WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: Division of Personnel TITLE NUMBER: 143

AMENDMENT TO AN EXISTING RULE: YES X, NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

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

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

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 133

SECTION 64-2-3, PASSED ON March 11, 1995.

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: June 1, 1995

AUTHORIZED SIGNATURE

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March 28, 1995

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SB 133 authorizing, **Title 143, Series 1,** Administrative rule of the WV Division of Personnel , passed the Legislature on **March 11, 1995.** It is was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 133, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 133** section **64-2-3.** The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE RULE

DIVISION OF PERSONNEL

Chapter 29-6-10
Series I
(1995) amended

Subject: Administrative Rule of the West Virginia Division of Personnel

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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 - April 18, 1995.

1.04. Effective Date - June 1, 1995.

Section 2. Preamble. The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness. All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.

Section 3. Definitions

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

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 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.

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

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

28) 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/her designee.

29) 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.

30) Discretionary: Open to individual choice or judgement.

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

32) Division: The Division of Personnel.

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

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

25) 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, 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.

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

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

65) Pay Increment: 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.

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

58) Minimum Qualifications: The least experience and/or training required by the State Personnel Board for employment in a class of position and admission to an examination for that class of position.

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

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

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

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

63) 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.

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.

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

67) Per Diem: A daily allowance.

68) 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.

69) 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.

70) 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.

71) 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.

72) 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.

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

74) 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.

75) 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.

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

77) 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.

78) 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.

79) 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.

80) 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.

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

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

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

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

85) 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.

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

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

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

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

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

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

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

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

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

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

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

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

99) Veteran: Any person who has fulfills the requirements of one of the following conditions:

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

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

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

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

1. completed 24 months of continuous active duty or the full period called or ordered to active duty, or 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.

100) 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.

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

102) 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.

103) 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/she would have been eligible for original appointment, promotion, transfer, or demotion, to a position of the new class while serving in the position as previously allocated. If ineligible to continue in the position, he/she may be transferred, promoted, or demoted by appropriate action in accordance with the provision of this rule as the Director may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he/she 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 by the Division of Personnel to allocate the position to its proper classification.

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

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

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

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

4.07. Position Reallocation - Whenever substantial changes occur in the duties and responsibilities assigned to a position , the Director shall reallocate the position to its proper class. The incumbent or the appointing authority may seek a reconsideration of the allocation action by submitting a written request to the Director within ten (10) calendar days of the effective date of the action .

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. .

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/her approval any revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum and maximum rates of pay for

each grade and a plan of implementation. The 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 is determined by the pay grade to which the classification of the position has been allocated. All employees, including those serving in positions on a part-time basis, shall be paid in proportion to the actual time worked.

(d) Additional Pay - Except for authorized overtime, Board approved pay differentials, or other statutorily required and/or authorized payments, 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 an agency makes salary adjustments and advancements in accordance with this rule, its

fiscal officer shall certify that funds for this purpose are available.

(f) Salary Adjustments

1. New Plan

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

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

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

2. Pay on Reclassification

a. Higher minimum

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

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

b. Lower Minimum

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

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

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

4. Pay Differentials - The Board, by formal action, may approve the establishment of pay differentials to address

circumstances such as class-wide recruitment and retention problems, regionally specific geographic pay disparities, 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.

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

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

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

(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; and,

(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) of this rule.

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 shall be reduced to at least the maximum pay rate of the new classification. The employee's salary may remain the same if his/her pay is within the pay range of the new classification, or his/her pay may be reduced to a lower pay rate in the new range.

5.07. Pay on Lateral Class Change - Any employee who receives a lateral class change shall be paid the same salary received prior to the change.

5.08. Salary Advancements

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

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

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

(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 any increase 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/she 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 include: written tests, performance tests, ratings of training and experience, oral examinations, job simulations, or

other assessment procedures shown to be related to the content of the job and/or to be predictive of successful job performance.

