 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 or routine dental or medical appointments, including reasonable travel time, if requested, not to exceed a total of three hours per occurrence, for an employee's immediate family may shall be charged to accrued sick leave, not to exceed 40 hours per calendar year.

7. Work related illness or injury - an employee may elect to use sick leave due to a work related illness or injury. However, an employee who elects not to use sick leave under this section must apply for a medical leave of absence without pay as provided under Section 15.08(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. Use of this form is required by all agencies.

2. Within two days of return to work, an employee shall furnish a written statement 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 job or that the employee's absence was due to reasons provided in Section 15.04.(f)6. 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 and the employee's pay shall be docked the following payperiod for the entire period of absence.

4. For extended periods of sick leave, a prescribed physician's statement form confirming the necessity for continued leave must be submitted every thirty (30) calendar days. Failure to produce the required statement shall be grounds to terminate further sick leave benefits and the employee shall be placed on unauthorized leave. The employee shall be given fifteen day written notice of such action. 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 regardless of the length of absence.

5. The appointing authority may permit an employee to return to work from sick leave at less than full duty, but the terms of return 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 job.

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

(b) The Director may deny the request to return to work at less than full duty under conditions including, but not limited to, the following:

(1) the employee cannot perform the essential duties of his job;

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

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

(c) 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.

(h) Transfer of Sick Leave

1. When a classified employee transfers from one agency to another, all accrued sick leave shall be transferred. The previous employer must 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.

(i) 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 must request such action immediately upon return to work and must provide a physician's statement or hospital statement listing the specific dates of hospitalization or emergency room services. Sick leave will be charged only for the period of time the employee is hospitalized or in the emergency room. The remainder of the time must be charged to annual leave.

15.05. 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. Prior written notice of the requirement for appropriate substantiation must be given to the employee.

15.06. Unauthorized Leave - When an employee is absent from work without authorization for sick or annual leave, the appointing authority ~~may~~ shall dock the employee's pay in the next payperiod for an equal amount of time paid during which no work was performed. The appointing authority must notify the employee in writing that such action is being taken. Unauthorized leave shall be used only in cases when the employee fails to obtain the appropriate approval, according to agency policy, for the absence. Such action must be transmitted in writing to the Director of Personnel.

15.07. Overtime Work and Holiday Work - An appointing authority or his 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 1938 and W.V. Code §21-5(C)-1 et seq.

15.08. Leave of Absence Without Pay

(a) Personal Leave - Upon application in writing to and written approval of the appointing authority, a permanent, probationary, or provisional employee may be granted a leave of absence without pay for a specific period of time which normally should not exceed one year. A leave of absence without pay may exceed the normal one year limitation and may be granted at the discretion of the appointing authority 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 - Upon exhaustion of the sick leave benefit for members of an employee's immediate family, as defined in this rule, and all annual leave, any employee hired for permanent employment who has worked for at least twelve consecutive weeks shall be entitled to a total of twelve weeks of unpaid family leave during any twelve month period because of the birth of a child of the employee, or the placement of a child with the employee for adoption; or to care for the employee's child, spouse, parent or dependent who has a serious health

condition.

1. In the case of a child, spouse, parent or dependent who has a serious health condition, such family leave may be taken intermittently when medically necessary. An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed twelve consecutive months, and the leave shall be scheduled so as not to unduly disrupt unduly the operations of the employer.

2. If a leave because of birth or adoption is foreseeable, the employee shall provide the employer with a two-week written notice of the expected birth or adoption. When it is not possible to provide such notice, the employee must give the employer notice within two working days of the time the employee learns of the need for the leave.

3. If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision so as not to unduly disrupt the operations of the employer, subject to the approval of the health care provider of the employee's child, parent or dependent and shall provide the employer with a two-week written notice of the treatment or supervision.

4. The employer may require the employee to provide certification by a health care provider that the child, dependent, parent or spouse has a serious health condition, the date the condition commenced, its probable duration, and other pertinent medical facts regarding the serious health condition. Written approval of the appointing authority is required in all cases. Notice of such action must be transmitted in writing to the Director.

(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 work related injury 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's/practitioner on the prescribed physician's statement form stating ~~written statement~~ that the employee is unable to perform his or her duties and giving a tentative date for the employee's return to work;

c. A prescribed physician's statement form is submitted every thirty (30) calendar days 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 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 that the leave will not be granted if the employee fails to apply within the ~~above~~ time limits specified in section 15.08.c.1.a.

(d) End of Leave -

1. At the expiration of a leave of absence without pay, the employee shall be ~~reinstated~~ 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 the absence was for an approved ~~unpaid family leave of absence as provided in section 15.08.(b)~~, the employee shall be returned to the position held prior to the leave provided the leave did not exceed twelve weeks during a twelve-month period.

2. If the leave of absence without pay was granted due to personal illness, the employee must furnish from the attending physician/practitioner a ~~certificate~~ 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 section 15.04.(g)(5) 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.

15.09. Injury on the Job ~

(a) In the event an employee is injured in the course of and resulting from covered employment, the employee may elect to receive either temporary total disability benefits from the Worker's Compensation Fund or sick leave benefits, but not both. Employees may collect sick leave benefits and, upon exhaustion of sick leave benefits, annual leave benefits until receiving temporary total disability benefits. If an employee has elected to receive temporary total disability benefits, Upon receipt of the initial temporary total disability benefits payment the employee shall pay or assign to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received net value of the sick/annual leave paid. Employees shall be restored sick leave benefits and, if used, annual leave benefits shall be restored on a day-for-day basis which corresponds to the temporary total disability benefits paid to the employer net value of the sick/annual leave paid. If the employee fails to pay or assign to the employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received net value of the sick/annual leave paid, then the employer shall deduct from the employee's subsequent wage payments an amount equal to the temporary total disability benefits received net value of the sick/annual leave paid. Upon payment of this amount the employer shall restore sick/annual leave time which corresponds to the amount of temporary total disability received by the employee previously paid.

(b) It is a discriminatory practice for an employer to fail to reinstate an employee who has sustained a compensable illness or injury to that employee's former position of employment, upon demand for the reinstatement, provided that the position is available and the employee is not disabled from performing the essential duties of the position. If the former position is not available, the employee shall be reinstated to another comparable available position with duties the employee is capable of performing. A comparable position means a position which is comparable in wages, working conditions, and, to the extent reasonably practicable, duties ~~to~~ of the position held at the time of illness or injury. A written statement from a medical professional ~~that the medical professional approves~~ physician/practitioner approving the injured employee's return to regular employment is shall be prima facie evidence that the worker is able to perform such essential duties. In the event that neither the former position nor a comparable position is available, the employee has a right to preferential recall to any

job which the injured employee is capable of performing which becomes open after the injured employee notifies the employer that reinstatement is desired. The right of preferential recall is in effect for one year from the day the injured employee notifies the employer that reinstatement is desired. The employee must provide the employer with a current mailing address during the one-year period.

(c) The provisions of Section 15.08.(c), (d), and (e) shall also apply to leave taken under the provisions of this section.

15.10. Military Leave

(a) All officers and employees of the State hired for permanent employment 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 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 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 subsection do not apply under the provisions of any Selective Training and Service act. An employee is required to submit an official order from the appropriate military officer in support of the request for military leave .

(b) Effective August 2, 1990, all officers and employees of the State who are ordered or called to active duty by the President of the United States 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. The term "without loss of pay" means that the employee shall continue to receive his 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 subsection (b) of this section, 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 must be granted a leave of absence from his 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 service with the agency without any prejudice to his status, merit rating or standing by reason of such absence, in accordance with Section 12.07(b) of the Division of Personnel Rules and Regulations. Employees shall be credited with all annual leave and sick leave not used at the commencement of his military leave in accordance with Section 12.07(c) of this rule. This subsection 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 is not performing the duties of his position with the state because of the services with the armed forces of the United States.

(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 section is inconsistent or in conflict .

15.11. 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 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 section 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 subsection 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 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 ~~appointing authority~~ Director.

15.12. 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 shall the employees be 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 Section 15.08(a) of this rule.

15.13. Supplementary Attendance and Leave Regulations - Each agency shall prepare supplementary regulations as may be required. Such regulations shall not enhance nor diminish the benefits afforded by this section. Copies of all regulations shall be filed with the Director who may approve, amend or disapprove the supplemental regulations.

15.14. Distribution of Regulations - Each agency shall make available to each of its employees a copy of these attendance and leave regulations together with the agency's own supplementary attendance and leave regulations.

15.15. 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 and regulations. Supervisors and employees shall attest to the accuracy of the records on a periodic basis, but not less than twice annually.

Section 16. 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. Insofar as practicable the system of performance evaluation in the classified service shall be standardized. The evaluations shall be prepared and recorded for all permanent employees at regular intervals not to exceed twelve months. Performance evaluations shall be considered in determining salary advancements and in making promotions, demotions, and dismissals. An employee shall be notified of his performance evaluation in writing by the appointing authority of the appropriate agency.

Section 17. Political Activities

17.01. Prohibition of Political Activities

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political or religious opinions or affiliations or race; but nothing in this section 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 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 sections three, four or five-e, article eight, chapter three of the Code of West Virginia, as amended. Other types of partisan or

nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section, are permitted.

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

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of the candidacy, commencing upon the filing of the certificate of candidacy. 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.

(h) In an effort to balance the interests of state employees, as citizens, in commenting on matters of public concern and the interests of the state, as an employer, in promoting the efficiency of the public services it performs through its employees, the Director shall determine any restrictions on political activities of classified employees. Such determination shall be made on the basis of federal and state statutes and the protection of the efficient performance of official duties and the prevention of conflicts of interests or apparent conflicts of interests.

17.02. 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 Federal Hatch Act. These provisions shall be made known to classified employees by the appointing authority concerned and they shall adhere to these provisions.

17.03. 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. Employees 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 position with the department immediately on the date of the filing of candidacy or the date of assuming the public office or the political party committee membership.

17.04. 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 shall retain the right to vote as he may please and to express his opinions as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render any service, assistance, subscription, assessment, or contribution for any political purpose.

Section 18. Employment Conflicts

Section 18.01. 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 by the appointing authority and the Board 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.

Section 18.02. Nepotism

No appointing authority shall influence or attempt to influence the employment or working conditions of his 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 immediate family. More specifically, no employee shall review or audit the work of a member of his immediate family, take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his immediate family, the situation must 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 19. 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 such pay bears the certification of the Director, or of his 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 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 20. Records and Reports

The 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. All personnel records shall be open to the inspection of the Board but shall be otherwise be held confidential by the Agency in accordance with applicable Federal and State law.

Section 21. Duties of State Officers; Legal Proceedings to Secure Compliance; Penalties

21.01. Duties of State Officers - Pursuant to W.V. 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.V. Code §29-6-1 et seq., as amended, the rules, regulations, and orders thereunder. All officers and employees shall furnish any records or information which the Director or the Board may request for any purpose of W.V. Code §29-6-1 et seq., as amended. All officers and employees shall comply with all rules, regulations, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by such rules, regulations, or orders.

21.02. Legal Proceedings to Secure Compliance - Pursuant to W.V. Code §29-6-12, the Director may institute and maintain any action or proceeding at law or in equity which he considers necessary or appropriate to secure compliance with Article 6, and the rules and orders thereunder.

21.03. Penalties

(a) Any person who willfully violates any provision of W.V. 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 section shall be in a court of record exercising criminal jurisdiction within the county wherein the offense is committed.

(b) Any person who is convicted of a misdemeanor under W.V. 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 is an officer or employee of the state, shall forfeit his 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.V. Code, §29-6A-1 et seq.

Section 23. Training and Development

23.01. Training and Development -

(a) 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.

(b) 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.

(c) 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.

(d) 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.

23.02. Apprenticeship Programs - The Director of Personnel, or his designee, in cooperation with participating appointing authorities within each agency shall develop and annually revise by the thirty-first day of December a list of employment classifications appropriate for apprenticeship training. Each appointing authority shall develop apprenticeship programs for approved classes that have employees working in apprenticeable trades which are, or may be recognized by, the United States Department of Labor, Bureau of Apprenticeship and Training. The apprenticeship program shall be developed and conducted in a manner that will assure meeting the national minimum requirements of quality and be registered with the United States Department of Labor, Bureau of Apprenticeship and Training.

Subject to the approval of the Director, each participating agency shall determine the location and positions in which apprenticeships shall be established. The Chief Administrative Officer of each agency shall establish procedures for the coordination of apprenticeship programs developed in accordance with this section and shall provide to the Director of Personnel, at his request, information which shall include, but not be limited to, the number of persons who applied for apprenticeship positions, the number of persons accepted into the apprenticeship programs, the number of persons who successfully completed and received a certificate of completion from the Bureau of Apprenticeship and Training, the number of persons who failed to complete apprenticeships, the number of persons who remain employed after successfully completing apprenticeships and a summary of characteristics of applicants and participants in the program.

23.03. Apprenticeship Advisory Board - The Director shall prepare and submit necessary reports to the Apprenticeship Advisory Board established in accordance with W.V. Code §29-6-17b regarding the achievements and deficiencies of the apprenticeship program.

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 will 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 will 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.



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

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Roger Morgan, Member
Eugene Stump, Member

**SUMMARY OF PUBLIC HEARING
ON
PROPOSED AMENDMENTS TO THE
ADMINISTRATIVE RULE OF THE DIVISION OF PERSONNEL**

The public hearing on proposed amendments to the Administrative Rule of the West Virginia Division of Personnel was held on Tuesday, July 19, 1994 at 2:00 p.m. in Building 6, Room 430-C, State Capitol Complex, Charleston, West Virginia. Board members Paul J. Gilmer and Eugene Stump were present as were Robert L. Stephens, Jr., Director of the Division of Personnel and staff members, Alma Legg and Tari McClintock Crouse.

After waiting approximately thirty minutes, the hearing was adjourned as no persons appeared to make oral comments or submit written comments.



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

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Roger Morgan, Member
Eugene Stump, Member

August 4, 1994

Ms. Susan Steele
2139 Pennsylvania Avenue
St. Albans, West Virginia 25177

Dear Ms. Steele:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel.

I can understand your concern with certain provisions of our current Administrative Rule as they relate to you personally. However, I think you will acknowledge that your circumstances are unusual. In spite of the effect these provisions have had on you personally, they do conform to professional standards for personnel practices.

In regard to employees with salaries "above the range", our preliminary estimates show fewer than ten percent of employees above the maximum for their pay range and almost seventy percent at or below the midpoint for their pay range. One of the most frequently mentioned issues in our public hearings on the pay plan was salary compression - specifically in the form of new employees making the same or close to the same salaries as significantly more tenured employees. With the flexibility of the new pay plan, we were able to begin to address the issue of salary compression. By absorbing the across-the-board increase within the pay plan and not raising the entire plan (thus not raising the entry salaries for new and prospective employees), the great majority of more tenured employees can begin to see differences between their salaries and salaries of employees newly hired.

One of the primary purposes of establishing a rate or range of pay for a position is to reflect the value of the work of that position. The pay plan for state employees includes a series of overlapping pay grades, each with a specified range. Ideally the minimum of the range is sufficient to attract competent employees, the spread is sufficient to motivate them (i.e. allow for merit increases), and the maximum is sufficient to retain them. Set ranges of pay which reflect the value of the work also

Ms. Susan Steele
August 4, 1994
Page two

provide assurance to employees that they are being paid equally for work of equal value. Consequently, all salaries should be within assigned pay ranges and variations should exist only under exceptional circumstances (e.g. longevity increases).

The requirement that salary increases with promotions be within the range for the position to which promoted does not limit promotions. It is currently possible to receive a promotion with a simultaneous demotion in pay only; this has the effect of allowing career movement with no (or limited) increase in pay.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or concerns.

Sincerely,

A handwritten signature in cursive script, reading "Robert L. Stephens, Jr.", written in dark ink.

Robert L. Stephens, Jr.
Director

2139 Pennsylvania Avenue
St. Albans, WV 25177
July 19, 1994

WV Division of Personnel
Capitol Complex
Building 6, Room 416
Charleston, WV 25305-0139

Dear Mr. Stephens:

I am very concerned with the proposed changes to the Administrative Rule. With the method utilized for the implementation of the legislated increase (no change in salary schedules), additional employees will be moved 'above range' in their respective pay grades. In addition, the effect of the Statewide Reclassification Project was to move greater numbers of State employees 'above the range' for their pay grade. Within the proposed Administrative Rule changes, there remains situations that have not been addressed with regard to above range staff.

As a result of HB 2665, I was demoted. I voluntarily accepted another demotion to accept a position that offered greater opportunity for involvement in decisions and greater use of my professional abilities. (Even on the surface, this seems inconsistent with the principles of classification!) At that time my salary was demoted to the maximum for the range as is required in the Administrative Rule, and I have no personal complaints regarding pay, since I willingly accepted the rate offered. As a result of the Statewide Reclassification Project, I was demoted once again and I am now above range.

I am now in a position where my eligibility for merit increases (based on quality of work) is restricted. For instance, the Instructions for Across-the-Board Increase dated April 14, 1994, bars merit increases in 12 month period to last until "July 1, 1995 at the earliest."

It is noted that in Section 5.09 the language "salary increase" is used to bar eligibility for salary advancements. Since this is an undefined term, the interpretation that it means salary advancement vs. salary adjustment is questionable to me. However, that is the interpretation that is consistently used.

Another element of the proposed regulations limiting my career is the restriction requiring promotions and demotions to be within the range for the class. In order to be promotable, I must find a position in pay grade 16 (I am currently pay grade 12). If a result of the Reclassification Project is to place employees in this type of situation, then the regulations should address this result and make some sort of provision that will allow career movement, whether it be an exception to the rule, a reduction in the mandated promotional amount, or to permit promotions with no

increase. As I recall, enhanced promotional ladders was an objective of the Reclass Project. I still have at least 12 years before retirement and am not pleased that my opportunities for merit increases and advancement are severely limited and have not been addressed as an issue.

I will also note that these concerns were raised during the public comment in April 1994, and I note that these issues have not been addressed, nor have I received any information clearing up these issues.



Susan Steele
Administrative Services Specialist



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

August 4, 1994

STATE
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Roger Morgan, Member
Eugene Stump, Member

Mr. Jeff Black, Director
Human Resources Division
Department of Transportation
Building 5, Room 109
Charleston, West Virginia

Dear Mr. Black:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel. In response to your questions and concerns, I offer the following information.

The currently approved percentage increase has been included in the language in Section 5.08.(c).

Section 6.04.(c) has been changed to "...6.04.(a) 4, 5, 6 and 7...".

Section 8.03.(d) which allows certification by lot for certain classifications, while not generally a new merit system certification concept, is certainly new within our merit system. The nature of this type of certification puts added emphasis on the employment interview in the selection process. As such, we believe that it is imperative that we set strict standards for "opportunities for interviews" to avoid even the appearance of deviation from merit standards in selection of employees.

The prohibition of successive appointments is addressed, as appropriate, in the various definitions or sections relating to the specific categories of limited term appointments.

The prescribed physician's statement requests only required information. The nature of some of the information requested (e.g. can the employee return to less than full duty, does the employee need accomodation to perform essential duties) makes the use of a form the simplest option.

Sections 15.04.(g)3. and 15.06. require docking in the next pay period in order to give the employee notice as required by Division of Labor regulation.

Mr. Jeff Black
August 4, 1994
Page two

W.V. Code §21-5D-4(a) requires the exhaustion of all annual and personal leave prior to the employee being entitled to unpaid family leave. We are seeking further clarification on this issue as it relates to the federal statute.

Extensions of leaves of absence should be reported. We do not show all extensions in some of our records (merely the beginning and end of the leave), but we do maintain records of all extensions in employees' personnel files.

We have made the appropriate changes in Section 15.09.(a).

We have changed the language in Section 15.10. to conform to the statute.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Stephens, Jr.", written in dark ink.

Robert L. Stephens, Jr.
Director



5

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways

Gaston Caperton
Governor

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0430 • 304/558-3505

July 19, 1994

Charles L. Miller, P.E.
Secretary

Fred VanKirk, P.E.
Commissioner
State Highway Engineer

M E M O R A N D U M

TO: Robert L. Stephens, Jr., Director
Division of Personnel

FROM: Jeff Black, Director *JB*
Human Resources Division

SUBJECT: COMMENTS ON PERSONNEL ADMINISTRATIVE RULE

Transmitted herewith are comments from the Department of Transportation regarding the proposed amendments to the Division of Personnel Administrative Rule.

Thank you for the opportunity to review this material. Should there be any question regarding our comments, please contact me.

JB:m

DEPARTMENT OF TRANSPORTATION
COMMENTS ON ADMINISTRATIVE RULE

Section 5.08(c): We feel the percentage of increase should be specified.

Section 6.04(c): Within the added sentence, we feel #8 is not appropriate.

Section 8.03(d): We object to the requirement that opportunities for interview be granted in the order of appearance on the certification. We feel we should have discretion to interview within the ninetieth percentile.

Section 9.06: We recommend there be wording included which forbids successive appointments.

Section 15.04(g): We object to the required use of one certain physician statement. We have experienced situations where doctors have insisted on using their own form or a letter format. We feel the Rule should specify what information must be provided, rather than the exact format.

Section 15.04(g)3: This statement should read that the employees pay shall be docked, period. The indication that it shall be docked in the following pay period assumes that all agencies process payroll on a current basis. Let each agency dock the pay however it best suits their system.

SECTION 15.06: The same comment as above regarding the docking of pay for unauthorized leave.

Section 15.08(b): We do not believe that employees should be required to exhaust all annual leave before requesting unpaid family leave.

Section 15.08(e): With respect to the statement that extensions of leave must also be reported, we currently do not report extensions, at the request of the Division of Personnel.

DEPARTMENT OF TRANSPORTATION
COMMENTS (CONT.)

Section 15.09(a):

It appears the phrase "temporary total disability benefit" should be stricken from line 10, as it was in previous references within the paragraph. Also, where the phrase "net value of the sick leave paid" is used, it should include "or annual leave."

Section 15.10:

The fact that military leave also applies to temporary employees should be noted.



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

August 4, 1994

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Roger Morgan, Member
Eugene Stump, Member

Gretchen O. Lewis, Cabinet Secretary
Department of Health & Human Resources
Building 3, Room 206
Charleston, West Virginia

Dear Ms. Lewis:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel. In response to your questions and concerns, I offer the following information.