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

6.02. 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/she shall make every reasonable effort to attract qualified persons to compete in these examinations. Notices of examinations and other publicity may be restricted to the places where additional eligibles are needed. Public announcement of examinations shall specify the title and salary range of the class of position, the duties to be performed, the minimum qualifications required, the final date on which applications will be accepted, and all other conditions of competition.

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/her name from a register or certification, or refuse to certify any eligible on a register if:

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

2. he/she is so disabled as to be rendered unfit for

the performance of the duties of the class;

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Director shall promptly notify a disqualified applicant of such action, and shall notify an applicant who is not admitted to an examination because of failure to meet the preliminary requirements by letter to his/her last-known address. Applicants disqualified under the provisions of sections 6.04(a) 4, 5, 6, and 7 of this rule are permanently disqualified from applying for an examination.

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/her, and may also arrange for the use of public buildings in which to conduct the examinations. The Director shall provide for the compensation of monitors and assistants in accordance with the approved budget for that purpose.

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

6.06. 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 . Failure in any part of an examination may disqualify the applicant in the entire examination and may disqualify him/her from participation in subsequent parts of the examination. All applicants for the

same position shall be accorded uniform and equal treatment in all phases of the examination procedures.

(b) Any veteran (as defined in Section 3 of this Rule) who claims veteran's preference and who has made a passing grade in an examination shall have five points added to his/her final earned score. An additional five points shall be added to the augmented earned score of veterans with a compensable service-connected disability or those who are awarded the purple heart. Persons claiming veteran's preference or disability preference must submit satisfactory proof of their service or disability 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 the pertinency of the training.

6.08. 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.

6.09. Notice of Examination Results - Each applicant passing all parts of the examination shall be notified by mail by the Director of his/her 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/her relative position on a register. The Director shall notify an applicant who fails any part of the examination or the total examination.

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

6.11. Adjustment of Errors - If, within thirty days after receipt of his/her 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, the Director shall promptly correct that error. The Director shall send formal written notice of the correction to the applicant. These corrections of errors shall not invalidate any certifications or appointments made prior to corrections of the errors.

6.12. Examination Records - The Director is responsible for the maintenance of all records pertinent to the examination program in accordance with official retention schedules and shall hold the records in confidence as specified in W.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 these persons shall be placed on the register in the order of their final ratings starting with the highest.

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

7.02. 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. The Director may determine that a register is 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/she shall notify each eligible remaining on the register to this effect by mail to his/her last-known address.

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

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

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

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

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

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

(e) When a register is declared null and void by the Director, he/she shall notify the affected persons 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/her last known address;

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

4. if an offer of a probationary appointment for the class for which the register was established in a location for which he/she 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; or

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

(c) The Director shall notify the eligible by mail to his/her last-known address of this action and the reasons for the action. All notices of changes of address shall be filed in

writing by eligibles with the Director. The Director shall reinstate an eligible's name on the register upon showing of cause satisfactory to the Director or in accordance with a decision of the Board upon appeal as provided in 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 this subsection. Nothing in this subsection 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 on the competitive examination. The Director may certify additional names at his/her discretion.

2. If the competitive register established as a result of a Division of Personnel examination for a specific class of position is exhausted, the Director may certify names from the register, or registers, most appropriate. If there is no register which the Director considers appropriate, then the Director may certify and submit names from a register established as described in Section 7.01 of this rule.

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

requests in writing that his/her name be retained for certification from the register or registers. If a laid off permanent classified state employee receives a probationary or permanent appointment to a classified position, that employee is no longer eligible for appointment from any preference register.

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

(d) If in the exercise of his/her 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/she has made from the register, written request may be made of the Director that the name of the eligible be omitted from any subsequent certification of the same appointing authority from the same competitive register. The name of the eligible shall thereafter not be certified to the appointing authority from that register for future vacancies in that class of position, or from subsequent registers established for that class of position. However, upon change of the person occupying the position of appointing authority, the Director shall reinstate the name of that person for certifying purposes and shall inform the agency of the reinstatement. If, subsequently, the eligible is interviewed by the agency and rejected once for the same position, his/her name shall not again be certified for that position to that agency during the tenure of the then incumbent appointing authority.

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

8.03. 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) The Director of Personnel may approve a request for

selective certification by gender if the appointing authority provides written justification which clearly shows that only persons of the required gender can perform the duties of the position and the request has been positively viewed by the Human Rights Commission.

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

(d) The Director may determine, for certain unskilled or semiskilled job classifications for which no previous education, training, or experience is required, that eligibles may be selected for certification by lot except for preference certifications. In such cases, all eligibles 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 is 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 employing 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/she or she is appointed, the Director shall withdraw the erroneous certification and make a correct certification . If a certification is to fill more than one position, the Director shall withdraw only that portion of it pertaining to positions for which applicants have not been notified that they are appointed .

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

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

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

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

Section 9. Appointments

9.01. 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/she passes the examination. If recommended by the appointing authority, he/she 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. The appointing authority shall, within thirty days after the examination, separate from employment any employee who fails to pass the qualifying examination unless there are no available eligibles on the register for the class, in which case his/her employment may be continued but he/she must be separated from employment within thirty days after certification of available eligibles.

(d) The appointing authority shall, within thirty days of the date of affiliation, separate from employment any person employed in such a position for less than six months preceding that date of affiliation unless there are no available eligibles on the register for the class, in which case his/her employment may be continued but he/she must be separated from employment

within thirty days after certification of available eligibles, provided, however, that he/she may be given a probationary appointment if he/she has passed an open-competitive examination for the class and is eligible for appointment within the provisions of Section 9.02 of this rule.

(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/her decision on this matter for the records.

9.02. Original Appointments

(a) Appointing authorities shall make all original appointments to classified positions in accordance with this rule. An appointing authority shall select for each position first from the eligibles on an appropriate preference register. Upon exhaustion of the preference register, the appointing authority shall select for each position from the top ten names on the register, including any persons scoring the same as the tenth name, or any persons scoring at or above the ninetieth percentile on the competitive examination, as provided by Section 8.02 of this rule. The appointing authority may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the appointing authority offers an objection in writing based on 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 may interview them. Final selection shall be reported in writing by the appointing authority to the Director.

(c) If the eligible selected declines the appointment, the appointing authority shall transmit evidence of declination and other such data to the Director for the permanent record. The Director may consider an eligible as having declined appointment if the eligible fails to reply after five days in addition to the time allowed for transmission of 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/she 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. The position must be classified and minimum qualifications established for the position in accordance with this rule before provisional appointments may be made. No provisional appointment shall be continued for more than thirty days after an appropriate register has been established for the class of position and in no event for more than 6 months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

(b) Employees not covered by Section 9.02 of this rule and all appointments made without a register subsequent to the effective date of this rule but prior to the holding of examinations shall be regarded as provisional appointments.

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

9.04. 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 candidates arranged in the order of final scores on the examination. Appointing authorities shall make their selection for each position from the ten highest available names on the list or from the names of any persons scoring at or above the ninetieth percentile. Once a person has received an intermittent appointment in accordance with this sub-section he/she may be given successive intermittent appointments without regard to standing on the list.

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

9.05. Temporary Appointments -

(a) If an employee is needed for a temporary period, the Director shall make a certification 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. The Director shall make the certification in the manner prescribed in Section 8 of this rule. Appointing authorities shall make temporary appointments in the same manner as prescribed in this rule for probationary appointments.

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

9.06. Limited Term Employment - Appointing authorities may employ individuals 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.

9.07. 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/her position and to adjust himself to the organization and program of the agency. It is an integral part of the examination process and the appointing authority shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work.

(b) Appointing authorities shall make all original appointments to permanent positions from officially promulgated registers for a probationary period of not more than one year. The Board shall fix the length of the probationary period for each class of position. The appointing authority shall notify the Director of Personnel when a probationary period has been completed and permanent status has been granted. This section 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 begins 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. If the appointing authority determines that the services of the employee shall be retained, the appointing authority shall notify the employee and the Director of Personnel of the action no later than the last day of the probationary period.