The prescribed physician's statement requests only required information. The nature of the some of the information requested (e.g. can the employee return to less than full duty, does the employee need accomodation to perform essential duties) makes the use of a form the simplest option. You will note that agencies are required to make the forms available to employees. We suggest that employers recommend that employees keep a form accessible for use in situations where it would be needed.

The minimum charge to both annual and sick leave has been changed to 15 minutes.

The maximum annual amount (i.e. 10%) for salary advancements has been added to Section 5.08.(c).

We do not think the proposed changes to sections 9.04. and 9.05. prohibiting successive appointments to these types of limited term employment will have a detrimental effect on your efforts to meet emergency or seasonal staffing needs with experienced individuals. There are other categories of employment (e.g. irregular part-time, part-time professional) available which should meet your needs. I assure you that the staff of this Division will work with you to insure sufficient and appropriate staffing for your emergency or seasonal needs.

The typographical error in Section 15.04.(f)7. has been corrected.

Ms. Gretchen O. Lewis
August 4, 1994
Page two

I believe your comments on Section 17.01.(b) are intended to refer to Section 17.01.(h). In this regard, the section was added to assure consistent treatment among the various departments and agencies on matters relating to W.V. Code §29-6-20, other statutory provisions regarding political activities, and "...regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency..." (W.V. Code §29-6-10(14)).

Qualifying service under Section 15.03.(b) does not, and is not intended to, differentiate between full and part-time employment. We have reviewed other sections of the Rule which refer to tenure or seniority and we think that the terms are adequately defined within the context of these sections. If, however, you have specific question regarding calculation of tenure or seniority, Division staff will be pleased to assist you.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert L. Stephens, Jr.", with a stylized flourish at the end.

Robert L. Stephens, Jr.
Director



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

MEMORANDUM

Gretchen O. Lewis
Secretary

TO: Robert L. Stephens, Jr., Director
Division of Personnel

FROM: Gretchen O. Lewis
Secretary *G. Lewis*

DATE: July 19, 1994

RE: Division of Personnel Administrative Rule

As requested, outlined below are this agency's comments about the Division of Personnel Administrative Rule and proposed amendments. I hope the comments are helpful.

- * With regard to Section 15.04(g), the use of a specific form for a physician/practitioner statement for the authorization of sick leave should not be mandatory. While desirable, the use of a "prescribed physician's statement form" does not seem practical. Since medical visits are often made during stressful or emergency situations, it is unreasonable to expect an employee to always have the appropriate form in hand. Given the rural nature of the State, a return visit to the physician to have the proper form completed would seem overly burdensome. A facsimile physician/practitioner statement that provides the required information should be acceptable.
- * In Sections 15.03(e) and 15.04(c) is there any reason why the minimum charge against sick or annual leave cannot be 15 minutes instead of one-half hour? Current data systems can accommodate a 15 minute minimum as well as a one-half hour minimum. A lower minimum would reduce the amount of manual tracking of leave time and, thus, reduce errors.
- * With regard to salary advancements in Section 5.08(c), should the wording "two increments" be replaced with "10%"?
- * The proposed changes to Sections 9.04 and 9.05 will have the practical effect of limiting this agency's capacity to employ experienced staff on a temporary basis in emergency situations and for seasonal employment.
- * There is an apparent typographical error in the last sentence of Section 15.04(f)(7) where the word "much" should read "must".
- * In Section 17.01(b) it appears that the Director is being given substantial and far-reaching authority to determine restrictions

on political activities of public employees. This area involves important and sensitive issues and the content of any restrictions needs to be subject to external checks and balances that include, at a minimum, the legislative rule-making review process.

- * Section 15.03(b) provides that qualifying service for length of service category under Section 15.03(a) is based on State employment or employment in the classified service. However, the Administrative Rule does not describe how "qualifying service" is to be computed with regard to part-time employment and full-time employment. While "qualifying service" is referenced in Section 12.06. Tenure of Office, the phrase still is not defined adequately. Similarly, the terms "tenure" and "seniority" as used in various sections of the Administrative Rule need to be defined more precisely.

Thank you for the opportunity to offer these comments. Questions may be addressed to Mike McCabe at 558-0025.

GOL/mes



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

August 4, 1994

STATE
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Eugene Stump, Member

Charles B. Felton, Jr., Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia

Dear Mr. Felton:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel. In response to your questions and concerns, I offer the following information.

The descriptions of the two types of demotions have been moved to the section on demotions, Section 11.04.

Since there are many employees who do not receive an annual increment, we did not include that in the definition of hourly rate.

The terms used to describe immediate family were chosen in the interests of simplicity and brevity.

Regarding the definition of "pay rate", hourly rates are specified in the approved pay plan on a separate schedule for hourly employees of the Division of Highways.

We have corrected the spelling of practitioner.

Section 5.04.(f)1.c. of the Administrative Rule has not been amended and correctly reads "ineligible". In conjunction with that, Section 5.08.(c) clarifies that "salary advancements" cannot cause an employee's salary to exceed the maximum for the pay grade to which the employee's class is allocated. There is no point in setting a maximum rate for a pay grade if it is not used as an upper limit for compensation for positions allocated to that pay grade. However, in recognition of the fact that there is no specified schedule for granting general salary increases, the provision for longevity increases was added to the Administrative Rule several years ago.

The provision for longevity increases (Section 5.09.) allows increases which cause salaries to exceed the maximum under very specific circumstances. Since the last across-the-board increase (prior to July 1, 1994) occurred in August, 1990, there have been three consecutive years that eligible employees

Charles B. Felton, Jr.
August 4, 1994
Page two

could receive longevity increases. This could have resulted in some confusion on the part of your staff who recommended "salary advancements" which, in fact, were approved by our staff under the provisions of Section 5.09. "Longevity Increases". Finally, we have changed "salary increase" to "any increase in salary" to accurately reflect the nature of a longevity increase.

Section 7.02.(a) has not been amended. We continue to set a one year limit on applicants' scores so that our registers accurately reflect the current skills and employment interests of applicants.

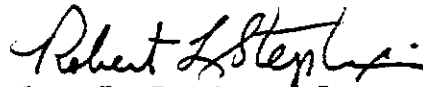
We have added "seasonal employees" to Section 15.03.(d).

We have eliminated the amended language in Section 15.07 and returned the original language.

Section 15.15. has not been amended. The current requirement regarding verification of leave records has been in effect since August, 1993.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or concerns.

Sincerely,

A handwritten signature in cursive script, reading "Robert L. Stephens, Jr.", written in dark ink.

Robert L. Stephens, Jr.
Director



STATE OF WEST VIRGINIA
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

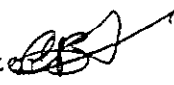
GASTON CAPERTON
Governor

State Capitol Complex
Building 3, Room 669
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0660
TDD 558-1439 TDD 1-800-354-6087
Telephone (304) 558-2754 Fax (304) 558-2768

CHARLES B. FELTON, JR.
Director

M E M O R A N D U M

TO: Robert L. Stephens, Jr., Director
WV Division of Personnel

FROM: Charles B. Felton, Jr., Director 

DATE: July 15, 1994

SUB: Comments to Administrative Rule of the
WV Division of Personnel

Following are this agency's comments regarding the Administrative Rule of the West Virginia Division of Personnel.

Page 3 - 26) Demotion: The two types of demotions should be spelled out as Voluntary Without Prejudice or Involuntary.

Page 4 - 43) Hourly Rate: The annual increment of each employee should be counted as a part of their salary and included in the hourly rate. The only time we use an hourly rate is when calculating overtime and it is included in that instance.

Page 4 - 44) Immediate Family: Terms proposed are too general. The spelled out version makes more sense.

Page 5 - Pay Rate: Hourly rates are not shown on the "approved" pay plan.

Page 5 - 68 Physician/Practitioner: Spelling should be practitioner.

Page 10 - (f) Salary Adjustments 1. New Plan, c. Appears to rule out longevity salary advancements when it says "ineligible." It should be changed to read "eligible" (see below).

Robert L. Stephens, Jr.
Page 2
July 14, 1994

Page 11 - 5.08 Salary Advancements: (c) Need to eliminate the last part of statement which says a 10% increase during the 12-month period cannot take the employee above the maximum. We have been told numerous times by DOP staff that the maximum salary in the pay grade should be discarded when giving salary advancement and when applying longevity raises.

Page 12 - 5.09 Longevity Increases: Suggest changing "salary increase" to "salary advancement" so the across-the-board raises do not exempt an employee from a "longevity" increase.

Page 15 - 7.02 Duration of Registers: (a) Competitive Registers: "The life of scores on a register shall be no longer than three years from the date of establishment . . ." Does this mean an individual's scores do not expire after one year? If so, this would be a good change.

Page 29 - 15.03 (d) Add seasonal employees to number 1.

Page 33 - 15.07 Overtime Work & Holiday Work: DOP should spell out which federal and state statutes and regulations we should be utilizing to make these determinations.

Page 36 - 15.15 Leave Records: Disagree that leave records be verified by employees twice annually. DNR's office provides leave balances and assistance whenever requested by employees throughout the year. Agency to send written statement once a year.

Thank you for the opportunity to comment. Feel free to contact me or Harry Price at your convenience.

CBF/hpb

cc: Section Chiefs
Executive Staff
Norma Justice, DNR Staffing



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

August 4, 1994

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Eugene Stump, Member

Ms. Leona Francisco
4328-C Washington Street West
Charleston, West Virginia 25313

Dear Ms. Francisco:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel.

The language in Section 5.09. has been changed from "...without a salary increase..." to "...without any increase in salary...". Such increases include promotional increases, merit increases and salary adjustments. They do not, however, include changes in pay resulting from an increase in an employee's FTE since such a change is not actually an increase in salary, but an adjustment of pay commensurate with the adjustment of the work hours.

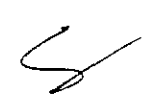
The pay plan for state employees includes a series of overlapping pay grades, each with a specified range. One of the primary purposes of establishing a rate or range of pay for a position is to reflect the value of the work of that position. Ideally the minimum of the range is sufficient to attract competent employees, the spread is sufficient to motivate them (i.e. allow for merit increases), and the maximum is sufficient to retain them. Set ranges of pay which reflect the value of the work also provide assurance to employees that they are being paid equally (i.e. within the range) for work of equal value. Consequently, regardless of tenure, all salaries should be within assigned pay ranges and variations should exist only under exceptional circumstances such as those outlined in the provisions for longevity increases.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or concerns.

Sincerely,

Robert L. Stephens, Jr.
Director

4328-C Washington Street West
Charleston, WV 25313
July 19, 1994



Robert L. Stephens, Jr., Director
WV Division of Personnel
Building 6, Room 416
1900 Kanawha Boulevard East
Charleston, WV 25305-0139

RE: Public Hearings on Administrative Rule
Longevity Increases

Dear Director Stephens:

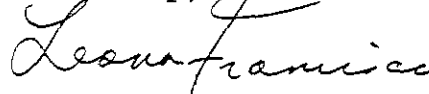
The Administrative Rule, Section 5.09, as it relates to Longevity Increases is of concern to me. It states "...without a salary increase....". Salary increase is not a defined term in the West Virginia Administrative Rule. How will this be interpreted by your staff?