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

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/she meets the minimum qualifications of the lower class. However, the appointing authority may not take such action 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 appointing authority or his/her designee. The appointing authority shall not take such action prior to completion of one-third of the probationary period. 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 appointing authority shall not transfer an employee during his/her probationary period to a position in another class nor may an appointing authority transfer an employee, certified to a vacancy on a geographic selective certification in accordance with the provisions of Section 8.03 of this rule, from that geographic area to any other geographic area or class.

10.05. Dismissal during Probation

(a) If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with Section 12.02. of this rule. If the appointing authority gives the fifteen calendar days notice on or before the last day of the probationary period, but less than fifteen calendar days in advance of that date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status. This extension shall not apply to employees serving a twelve month probationary period.

(b) The Director may restore the name of a probationary appointee who has been dismissed to the register from which he/she 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, an appointing authority will fill a vacancy 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, appointing authorities should make an effort to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees.

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

11.02. Promotion by Competitive Examination

(a) If it is determined by the appointing authority to fill vacancies in a particular class of position by promotion by 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) The Director shall place the names of all employees who receive a passing grade on a promotional register for the class of position in order of their examination ratings.

(c) If a promotional and an original register exist, the Director shall certify the same number of names from each register in accordance with Section 8 of this rule. The appointing authority may make his/her 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 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. An appointing authority may demote a permanent employee after presenting the employee with the reasons for the demotion stated in writing, and allowing the employee a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his/her designee. The appointing authority shall file the statement of reasons for the demotion and the reply with the Director of Personnel. An appointing authority may demote a probationary employee as provided for in Section 10.04 of this rule.

11.05. Lateral Class Change - An appointing authority may move a permanent employee from a position in one class to a vacant position in another class in the same pay grade if 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, appointing authorities may transfer 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 at any time. In the case of inter-agency transfers, annual and sick leave and all seniority rights shall be transferred with the employee.

(b) Appointing authorities shall report all inter and intra-agency transfers within a class to the Director on appropriate forms at the time of the transfer. The Director shall approve transfers to comparable classes prior to the transfers and shall require that the employee 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 for the resignation 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/her. If a written resignation cannot be obtained, the appointing authority shall notify the Director of Personnel in writing of the resignation of the employee and the circumstances of the resignation.

12.02. Dismissals - The appointing authority, fifteen (15) calendar days after notice in writing to an 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/her 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 or when the cause of dismissal is gross misconduct. An appointing authority may dismiss an employee 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 rational nexus to the employee's performance of his/her 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 his/her designee. The eight (8) calendar day notice is not required for employees in certain cases when the public interests are best served by withholding the notice. The appointing authority shall file the statement of reasons for the suspension

and the reply, if any, with the Director of Personnel.

12.04. 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 appointing authority has determined the number of positions to be abolished and the Board has approved the organizational unit to which the layoff will apply, the order of separation shall be applied in the following manner:

1. employees without permanent status in the same class or classes identified for layoff in the following order: emergency, ninety-day exempt, student, seasonal, 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/her 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 to jobs within the county wherein his/her last place of employment is located or within a county contiguous thereto. The agency shall notify any laid off employee who is eligible for recall to a position under these provisions by certified mail of the vacancy. It is the responsibility of the employee to notify the agency of any change in mailing address.

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

(j) Salary Reductions for Layoff. Salary reductions resulting from provisions of this subsection shall follow Section 5.06 of this rule for pay on demotion.

(k) Reporting. The appointing authority shall report the names of all employees who are to be laid off to the Director in

writing no later than the date notification of the layoff is mailed to the employee .

(l) Appeals. Employees shall file appeals 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, appointing authorities shall impose like penalties 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/her duties as recorded by his/her 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/she has been certified by the Director as meeting the current minimum qualifications as to training and experience of the class status of position to which he/she is being appointed. Prior to making the certification, the Director may require the employee to pass a qualifying examination.

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

(c) Any veteran who has been in the armed services of the United States and who has been granted military leave from one of the agencies and who returns to the Agency shall be granted all within-grade salary adjustments and may be granted salary advancements he/she would have received had he/she remained in active status in the classified service, and he/she shall be

credited with all annual and sick leave accumulated and unused at the time the military leave began. 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/her name withdrawn from a register at his/her request may have his/her 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/her examination score is still valid. His/her rank on the register shall be determined by his/her 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/her request to the Director in writing and shall furnish whatever information the Director may require;

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

3. No person may be reinstated to a register from which he/she 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/her qualifications. The Director shall consider the appeal if submitted in writing and received not later than fifteen (15) calendar days following the date the rejection notice was postmarked. The Director may admit an applicant to an examination pending the outcome of the written appeal. Admission to an examination under such circumstances shall not constitute assurance of a passing grade with respect to any portion of the examination process.

(b) Decision - Within thirty (30) calendar days after a properly submitted appeal is received, the Director shall report his/her decision in writing to the applicant. The Director shall determine that uniform rating or review procedures have been applied. A rating in any part of an examination shall not

be changed unless the Director finds that an error has been made. Any correction resulting from the appeal 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/she shall make the request on appropriate forms specified by the Director. In no event shall a classified service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

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 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/her agency. The work schedule shall specify the number of hours of actual attendance on duty for full-time employees during a workweek, the day and time that the workweek begins and ends, and the time that each work shift begins and ends. The work schedules and changes 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 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 under the provisions of W.V. Code §21-5D-1 et seq., the Parental Leave Act. The employee shall request annual leave in advance of taking the 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. 30-day emergency, per diem, student, seasonal, or 90-day exempt employees shall not accrue annual leave.

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

3. Annual leave accrued by 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 quarter (¼) hour. Additional leave shall be in multiples of a quarter hour.

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

1. An employee may elect to be paid in semi-monthly installments 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/her 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/her employment continued. No deductions may be made for contributions toward retirement from the lump sum payment; or

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

(g) Transfer of Annual Leave

1. When a classified employee transfers 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 granted in circumstances when sick leave or the sick leave allowance for an employee's immediate family is exhausted. The provisions of Section 15.04 (g) of this rule regarding the necessity for a physician's statement when sick leave is used apply when annual leave is used under these circumstances.

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 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 quarter (¼) hour. Additional leave is charged in multiples of one quarter hour.

(d) Maximum Charge - The maximum charge against sick leave is one work year per substantially continuous absence. The appointing authority may at his/her discretion grant additional accrued sick leave if the employee's disability, as verified by a physician, is not of such a nature as to render the employee permanently unable to perform the essential duties of the position.

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

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

2. All Other Separations - All accumulated sick leave shall be cancelled as of the date of separation. If the employee returns to work within twelve (12) calendar months, including the first working day the reinstatement could be accomplished, all cancelled sick leave shall be restored. However, if the employee returns to work after more than twelve (12) calendar months from the effective date of separation of employment, no more than thirty (30) days of cancelled sick leave shall be restored. If an employee is recalled from a layoff all cancelled sick leave shall be restored.

(f) Granting - Accrued sick leave shall be granted to employees for the following reasons:

1. Illness - Sick leave shall be granted in the event of an illness of, or injury to, an employee which incapacitates him/her from performance of his/her duties.

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

3. Exposure to Contagious Disease - Sick leave 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 shall be charged to sick leave. Reasonable travel time for the appointments may also be charged to sick leave not to exceed a total of three hours per occurrence.

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

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 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/her job or that the employee's absence was due to reasons provided in Section 15.04.(f)6. of this rule for a member of the employee's immediate family.

3. In the absence of a prescribed physician's statement form, the entire absence shall be charged to unauthorized leave 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 is grounds to terminate further sick leave benefits and the appointing authority shall place the employee on unauthorized leave. The appointing authority shall give the employee 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 on a prescribed physician's statement form regardless of the length of absence.