If an employee is to be denied a longevity increase because of a promotional advancement, an across the board increase (cost-of-living or otherwise), a part-time to full-time pay adjustment, etc., then I suggest a change in the wording or that "salary increase" be defined in the Administrative Rule. It is noted that the Instructions for the Across-the-Board Increase dated April 14, 1994, IV.A. state that Longevity Increases shall not apply until July 1, 1995.

To make my position clear, I will state it in a different way. An employee who receives a "salary adjustment" on July 1, 1994, which elevates their pay to the "maximum rate", should not be ineligible for a "salary advancement/longevity increase"; there should be no impact on eligibility. All other employees remain eligible. Most employees near, at, or above their maximum rates are tenured employees. Could this section of the Administrative Rule be a form of age discrimination?

I appreciate the opportunity to comment on the proposed changes to the Administrative Rule.

Sincerely,



Leona Francisco

elf



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

August 4, 1994

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Mark A. Scott, Chief
Office of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311-1088

Dear Mr. Scott:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel. In response to your questions and concerns, I offer the following information.

In regard to definitions for assembled examination, classify, day, Division of Personnel, hourly rate, intermittent appointment, limited term employment, ninety-day exempt appointment, original appointment, per diem, provisional appointment, reinstatement, student employee, and unassembled examination we have attempted to express the essential nature of the terms. Further clarification of the conditions, processes and variations of these terms, if necessary, is contained in the text of the Rule.

Minimum qualifications or duties, for purposes of determining a demotion, are found respectively in job specifications and position descriptions. The term "step" in this definition has been changed to "rate", thus a lower rate is any lower rate, irrespective of pay increments set for other personnel transactions.

The term "for cause" has been deleted from the definition of demotion and added to the definition of dismissal.

The term existing employee is defined because of its specific use in the Rule regarding preference hiring.

The definition of fitness comports with ADA requirements.

In the definition of grievance, the placement of the word "State" is correct.

Generally, pay rates must be within the specified range. Exceptions are rates resulting from longevity increases or across-the-board adjustments.

The definition for "pay increment" is shown in your copy under "increment". We have changed it to "pay increment".

We have corrected the spelling of practitioner throughout, the duplicate "the the" and the unnecessary hyphenation of prescribed.

Mr. Mark A. Scott
August 4, 1994
Page two

There is an exempt category of employment for students.

The definition for veteran is taken from the West Virginia Code.

In regard to your comments on Section 5.04.(a), one of the purposes of establishing ranges or rates of pay is to reflect the value of the work of the positions assigned to those particular pay ranges or rates. This language does not bar promotions of employees whose salaries are or would be above the range because a demotion in pay only can be processed simultaneously with the promotion and thus result in no change in pay for employees so promoted.

The language in Section 5.04.(f) was made consistent in regard to actions by the Board. We also reviewed the language in 5.04.(f)4. and believe it to be correct as stated.

The language in 5.05.(c) has been changed to confine it to actions within an agency. In regard to your other questions on this section, please see my response regarding Section 5.04.(a) (above).

The provision for longevity increases was added to the Administration Rule several years ago in recognition of the fact that there is no specified schedule for granting general salary increases. Thus, when a general salary increase is given, the provisions for longevity increases do not apply. Again, regarding the maximum rates of pay grades, I refer you to my response regarding Section 5.04.(a) (above).

Deletion of Section 6.02.(b) does mean that applicants will not be ranked by residence.

In Section 6.04.(c) we have corrected the numbers to read "...6.04.(a) 4, 5, 6 and, 7...".

The spelling error in Section 7.03.(b) has been corrected.

The reference in Section 8.02.(a)2. has been corrected from 7.02 to 7.01.

The language in Section 9.04(a), while not exactly the same as in 9.02(a), has the same meaning and is correct.

Section 9.06. has been modified.

The language in Section 10.01.(b) and 10.05.(a) has not been changed as we have not encountered problems with agencies' determinations of when the probationary period ends and permanent status begins.

Mr. Mark A. Scott
August 4, 1994
Page three

Section 10.04. has been changed to reflect geographic area rather than local office.

The voluntary demotion of an employee because of that employee's desire for the demotion along with the employer's agreement to the demotion can be characterized as due to business necessity and should be processed in accordance with Section 11.04.

We are reviewing the language in Section 12.02. to determine if the reference in Section 10.05. is as clear as intended.

The language in Section 12.03. has been changed from "deputy" to "designee".

The language in Section 12.04.(f)1. has been changed from "non-status employees" to "employees without permanent status". In 12.04.(f)2., the method of calculating tenure is not optional, it is inclusive.

The listing of occupational groups referenced in Section 12.04.(g) will be available to agencies in the near future. The term "onto" in subsection (h) has been changed to "to".

The subsections in Sections 15.03. and 15.04. are not identical, and thus not shown in the same order.

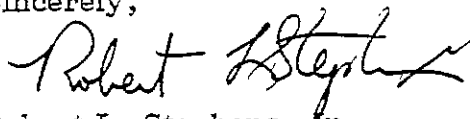
In Section 15.04(f)5. and 6., employers are required to grant sick leave to employees (i.e. "Accrued sick leave shall be granted to employees for the following reasons..."). Employers are not required to (but may) allow employees to use annual leave for the reasons specified.

Section 15.04.(g)2. has been changed back to "(I)mmediately upon".

We are reviewing the language in Section 15.09.(a) to determine if further clarification is needed.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or concerns.

Sincerely,



Robert L. Stephens, Jr.
Director



S

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1201 Greenbrier Street
Charleston, WV 25311-1088

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Laidley Eli McCoy
Deputy Director

July 19, 1994

MEMORANDUM TO: Robert L. Stephens, Jr., Director
WV Division of Personnel

SUBJECT: Notice of Public Hearing -
Comments on Administrative Rule

The attached comments are being forwarded to you for your information and review as a result of your request for comment on the proposed Administrative Rule amendments.

Mark A Scott

Mark A. Scott, Chief
Office of Water Resources

MAS/sfs

Attachments

OFFICE OF WATER RESOURCES
Comments on Proposed DOP Administrative Rule

Section 3. Definitions

- 10) Assembled Examination - don't the applicants do more than come to a test location, how are scores assigned?
- 22) Classify - Order of processing would suggest that to classify a position is the process of analyzing, evaluating, and ascertaining. Classify also means to allocate every position to the appropriate class in the classification plan.
- 25) Day - It seems extremely common for staff to be unable to discern (no matter how apparent it seems) the difference between work day, paid day, and calendar day. It would seem that additional definitions are appropriate.
- 26) Demotion - How is the measure of "minimum qualification, or duties" applied? Is the 'lower step' language interpreted to mean "the pay differential established by the State Personnel Board" and what is that amount currently - (hiring rate - 3% increments, salary advancements 0-10%, promotion - 5% with optional 3% increments, longevity rate 1\$ to 10%, salary equity - gone except in the Pay Plan Implementation Policy II. Definitions) ?

Demotion without Prejudice - Definition of Demotion cites "A change for cause," therefore, voluntary demotions or Demotion without Prejudice are not provided for or defined?? Rule should provide for an employee's choice to seek and accept a lower level position without an employment 'blemish.' Preferred language is Demotion without Prejudice so that the definitions will 'fall together' in the rule.

- 30) Dismissal - Is not a dismissal 'for cause'? Should this not be cited in the definition?

- 32) Division of Personnel - More specifically is responsible for planning, evaluating, administering and implementing personnel programs and policies in State government.

- 39) Existing Employee - There is no apparent need for this definition -- the subject is covered under Employee. However, if there is some need - the point is lost! Is it intended to differentiate between permanent vs. temporary employment? Is it intended to narrow the scope of employee by limiting it to classified or classified-exempt staff? Is it intended to include volunteers not paid a wage?

- 40) Fitness - Has this definition been reviewed as a result of the ADA?

42) Grievance - Is placement of the work 'State' correct. Does this apply to classified employees of political subdivisions and not classified-exempt employees of political subdivisions?

43) Hourly Rate - Needs to address the method of calculating Hourly Rate for overtime pay which is different?

50), 57), 61), 62), 75), 80), 88), 90) Intermittent Appointment, Limited Term Employment, Ninety-Day Exempt Appointment, Original Appointment, Provisional Appointment, Reinstatement, Student Employee, Temporary Appointment - definitions do not convey information as to whether or not merit system protections are afforded these positions.

65) Pay Rate - Not all rates are within the range. The 'approved pay plan' is called the WV DOP Salary Schedule or Pay Schedule.

Pay Increment - Definition from the Pay Plan Implementation Policy was not incorporated?

66) Per Diem - Is this not a daily pay rate?

68) Physician/Practitioner - Misspelled 'practitioner' and 'the the' should be 'by the'

73) Probationary Period - No hyphen necessary in 'pre-scribed'

74) Student Employee - Is there a Student Exempt Appointment?

96) Unassembled Examination - How are scores assigned, what is the evaluation procedure?

98) Veteran - This is unclear regarding the flow between a, b, c, and d. Is it 'and' or 'or' after a and b?

Section 5: Compensation Plan and Salary Regulations

5.04 Implementation of Plan

a) Assignment of Classes - "No salary shall be approved by the Director of Personnel unless it conforms to one of the pay rated in the pay grade assigned to the employee's class of position." This language can serve to bar a promotion of an employee who is currently above range and where a 5% increase as required in the Pay Plan Implementation Policy (effective May 1, 1994) would also place the employees salary above range. This is career limiting. Even if only for a statistically small group of State employees, it is unfair. The language needs to be corrected to provide for the impact of Longevity Increases on pay ranges.

f) Salary Adjustments, 2. a. 1. and 2. b. 1. - Language inconsistent with regard to Board.

4. - Contradictory use of term employee (note definition of employee), use of former employee (as in 12.04 Layoff) more appropriate.

5.05 Pay on Promotion, (c) Exceptions - The obvious intent is to prevent manipulating the system to engineer increases. However, the restriction seems not to allow for legitimate situations that may arise (however infrequent) due to reorganizations or budget cuts that result in an functional impact on employees without intent to enhance or impair the terms of employment. It would seem that the proposed rule change is overly restrictive. Employees should be able to apply for posted positions in other agencies without their salary history following them. Each new job begins new employment terms. Language narrowing this restriction to an agency level seems more appropriate.

Another issue to be addressed: situations have been experienced where the number 1 applicant for a position was not selected due to either financial constraints as a result of the salary calculation method, or due to an inequity created with salaries of current staff. Has a procedure for an employee to voluntarily waive the mandatory promotional increase been considered? Can an interpretation of the 'demotion' definition allow for voluntary demotion of pay at the employee's initiative?

Another question: Can employees be promoted that are currently 'above range'? Where do the rules address this occurrence, or are these employees limited in terms of opportunities for career advancement?

5.09 Longevity Increases -

What is the Basis for a Longevity Increase?

What is the Amount of a Longevity Increase?

The assumed meaning of 5.09 is "...or is within 5% of the maximum in the range and the proposed increase will exceed the maximum of the range," since the intent is not to create Longevity Increases that are within the range. Why do Instructions for legislated increases always bar Longevity Increases for one year for 'above range' staff? What is the basis for this in the Administrative Rule? Salary Adjustments do not have an impact on salary eligibility of any other class of employee. Why does it have a negative impact on the most tenured staff? This is a long term practice that was continued effective with this July 1, 1994 increase. The impact of the method of implementing the legislated raises this year (without any adjustment to the pay plan) means that greater numbers of staff are moved above range and impacted by that policy.

6.02 Notice of Examinations (b) - Does deletion of this section mean that all applicants will be ranked according to score only and not residence?

6.04 Disqualification of Applicants (c) - "6.04 (a) 5, 6, 7, 8, and 12 shall be permanently disqualified for applying." RE: #8

Do you really intend to permanently disqualify an applicant because he failed to submit his application correctly or within prescribed time limits? Isn't this rather harsh?

7.03 (b) Preference Registers 3. - Misspelled 'eligible.'

8.02 (a) 2. - Where in Section 7.02 does it provide for certification of names if no register exists?

9.04 Intermittent Appointments (a) - Language not consistent with language in 9.02, "names of persons who have successfully passed an examination," instead of 'eligible;' and the "Selection shall be made for each position from top ten names including any persons scoring the same as the tenth name or any persons scoring at or above the ninetieth percentile on the register." vs. "the ten highest available names..."

9.06 Limited Term Employment - Repeats the contents of the definition, is this necessary.

Section 10. Probationary Period (b) - No language corrections were made to address the continuing issue of when a probationary period ends. Has this been resolved? The language as written, "Permanent appointment ... shall begin with the date ending the probationary period" makes the beginning and the ending at the same time. While common practice has been immediately following the end of the probationary period, for example, persons hired on February 14th are customarily certified permanent on August 14th.

10.04 Transfers during Probation - Misspelled 'Competitive' twice. Local Office Certification (Section 8.03) was deleted and geographic selective certification was provided for in Section 8.03 (c).

10.05 Dismissal during Probation - The problem of when a probationary period ends continues in this section. If the permanent status begins on the last day of probation, then the dismissal notice must be given on the day before the last day of probation. This last day of probation needs clarified in the rules.

11.04 Demotions - The explanation of voluntary demotion does that agree with the common usage throughout the service, which is not business necessity (which is agency motivated), but employee desire for a change. In accord with this definition, what documentation is required to show 'business necessity' and how does an agency process a change as a result of an employee applying for a lower level posted vacancy?

12.02 Dismissals - Since Section 10.05 Dismissal during Probation, now references 12.02, shouldn't the reference to 'permanent' employee be removed.

12.03 Suspension - "Appointing authority or deputy" not consistent with new language in 12.02 Dismissals.

12.04 Layoff (f) 1. - What is a non-status employee? Should this be all employees except permanent employees? Use of non-defined terms makes the regulations difficult for program managers to understand.

2. - Is the method of determining tenure optional between the two listed?

(g) - How are occupational groups now determined? The new Classification and Compensation Plan effective April 30, 1994 does not delineate Occupational Grouping and code numbers grouped in the 8000 and 9000 series no longer distinguish Occupational Groups since the Reclassification Project. Where are these grouping available?

(h) Recall - How can an employee be recalled 'onto' a job?

(i) Preference Hiring - vacancies at agencies

15.03 Annual Leave, (d) Coverage & 15.04 Sick Leave, (b) Coverage - Make it easier -- list elements in the same order.

15.04 Sick Leave, (f) Granting, 5. & 6. - Is the intent to mandate that employees charge such appointments to sick leave? Can not an employee choose to use accrued annual leave?

7. Misspelled 'must' (much)

(g) Physician's Statement - This change could result in work performed by an employee who has not actually been released by a physician to return to duty or full duty. This could cause increased liability to an agency and cause additional injury to the employee. It could also place other employees at risk. What is the basis for this change?

15.05 Leave of Absence Without Pay, (d) End of Leave, 2. -Misspelled 'practitioner'

15.09 Injury on the Job, (a) - It appears that the employee must repay only the value of sick leave charged? What about the value of annual leave charged? Doesn't it have to be repaid if the leave is to be restored to the record?. It seems that the phrases should be 'net value of sick and/or annual leave paid' and 'sick and/or annual leave paid,' or is repayment of annual leave not an option?

15.09 (b) - Misspelled 'practitioner'



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STATE
PERSONNEL BOARD
John A. Canfield, Chairman
Rev. Paul J. Gilmer, Member
Sharon H. Lynch, Member
Roger Morgan, Member
Eugene Stump, Member

August 4, 1994

Andrew N. Richardson, Commissioner
Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia

Dear Commissioner Richardson:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel. In response to your questions and concerns, I offer the following information.

The certification by lot for semi-skilled and unskilled positions would still allow for crediting veterans' preference points. As anticipated, for each certification, eligibles on the appropriate list would be assigned scores randomly. Applicable veterans' preference points would be added and then the top ten percent certified. This is a method used in other merit systems which both recognizes the veterans' preference and the fact that no formal training or previous experience is required for the positions.

By statute, veterans' preference points are added to final passing scores. Thus a veteran with a final passing score of 72.00 and qualifying for a 5-point preference would be put on the register with a score of 77.00. As you can see, this does not necessarily allow that veteran to "rise to the top" of the certification list. On the other hand, if that same veteran received a final passing score of 92.00 [97.00 with veterans' preference points added], it is likely that s/he would "rise to the top" of the certification list. The same would be true for the proposed method of certification for semi-skilled and unskilled positions.

We do not plan to change the current rule requiring official orders to support requests for military leave. Absent official orders, agencies would be hard-pressed to determine whether, when, and for how long an employee was acting under official military orders. In addition, we have not been advised that obtaining such orders has been a problem for employees. Further, and unfortunately, there have been incidents of abuse in this area.

In regard to the amendments which further clarify that successive intermittent and/or temporary appointments are not permitted, we do not think this will have a detrimental effect on staffing your local offices. You suggest the creation of the category of irregular part-time employment to resolve your concerns on the amendments regarding intermittent/temporary

Andrew N. Richardson
August 4, 1994
Page two

employment. As you mention in your letter, my staff has been working with your staff to fully explain the use of irregular part-time employment. However, I would like to point out that this is a category of employment that has existed for some time. We believe the use of this type of employment combined with the use of non-successive intermittent and/or temporary employment will meet your particular staff needs in light of your fluctuating claims load. I assure you that we will continue to work with you to insure sufficient staffing levels within the limits of your funding.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert L. Stephens, Jr.", with a stylized flourish at the end.

Robert L. Stephens, Jr.
Director

Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Gaston Caperton, Governor
John Ranson, Secretary,
Commerce, Labor and Environmental Resources
Andrew N. Richardson, Commissioner,
Employment Programs



July 18, 1994

A handwritten signature in dark ink, appearing to be "G. Caperton", written over the date.

Mr. Robert L. Stephens, Jr., Director
WV Division of Personnel
Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Stephens:

Please accept this letter as the Bureau of Employment Programs' written comments for the public hearing on the proposed amendments to the Administrative Rule of the West Virginia Division of Personnel.

The first issue concerns veterans and the 10-point or 5-point preference (Section 8.03) relating to certain unskilled and semi-skilled classification for which no previous education, training or experience is required. The proposed amendments would select eligibles for certification by lot. Would the 10-point and 5-point preference veterans rise to the top of the certification list? Concern was raised by the Bureau's Director of Veterans' Employment and Training Services that the intent of the Code may be thwarted by not providing all veterans with preferential treatment under the selective certification process.

The second issue, while not a proposed rule change, concerns Section 15.10, Military Leave, paragraph (a) in which "an official order from the appropriate military officer in support of the request for military leave" is required. A Supreme Court decision relative to a request for military leave issue under the Veterans' Re-employment Rights statute ruled in the 1981 Maryland case that "in issues where employers have attempted to require the presentation of orders, the intent of the statute was that the reserve component member was required to provide notice and the orders will not necessarily be in writing." It is suggested that consideration be made to deleting the last sentence in paragraph (a) and inserting in its stead the following: "An employee must be acting under official military orders to qualify for military leave." Such action would reduce reservist and veteran confusion and complaints.

The Unemployment Compensation and Employment Service Divisions are also concerned about part-time workers. Under the Wagner-Peyser 10 percent program, we have made use of

Robert L. Stephens, Jr.
July 18, 1994
Page 2

intermittent and temporary staff to fill "high performance" positions in local offices. Since those positions may very well shift from one program year to the next, the Bureau felt it best not to use permanent full-time positions. The proposed amendments in Section 9.05 would disrupt our service to the unemployed worker due to the fluctuation in our unemployment claims load and federal funding process. Bureau staff is working with Division of Personnel staff to develop an alternative temporary-type employment called "Irregular Part-time Employment" as defined in Section 3.51 of the Rule. I would strongly recommend not approving the amendments to Section 9.04, 9.05 and 9.06, until an alternative temporary-type employment is fully developed and implemented.

One would have to understand our federal funding process and the nature of the public service we provide to appreciate the disruptions the proposed amendments could cause. The workload in the unemployment compensation and employment service divisions is affected by unpredictable economic factors, such as surges in unemployment and federally-mandated extended unemployment benefit programs. During these periods, which are of limited duration, additional personnel is needed to deal with the increased workload. The Bureau receives federal contingency funding which is used for hiring temporary-type employees during these periods. The contingency funding allows the flexibility to hire temporary personnel for the duration of the increased work activity. Given the nature and complexity of the work involved, it is essential to maintain those temporaries who are familiar with procedures.

The Bureau's unemployment compensation funding process requires us to hire temporary/contingency employees. The U.S. Department of Labor allocates to our state a base/permanent staff funding at \$31,184 per base position for fiscal year 1994. For unemployment claims processed above the base-funded level, we earn quarterly contingency/temporary funded staff at \$16,906 per contingency position. If the workload/unemployment rate decreases, then contingency funds are reduced. The attached chart shows how our funded staff fluctuates from a low of 289 in fiscal year 1990 to a higher of 374 in 1993 for a difference of 89 positions, of which most were contingency/temporary positions.

Obviously, because of the fluctuating workload and federal funding, complying with the new intermittent/temporary rules would make it difficult to provide the current level of services to the public. If the revised Rule is approved as drafted, we can foresee on-going layoffs. Furthermore, the potential unfunded cost of hiring permanent staff instead of temporary staff (a \$14,279 difference) could have been up to \$999,530 (336

Robert L. Stephens, Jr.
July 18, 1994
Page 3

base) for 70 positions in fiscal year 1993. If layoff of permanent staff during decreasing workload periods is not accomplished in a timely manner, then an additional unfunded liability would occur.

To replace temporary staff with permanent staff would require us to seek state funds. How do we explain to elected officials that our unemployment compensation program needs state funds due to personnel rules while other states' programs can operate within federal funding limits without state funds? Hiring and layoff of new temporary staff every six months is not feasible because it will result in extra administrative costs due to payment of unemployment benefits and additional staff time training new employees.

The following are some suggestions to resolve the concerns with the amendments on temporary/intermittent staff:

1. Exempt the Bureau of Employment Programs from the Rule in questions.
2. Allow the Bureau to continue to use 30/90 Day Exempt employees following or preceding a temporary/intermittent employment assignment.
3. Create a new temporary classification for the Bureau, such as: Irregular Part-time Employment, Temporary-type appointments could be made permanent and the employee worked as needed (this option is used by other states).
4. An intermittent classification which allows the employee to work ten (10) months of the year.