(h) Return At Less Than Full Duty - The appointing authority may permit an employee to return to work from sick leave at less than full duty, but the terms of return 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/her job.

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

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

(a) the employee cannot perform the essential duties of his/her job;
(b) the nature of the employee's job is such that it may aggravate the employee's medical condition; or,
(c) the approval of the request would seriously impair the conduct of the agency's business.

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

(i) Transfer of Sick Leave

1. When a classified employee transfers 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.

(j) Illness While on Annual Leave - An employee who becomes ill and who is admitted to a hospital or has medical services performed in an emergency room while on previously approved annual leave may request that all or part of the time spent in a hospital or emergency room be charged to sick leave. The employee 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. The appointing authority must give the employee prior written notice of the requirement for appropriate substantiation.

15.06. Unauthorized Leave - When an employee is absent from work without authorization for sick or annual leave, the appointing authority shall dock the employee's pay in the next 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. The appointing authority shall use unauthorized leave only in cases when the employee fails to obtain the appropriate approval, according to agency policy, for the absence. The appointing authority shall transmit notice of the action in writing to the Director of Personnel.

15.07. Overtime Work and Holiday Work - An appointing authority or his/her designated representative may require an employee to work in excess of the prescribed working hours or on holidays when the work is considered necessary to the public interest. Compensation shall be made in accordance with the Fair Labor Standards Act of 1986 and W.V. Code §21-5(C)-1 et seq.

15.08. Leave of Absence Without Pay

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

Written approval of the appointing authority is required in all cases. Approval of personal leave is discretionary with the appointing authority.

(b) Family Leave - Upon exhaustion of all annual leave, any employee hired for permanent employment who has worked for at least twelve consecutive weeks is 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. The twelve month period begins on the initial date an employee is granted leave under W.V. Code §21-5D-1 et seq., the Parental Leave Act, or P.L. 103.3, the Family and Medical Leave Act of 1993.

1. In the case of a child, spouse, parent or dependent who has a serious health condition, the 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 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/practitioner on the prescribed physician's statement form stating that the employee is unable to perform his/her 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/her duties.

2. The appointing authority shall, at least 15 days prior to, if possible, but no later than five (5) days following the expiration of the employee's sick leave, mail to the employee a written notice of the employee's right to a medical leave of absence without pay and informing him/her that the leave will not be granted if he fails to apply within the time limits specified in section 15.08.c.1.a. of this rule.

(d) End of Leave

1. At the expiration of a leave of absence without

pay, the employee shall be returned to duty to either his/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 absence as provided in section 15.08.(b) of this rule, 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 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 payment the employee shall pay or assign to his/her employer the net value of the sick and/or annual leave paid. Employees sick leave and, if used, annual leave shall be restored on a day-for-day basis which corresponds to the net value of the sick and/or annual leave paid. If the employee fails to pay or assign to the employer the net value of the sick and/or annual leave paid, then the employer shall deduct from the employee's subsequent wage payments an amount equal to the net value of the sick and/or annual leave paid. Upon payment of this amount the employer shall restore sick and/or annual leave 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 of the position held at the time of illness or injury. A written statement from a physician/practitioner approving the injured employee's return to regular employment is 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) of this rule shall also apply to leave taken under the provisions of Section 15.09 of this rule.

15.10. Military Leave

(a) All officers and employees of the State who are members of the National Guard or of any of the Reserve Components of the Armed Forces of the Federal Government are entitled to a leave of absence from duty without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades during business hours ordered by proper authority, or for field training or active service for 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/her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation during the same period. An employee need not exhaust all annual leave or sick leave. Furthermore, the leave of absence is considered as time worked for the agency in computing seniority, eligibility for salary increase and experience with the agency. The terms of this 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) 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/her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from federal or state sources during the same period.