The use of private temporary employment services to provide staff is not a highly desirable option. Current contracts for office staff pay less than the state. Since many of our current temporary staff would seek employment through these services, this could create a recruitment and retention problem due to the nature and complexity of the work.

The proposed amendments regarding this issue, if promulgated, would have a far-reaching negative impact on the Bureau's service to the public and budget. The utilization of temporary staff by the Bureau has been successful. We are currently working with the Division of Personnel staff to develop a solution to this problem. Until a solution has been implemented, we urge you not to approve the amendments to the Administrative Rule involving the use of temporary-type staff.

Robert L. Stephens, Jr.
July 18, 1994
Page 4

Should you have any questions, please contact me or
Thomas K. Rardin, Personnel Administrator.

Sincerely,

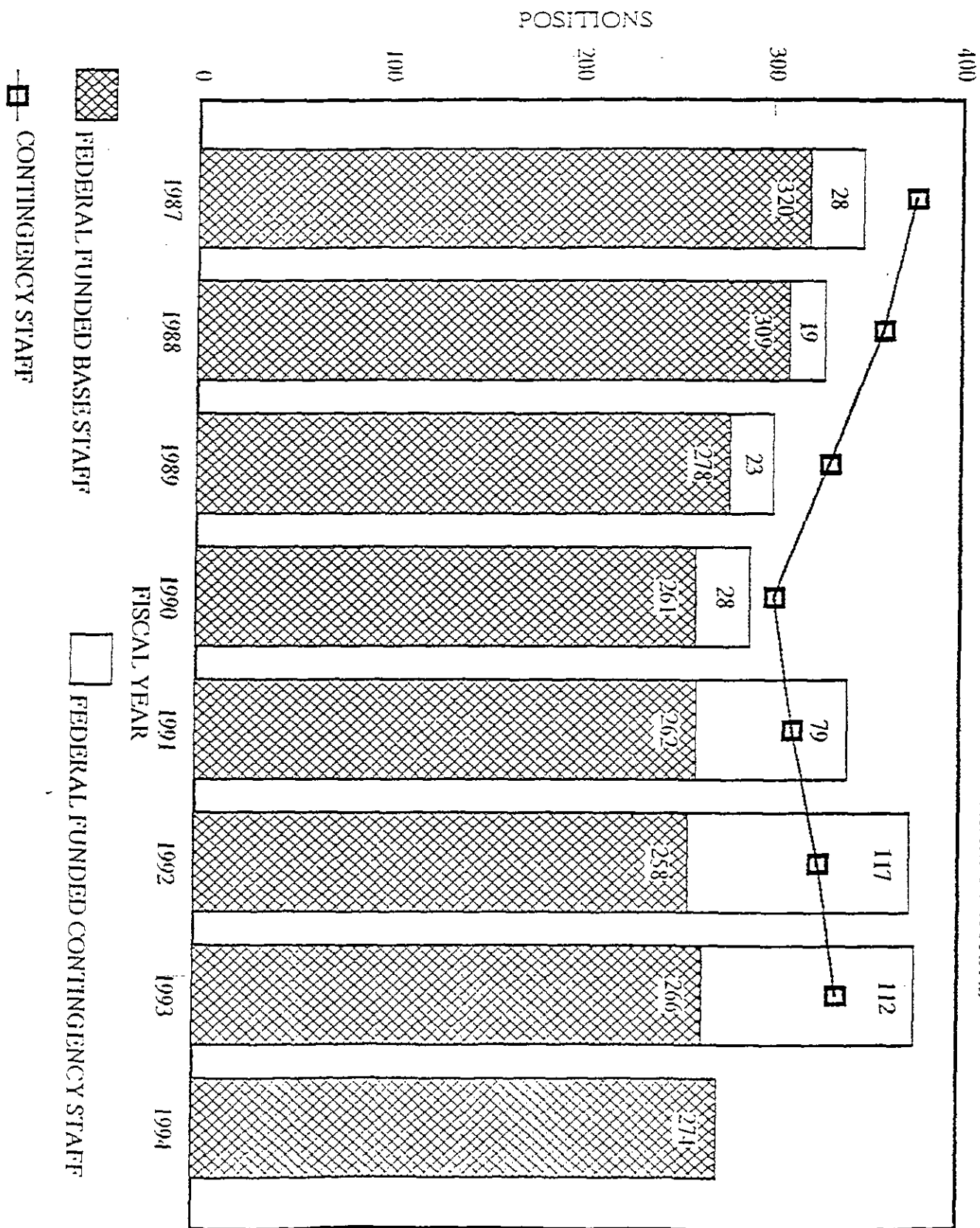

Andrew N. Richardson
Commissioner

ANR:vhe

Enclosure

cc: The Honorable Ken Heckler, Secretary of State
Daniel Light, Director - UC Division
Anthony Selario, Director - ES Division

COMPARISON OF POSITIONS USED VS FUNDED POSITIONS





Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

August 4, 1994

STATE
PERSONNEL BOARD
John A. Canfield, Chairman
Rev. Paul J. Gilmer, Member
Sharon H. Lynch, Member
Roger Morgan, Member
Eugene Stump, Member

Mr. Nicholas J. Hun, Commissioner
Division of Corrections
112 California Avenue
Charleston, West Virginia

Dear Mr. Hun:

Thank you for your written comments on the proposed amendments to the Administrative Rule of the Division of Personnel. In response to your questions and concerns, I offer the following information.

In the rule, masculine gender personal pronouns are used. This is done for simplicity of style and to be consistent with W.V. Code §2-2-10(a) "...a word importing the masculine gender only may be applied to females as well as males...". In all cases, these personal pronouns should be interpreted as applying to females and males.

As revisions are made to the Administrative Rule, the appropriate identifying numbers and letters must also be revised.

The correction in the definition of physician/practitioner has been made.

In regard to Section 4.02., the authority to abolish, add or change existing classes of positions rests with the Board. The Board has delegated authority to the Director to make limited changes in existing classes, for example, minimum qualifications.

The language used in Section 5.01. is consistent with that in W.V. Code §29-6-10.

The assignment of classes [Section 5.04.(a)] to appropriate pay grades is done by the Board.

We have reviewed your comments on Section 6.04.(a), Disqualification of Applicants. While we are sensitive to the particular issues in selecting correctional staff, we believe that this section is sufficient to screen applicants in a legally permissible manner. I encourage you to continue to work with Division staff as you encounter specific problems in selecting staff.

The provisions Section 9.02.(a) are specifically outlined in W.V. Code §29-6-10(7) and cannot be modified by administrative rule.

Mr. Nicholas Hun
August 4, 1994
Page two

The prohibition of transfers during probation (Section 10.04.) is intended to prevent abuses of the selection process. Our staff has evaluated your division's situation in regard to the closure of the Moundsville facility and subsequent transfer of employees from that facility. It is our understanding that the terms and conditions of employment were clearly communicated to all appropriate parties during the selection process; that is, that those persons hired could potentially be transferred to another facility upon closure of the Moundsville facility. Consequently, it is our opinion that this section does not apply under these specific circumstances.

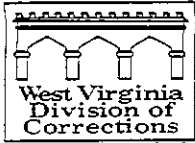
The provisions of W.V. Code §29A-1-1 et seq., under which our Administrative Rule is authorized do not appear to allow for the type of waiver you have recommended.

Again, thank you for your comments on the proposed amendments to our Administrative Rule. Please let me know if you have further questions or comments.

Sincerely,

A handwritten signature in cursive script, reading "Robert L. Stephens, Jr.", written in dark ink.

Robert L. Stephens, Jr.
Director



DEPARTMENT OF PUBLIC SAFETY
DIVISION OF CORRECTIONS
NICHOLAS J. HUN, COMMISSIONER



GASTON CAPERTON
GOVERNOR

MAJOR GENERAL JOSEPH J. SKAFF
SECRETARY

OFFICE OF THE COMMISSIONER
112 CALIFORNIA AVE.
STATE CAPITOL COMPLEX
CHARLESTON, WV 25305-0280
(304) 558-2036

MEMORANDUM

TO: Robert L. Stephens, Jr.
Director, Division of Personnel

FROM: Nicholas J. Hun
Commissioner, Division of Corrections

DATE: July 19, 1994

RE: Agency Comments - Amendments to DOP Administrative Rule

Please find attached notations made by Division of Corrections staff regarding amendments to the Administrative Rule of the West Virginia Division of Personnel, Chapter 29-6-10, Series I.

You will find notations on the following pages as recommendations for additions/clarifications of the amended rule:

<u>Page</u>	<u>Section</u>
3	In #27
4	Note in left margin
5	In new #8 - minor change in wording
8	In Section 4.02 - question/clarification of the word "Board" (carries throughout document)
9	In Sections 5.01 and 5.04 (a)
13	2 page 13's are included with notations on both,
19	In Section 9.02 (a)
22	2 page 22's are included with notations on both in Section 10.04 for consideration
41	Additional wording/waiver

If you have any questions or need clarification of notations made by my staff, please contact Wyetta Fredericks at this office (558-2036).

NJH/bjh

24) Daily Rate: The regular salary paid to an employee for the pay period divided by the total number of work days plus holidays in the pay period.

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

26) Demotion: A change for cause 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 step in the pay range assigned to the classification. ~~The two types of demotions are:~~
~~a) Disciplinary Demotion - A reduction in pay 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. b) Demotion Without Prejudice - A change in classification of an employee to a lower classification or a reduction of pay due to work necessity.~~

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

28) Disabled: A person who has a physical or mental impairment which substantially limits one or more of a person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

29) Discretionary: Open to individual choice or judgement.

30) Dismissal: The separation from employment of an employee by an appointing authority.

31) Division: The Division of Personnel.

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

33) Effective Date: The established date an action takes place except for separations.

34) Effective Date of Separation: Last day of work of employees separating due to dismissal, voluntary resignation, voluntary retirement or sudden death; date of death of employees who die while on paid or unpaid leave; date of notification by employees resigning or retiring due to disability as verified by a physician.

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.

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.

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.

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

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

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

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

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 such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of their employer; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees. Any pension matter or other issue relating to public employees insurance in accordance with W.V. Code §5-16-1 et seq., retirement, or any other matter in which authority to act is not vested with the employer shall not be the subject of any grievance filed in accordance with the provisions of W.V. Code §29-6A-1 et seq.

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.

434) Immediate Family: Consists of the father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandfather, grandmother, granddaughter, grandson, stepmother, stepfather, and parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-siblings, stepchildren, and individuals in a legal guardianship relationship.

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

456) Increment: one of a series of regular consecutive increases between the minimum and maximum rates of a pay grade in an approved salary schedule the percentage pay differentials established by the State Personnel Board to implement pay practices including hiring rates, salary advancements, pay on promotion, and longevity increases.

467) Incumbent: Any employee occupying a position.

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

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

4950) 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.

501) Irregular Part-time Employment: Employment in a position for which work hours vary from payperiod to payperiod and are less than the full-time work schedule established by the agency.

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

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

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

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

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

57) 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.

568) 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.

579) 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.

5860) Month: Any of the twelve parts into which the calendar year is divided.

5961) Ninety-Day Exempt Appointment: Employment for no more than ninety (90) working days in a year.

602) Original Appointment: Initial employment of an individual into the classified service as a result of selection from a certification of names from a register.

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

624) 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.

~~63) Salary Schedule: The official schedule of salaries approved by the Governor consisting of multiple pay grades with minimum, maximum, and intervening rates of pay for each grade.~~

645) Pay Rate: One of the ~~fixed steps or increments~~ monthly or hourly rates within the pay range established by the State Personnel Board for each classification included in a the approved pay plan.

656) Per Diem: A daily allowance.

667) 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.

678) 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.

689) 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.

6970) 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.

701) Position Description: The document prepared by the employee or the employing agency and approved by the position supervisor and 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.

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

723) Probationary Period: A specified trial work period pre-scribed 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.

734) 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.

Section 4. Classification Plans

4.01. 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. 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.

4.02. 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.

4.03. 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 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 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 is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.04. Class Specifications - The Board 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. Consideration shall be given 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 shall be construed as 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 power of the appointing authority now or hereafter vested with the right 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, skills and knowledge which would be required of any new appointee to a position in the class as partial evidence of ability to perform the work properly and is to be so construed.

(f) Qualification requirements in the specification for any class, as interpreted in this rule, shall constitute the basis and source of authority for the tests to be included in examinations for the class and for the evaluation of the qualifications of applicants, and for the acceptance or rejection of applications of examinees for the class.

4.05. Position Descriptions - When new positions are created or when duties, responsibilities, supervisory relationships or other significant aspects of current positions are changed, the appointing authority shall provide a completed position description to the Director to be used for position allocation. The completed position description shall be the official source of information for position allocation.

4.06. 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 any licensure or certification requirements are met.

(d) Any incumbent in a position reclassified under this section shall have the right to a review of the action under the procedure established in W.V. Code §29-6-10(1).

4.067. Position Reallocation - Whenever substantial changes occur in the duties and responsibilities assigned to a position ~~or to correct a position misclassification~~, 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.

Section 5. Compensation Plan and Salary Regulations

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

5.01. Purpose and Intent - To attract qualified ^{employees and/or appropriate, suitable} 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. ~~The intent of the Board is to recommend to the Governor a pay plan with annual adjustments for cost of living increases and additional funds for merit increases.~~

5.02. Preparation of 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 approval any ~~annual~~ revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum, ~~intervening~~, and maximum rates of pay for each grade and a plan of implementation. The Board may make periodic amendments to the pay plan in the same manner.

5.03. Adoption of 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.

5.04. Implementation of Plan

^{Director}
^{Is it this done at Board level?}
(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. 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 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 where the appointing authority can substantiate severe or unusual recruiting difficulties for the job class.

6.04. Disqualification of Applicants

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

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

2. he is so disabled as to be rendered unfit for the performance of the duties of the class;

3. ~~he is addicted to the use of narcotic or intoxicating liquors;~~

4. ^{infamous} he has been convicted of an ^{involving moral turpitude} crime or other crime ^{or whose background suggests} which has a reasonable connection to the position/class for which he is applying; ^{that he is not a suitable candidate.}

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

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

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

8. he has directly or indirectly obtained information regarding examinations to which as an applicant he was not entitled;

9. he has failed to submit his application ^{accurately & completely} ~~correctly~~ or within the prescribed time limits;

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

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

12. ^{too restrictive w/3} at least three former employers ^{Agency need discretion power here!} state that they would not re-employ him, or otherwise indicate that his services as an employee were unsatisfactory or that he is lacking in character and fitness for the position he applied for;

13. the register from which he 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 and report that he is not considered to be suitable for a position in the class he was interviewed for;~~

14. he is not eligible to work in the United States.

15. he has otherwise violated provisions of this rule.

(b) In order to be admitted to an open competitive examination, an applicant must have satisfied all minimum qualifications of the position for which he has requested an examination, except that he may be admitted if he 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 is engaged in educational pursuits that will qualify him; or (2) a deficiency of no more than one month of qualifying experience and, at the time of application, he is employed in work that will qualify him. An applicant so admitted, and 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.

6.04. Disqualification of Applicants

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

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

2. he is so disabled as to be rendered unfit for the performance of the duties of the class;

~~3. he is addicted to the use of narcotics or intoxicating liquors;~~

~~43.~~ he 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 is applying;

~~54.~~ he has made a false statement of material fact or has misrepresented his qualifications in his application;

~~65.~~ he has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;

~~76.~~ he has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

~~87.~~ he has directly or indirectly obtained information regarding examinations to which as an applicant he was not entitled;

~~98.~~ he has failed to submit his application ^{completeness} correctly or within the prescribed time limits;

~~109.~~ he has taken part in the compilation, administration, or correction of the examination;

~~140.~~ he has taken the same examination less than 60 days prior to the date of the current examination;

~~121.~~ ~~at least three~~ former employers state that they would not re-employ him, or otherwise indicate that his services as an employee were unsatisfactory or that he is lacking in character and fitness for the position he applied for;

~~132.~~ the register from which he 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 of the following conditions exist: (1) he has been convicted of a crime involving moral turpitude and (2) he is not considered to be suitable for a position in the class he was interviewed for;~~

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

14. he has otherwise violated provisions of this rule.

(b) In order to be admitted to an open competitive examination, an applicant must have satisfied all minimum qualifications of the position for which he has requested an examination, except that he may be admitted if he 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 is engaged in educational pursuits that will qualify him; or (2) a deficiency of no more than one month of qualifying experience and, at the time of application, he is employed in work that will qualify him. An applicant so admitted, and 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.

(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) A person employed in such a position continuously for six months immediately preceding that date may take a qualifying examination administered by the Director and may be given a probationary or permanent appointment in the position if he passes the examination. If recommended by the appointing authority, he may be admitted to an examination regardless of the minimum qualifications for the class to which the position is allocated. 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. An employee who fails to pass the qualifying examination shall be separated within thirty days after the examination unless there are no available eligibles on the register for the class, in which case his employment may be continued but he must be separated within thirty days after certification of available eligibles.

(d) A person employed in such a position for less than six months preceding that date of affiliation shall be separated within thirty days after that date unless there are no available eligibles on the register for the class, in which case his employment may be continued but he must be separated within thirty days after certification of available eligibles, provided, however, that he may be given a probationary appointment if he has passed an open-competitive examination for the class and is within reach on the register for certification and original appointment.

(e) In making the appointments provided for in Section 9.01(c) and (d) of this rule it is optional with the appointing authority whether to 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 decision on this matter for the records.

9.02. Original Appointments

(a) All original appointments to positions exclusive of exempt positions shall be made in accordance with this rule. Selection shall be made for each position first from the eligibles on appropriate preference registers. Upon exhaustion of the preference register, selection shall be made for each position from the top ten names including any persons scoring the same as the tenth name or any persons scoring at or above the ~~ninety~~ eightieth percentile on the register, as determined by Section 8.02 of this rule exclusive of the names of those who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing based on Section 6.04 of this rule which objection 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 interview them. Final selection shall be reported in writing by the appointing authority to the Director.

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

9.03. Provisional Appointments

(a) If, in the opinion of the appointing authority, 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

In the event an agency is ¹⁹ having ~~several~~ for multiple positions, and it is deemed necessary by an agency Director ~~that~~ the Director of Personnel may authorize consideration of ~~the~~ applicants who ~~offer~~ score at or above the eightieth percentile on the register

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. In the event it is determined 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.

10.03. 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 meets the minimum qualifications of the lower class. However, such action may not be taken until the employee has been presented with the reasons in writing and has been given a reasonable time to reply thereto in writing, or to appear personally and reply to the head of the department or his deputy. Neither shall such action be taken prior to completion of one-third of the probationary period, and the probationary period for the class of position to which the employee is demoted shall begin with the date of demotion.

10.04. Transfers during Probation - An employee shall not be transferred during his probationary period to a position in another class for which a preference or competitive register exists, nor may an employee, certified to a vacancy in a local office on a strictly local-area basis in accordance with the provisions of Section 8.03 of this rule, be transferred from that local office to any other office or class for which a preference or competitive register exists, *provided that upon proper notification a probationary employee may be transferred from one subdivision of an agency to another.*

10.05. Dismissal during Probation

with the written approval of the Dir. of Personnel
(a) If at any time during the probationary period, it is determined the services of the employee are unsatisfactory, the employee may be dismissed ~~from the service, but such action shall take place only after the person to be dismissed has been presented with the reasons for the dismissal stated in writing, and has been allowed a reasonable time to reply thereto in writing or upon request to appear personally and reply to the head of the department or his deputy. The statement of reasons and the reply shall be filed as a public record with the Director. Notification of the dismissal shall be given to the employee 15 calendar days prior to the effective date of his dismissal, and no further salary shall be paid to him except in payment for accrued annual leave in accordance with Section 12.02 of this Rule. If the fifteen days notice is given on or before the last day of the probationary period, but less than fifteen 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. Fifteen days notice shall not be required for employees in certain classes where the Board holds by formal action that the public interests are best served by withholding the notice, and is at the discretion of the appointing authority for employees in any class when the cause of dismissal is gross misconduct.~~

(b) The Director may restore the name of a probationary appointee who has been dismissed to the register from which he was certified, in accordance with procedure described in Section 12.08 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

11.01. Method of Making Promotions

(a) Whenever practical and in the best interest of the service, a vacancy will be filled by promotion, after consideration of the eligible permanent employees in the agency or in the career service upon the basis of the employees' demonstrated capacity and quality and length of service. In filling vacancies, an effort should be made to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees.

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. In the event it is determined 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.

10.03. 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 meets the minimum qualifications of the lower class. However, such action may not be taken until the employee has been presented with the reasons in writing and has been given a reasonable time to reply thereto in writing, or to appear personally and reply to the head of the department or his deputy. Neither shall such action be taken prior to completion of one-third of the probationary period, and the probationary period for the class of position to which the employee is demoted shall begin with the date of demotion.

10.04. Transfers during Probation - An employee shall not be transferred during his probationary period to a position in another class for which a preference or competitive register exists, nor may an employee, certified to a vacancy in a local office on a strictly local-area basis in accordance with the provisions of Section 8.03 of this rule, be transferred from that local office to any other office or class for which a preference or competitive register exists.

10.05. Dismissal during Probation

(a) If at any time during the probationary period, if unsatisfactory, the employee may be dismissed from the service. ~~person to be dismissed has been presented with the reasons allowed a reasonable time to reply thereto in writing or up of the department or his deputy. The statement of reasons a Director. Notification of the dismissal shall be given to the e of his dismissal, and no further salary shall be paid to him e accordance with Section 12.02. of this Rule. If the fifteen day probationary period, but less than fifteen days in advance of fifteen days from the date of the notice and the employee sh not apply to employees serving a twelve month probationary employees in certain classes where the Board holds by forms withholding the notice, and is at the discretion of the appoin cause of dismissal is gross misconduct.~~

(b) The Director may restore the name of a probationary employee from which he was certified, in accordance with procedure. The Director shall not in the future certify the name of that person to the register.

* Arrived that, upon proper justification a probationary employee may be transferred to another subdivision w/in the agency w/ the written approval of the Director of the DOP.

Section 11. Promotions, Demotions and Transfers

11.01. Method of Making Promotions

(a) Whenever practical and in the best interest of the consideration of the eligible permanent employees in the agency employees' demonstrated capacity and quality and length of service to achieve a balance between promotion from within the service and new employees.

23.03. Apprenticeship Advisory Board - The Director shall prepare and submit necessary reports to the Apprenticeship Advisory Board established in accordance with W.V. Code §29-6-17b regarding the achievements and deficiencies of the apprenticeship program.

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 will 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 will 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.

In the event of emergency situations and/or public safety needs, the Director may request to the State Personnel Board that certain regulations be waived. The Director of Personnel or Board may authorize such waiver.

SUMMARY OF AMENDMENTS

The following is a summary of amendments to the proposed amendments to the Administrative Rule of the West Virginia Division of Personnel which were made in response to comments submitted during the comment period. This summary does not include amendments which merely correct errors in spelling, punctuation, grammar, typing and other such corrections. Reference is made to the sections of the Rule which have been amended and the agency/individual proposing the amendment. Further detail is available in the agencies'/individuals' comments and our responses.

Section 3. Definitions

- 27) Demotion: Office of Water Resources proposal.
- 31) Dismissal: Office of Water Resources proposal.
- 50) Irregular Part-time Employment: Bureau of Employment Programs proposal.
- 64) Pay Differential: staff recommendation to supplement Section 5.04.(d).
- 65) Pay Increment: Office of Water Resources proposal.

Section 4.05. Position Description: staff recommendation to further clarify the initial amendment.

Section 5.04.(f)2.b.: Office of Water Resources proposal.

5.04.(f)4: new section added to supplement Section 5.04.(d).

Section 5.05.(c): Office of Water Resources proposal.

Section 5.09.: clarification based on comments from Office of Water Resources, Division of Natural Resources, Leona Francisco and Susan Steele.

Section 12.02.: Office of Water Resources proposal.

Section 12.04.(f)1.: Division of Natural Resources proposal and Office of Water Resources proposal.

Section 15.03(c): staff recommended that the proposed amendment be deleted as it was confusing. This was also done in the following sections: 15.04(f)1. and 6. and 15.08(c)3.

Sections 15.03(e) and 15.04.(c): Department of Health and Human Resources proposal.

Section 15.07.: Division of Natural Resources proposal.

Section 15.09.(a): Division of Highways proposal.

Section 15.10.(a): Division of Highways proposal.

Please note Section 15.08.(b) Family Leave. W.V. Code §21-5D-4(a) requires public employees to exhaust all annual and personal leave prior to being entitled to unpaid family leave. The federal statute (P.L. 103-3) allows employers to require employees to first use their paid vacation, personal or sick

Summary of Amendments
Page two

leave for any part of the 12-weel period. The West Virginia Department of Labor has issued a notice (copy attached) which states that an employee may elect, but is not required, to substitute paid leave, if provided as a benefit. We believe the provision in our Rule is correct as written, but would respectfully **request your review.**

WEST VIRGINIA DIVISION OF LABOR

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Phone (304) 558-7890 • Fax (304) 558-3797

GASTON CAPERTON
Governor



ROY M. SMITH
Commissioner

IN COMPLIANCE WITH THE WEST VIRGINIA PARENTAL LEAVE ACT

AND

THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993*

Employee Qualifications for Family Leave:

- (1) Any employee hired for permanent employment and who has worked for at least twelve consecutive weeks.
- (2) Permits an employee to elect (but employee is not required) to substitute paid leave, if provided as a benefit, for any part of the 12 unpaid work weeks.
- (3) Each spouse employed by the same employer is entitled to a total of 12 weeks of leave without pay.

Unpaid Leave Shall Be Granted:

- (1) At the birth of a son/daughter of the employee.
- (2) Placement of a son/daughter by adoption.
- (3) Care for employee's child, spouse, parent, or dependent who has a serious health condition. This leave can be taken intermittently when medically necessary.
- (4) An employee's own serious illness.

Conditions of Family Leave:

- (1) Leave is restricted to 12 weeks in a 12 month period.
- (2) Leave may be taken on a part-time leave schedule, but shall not exceed 480 hours, and must be mutually arranged between the employee and the employer.
- (3) Employee must give 2 weeks notice to employer if practical.
(Example - Birth or Adoption).

- (4) If the leave is for medical treatment the employee shall give the employer two weeks notice if practical.
- (5) The employer may require certification of a serious illness of a family member from a health care provider before granting leave.

Position Upon Return From Leave:

- (1) The position occupied by the employee prior to the leave shall be held for a period not to exceed the 12 weeks period. The employee shall return to his/her former position.
- (2) The employee does not accrue any tenure, sick or annual leave while on leave without pay.
- (3) Employees taking leave are entitled coverage under any "group health plan" under the same conditions coverage would have been provided if the employee had continued employment during period of leave.
- (4) If the employee fails to return to work, the employer may seek to recover the health insurance premiums paid by the employer.

TO QUALIFY FOR FAMILY LEAVE YOU MUST BE EMPLOYED BY THE STATE IN ANY DEPARTMENT, DIVISION, BOARD, BUREAU, AGENCY, COMMISSION, OR OTHER UNIT OF STATE GOVERNMENT, OR ANY COUNTY BOARD OF EDUCATION IN WEST VIRGINIA.

* This notice complies with the provisions of Section 401.(b) and 402.(a) and (b) of the FMLA.

TITLE IV - MISCELLANEOUS

PROVISIONS

29 USC 2651 SEC. 401. EFFECT ON OTHER LAWS

(b) STATE AND LOCAL LAWS. - Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

29 USC 2652 SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS

(a) MORE PROTECTIVE. - Nothing in the Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

(b) LESS PROTECTIVE. - The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Gaston Caperton, Governor
John Ranson, Secretary,
Commerce, Labor and Environmental Resources
Andrew N. Richardson, Commissioner,
Employment Programs



July 18, 1994

Mr. Robert L. Stephens, Jr., Director
WV Division of Personnel
Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Stephens:

Please accept this letter as the Bureau of Employment Programs' written comments for the public hearing on the proposed amendments to the Administrative Rule of the West Virginia Division of Personnel.

The first issue concerns veterans and the 10-point or 5-point preference (Section 8.03) relating to certain unskilled and semi-skilled classification for which no previous education, training or experience is required. The proposed amendments would select eligibles for certification by lot. Would the 10-point and 5-point preference veterans rise to the top of the certification list? Concern was raised by the Bureau's Director of Veterans' Employment and Training Services that the intent of the Code may be thwarted by not providing all veterans with preferential treatment under the selective certification process.

The second issue, while not a proposed rule change, concerns Section 15.10, Military Leave, paragraph (a) in which "an official order from the appropriate military officer in support of the request for military leave" is required. A Supreme Court decision relative to a request for military leave issue under the Veterans' Re-employment Rights statute ruled in the 1981 Maryland case that "in issues where employers have attempted to require the presentation of orders, the intent of the statute was that the reserve component member was required to provide notice and the orders will not necessarily be in writing." It is suggested that consideration be made to deleting the last sentence in paragraph (a) and inserting in its stead the following: "An employee must be acting under official military orders to qualify for military leave." Such action would reduce reservist and veteran confusion and complaints.

The Unemployment Compensation and Employment Service Divisions are also concerned about part-time workers. Under the Wagner-Peyser 10 percent program, we have made use of

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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intermittent and temporary staff to fill "high performance" positions in local offices. Since those positions may very well shift from one program year to the next, the Bureau felt it best not to use permanent full-time positions. The proposed amendments in Section 9.05 would disrupt our service to the unemployed worker due to the fluctuation in our unemployment claims load and federal funding process. Bureau staff is working with Division of Personnel staff to develop an alternative temporary-type employment called "Irregular Part-time Employment" as defined in Section 3.51 of the Rule. I would strongly recommend not approving the amendments to Section 9.04, 9.05 and 9.06, until an alternative temporary-type employment is fully developed and implemented.

One would have to understand our federal funding process and the nature of the public service we provide to appreciate the disruptions the proposed amendments could cause. The workload in the unemployment compensation and employment service divisions is affected by unpredictable economic factors, such as surges in unemployment and federally-mandated extended unemployment benefit programs. During these periods, which are of limited duration, additional personnel is needed to deal with the increased workload. The Bureau receives federal contingency funding which is used for hiring temporary-type employees during these periods. The contingency funding allows the flexibility to hire temporary personnel for the duration of the increased work activity. Given the nature and complexity of the work involved, it is essential to maintain those temporaries who are familiar with procedures.

The Bureau's unemployment compensation funding process requires us to hire temporary/contingency employees. The U.S. Department of Labor allocates to our state a base/permanent staff funding at \$31,184 per base position for fiscal year 1994. For unemployment claims processed above the base-funded level, we earn quarterly contingency/temporary funded staff at \$16,906 per contingency position. If the workload/unemployment rate decreases, then contingency funds are reduced. The attached chart shows how our funded staff fluctuates from a low of 289 in fiscal year 1990 to a higher of 374 in 1993 for a difference of 89 positions, of which most were contingency/temporary positions.

Obviously, because of the fluctuating workload and federal funding, complying with the new intermittent/temporary rules would make it difficult to provide the current level of services to the public. If the revised Rule is approved as drafted, we can foresee on-going layoffs. Furthermore, the potential unfunded cost of hiring permanent staff instead of temporary staff (a \$14,279 difference) could have been up to \$999,530 (336

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base) for 70 positions in fiscal year 1993. If layoff of permanent staff during decreasing workload periods is not accomplished in a timely manner, then an additional unfunded liability would occur.

To replace temporary staff with permanent staff would require us to seek state funds. How do we explain to elected officials that our unemployment compensation program needs state funds due to personnel rules while other states' programs can operate within federal funding limits without state funds? Hiring and layoff of new temporary staff every six months is not feasible because it will result in extra administrative costs due to payment of unemployment benefits and additional staff time training new employees.

The following are some suggestions to resolve the concerns with the amendments on temporary/intermittent staff:

1. Exempt the Bureau of Employment Programs from the Rule in questions.
2. Allow the Bureau to continue to use 30/90 Day Exempt employees following or preceding a temporary/intermittent employment assignment.
3. Create a new temporary classification for the Bureau, such as: Irregular Part-time Employment, Temporary-type appointments could be made permanent and the employee worked as needed (this option is used by other states).
4. An intermittent classification which allows the employee to work ten (10) months of the year.

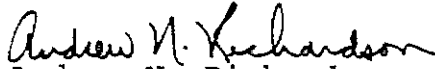
The use of private temporary employment services to provide staff is not a highly desirable option. Current contracts for office staff pay less than the state. Since many of our current temporary staff would seek employment through these services, this could create a recruitment and retention problem due to the nature and complexity of the work.

The proposed amendments regarding this issue, if promulgated, would have a far-reaching negative impact on the Bureau's service to the public and budget. The utilization of temporary staff by the Bureau has been successful. We are currently working with the Division of Personnel staff to develop a solution to this problem. Until a solution has been implemented, we urge you not to approve the amendments to the Administrative Rule involving the use of temporary-type staff.

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Should you have any questions, please contact me or
Thomas K. Rardin, Personnel Administrator.

Sincerely,


Andrew N. Richardson
Commissioner

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Enclosure

cc: The Honorable Ken Heckler, Secretary of State
Daniel Light, Director - UC Division
Anthony Selario, Director - ES Division

COMPARISON OF POSITIONS USED VS FUNDED POSITIONS