(c) Other than as provided in 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/her service with the agency. Upon completion of and discharge from the armed services and within the applicable time period prescribed by federal statute, rule, or regulation regarding return to employment, the employee has the right to resume his/her service with the agency without any prejudice to his/her status, merit rating or standing by reason of such absence, in accordance with Section 12.07(b) of this rule. An employees shall be credited with all annual leave and sick leave not used at the commencement of his/her 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/she is not performing the duties of his/her position with the state because of the services with the armed forces of the United States; or

(3) As having precedence over the provisions of any applicable federal statute, rule, or regulation regarding military leave or re-employment rights with which this 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/she serves upon a jury or appears as a witness before any court or judge, any legislative committee, or any officer, board, or body authorized by law to conduct any hearing or inquiry. This 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 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 are the employees eligible for salary advancements.

(b) Non-subsidized by Agency - A personal leave of absence may be granted for educational purposes in conformance with the requirements of Section 15.08(a) of this rule.

15.13. Supplemental Attendance and Leave Regulations - Each agency shall prepare supplemental regulations as may be required. The 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 this attendance and leave rule together with the agency's own supplemental 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/her 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 by employees. Insofar as practicable the system of performance evaluation in the classified service shall be standardized. The appointing authority shall prepare and record evaluations for all permanent employees at regular intervals not to exceed twelve months. The appointing authority shall consider performance evaluations in determining salary advancements and in making promotions, demotions, and dismissals. The appointing authority shall notify an employee of his/her performance evaluation in writing.

Section 17. Political Activities

17.01. Prohibition of Political Activities

(a) An appointing authority shall not appoint, promote, demote, or dismiss any person in the classified service or in any way favor or discriminate against any person with respect to such employment because of his/her 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/her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

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

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

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 Hatch Act for State and Local Government Employees, 5 USC 1501-8. These provisions shall be made known to classified employees by the appointing authority concerned and they shall adhere to these provisions.

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/her 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/she shall retain the right to vote as he/she may please and to express his/her 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

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.

18.02. Nepotism

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

No employee shall directly supervise a member of his/her immediate family. More specifically, no employee shall review or audit the work of a member of his/her immediate family, or take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his/her immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his/her 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/her authorized agent, that the persons named in the voucher or account have been appointed and employed in accordance with the provisions of this rule. The Director may for proper cause withhold certification from an entire payroll or from any specific item or items on the payroll. The Director may, however, provide that certification of payrolls may be made once every six months, and the certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his/her payroll. In the latter case no voucher for payment of salary to the employee shall be issued or payment of salary made without further certification by the Director.

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

Section 20. Records and Reports

An 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 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., and the rules and orders promulgated in accordance with W.V. Code §29-6-1 et seq. All officers and employees shall furnish any records or information which the Director or the Board may request for any purpose of W.V. Code §29-6-1 et seq.. All officers and employees shall comply with all rules, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by the rules, or orders.

21.02. 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/she considers necessary or appropriate to secure compliance with W.V. Code §29-6-1 et seq., and the rules and orders promulgated under the code.

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/she is an officer or employee of the state, shall forfeit his/her present office or position.

Section 22. Grievance Procedure - An employee hired for permanent employment may file a grievance with the Education and State Employees Grievance Board as provided for in W.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/her 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/her 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

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

March 16,1995

To Members of the State Personnel Board:

Your approval is requested for the final filing of amendments to the Administrative Rule of the Division of Personnel in accordance with the provisions of W.V. Code §29A-3-1 et seq.

Senate Bill 133, authorizing the Division of Personnel to promulgate legislative rules, was passed by the Legislature and is pending signature of the Governor. This Bill of Authorization amended our proposed amendments to the Administrative Rule by deleting the proposed new section 17.01 (h). (A copy of the page from the proposed amendments showing this section is attached.) The remainder of the proposed amendments were approved as submitted.

Once the Rule is final filed and an effective date established, we will print and distribute copies of the Rule to you and to all agencies, bureaus and departments as well as approximately 900 administrators, managers and supervisors in state government and county boards of health. As in the past, we will include a synopsis of the changes with the Rule. We anticipate distribution within four to six weeks.

Thank you for your consideration of this request.

Sincerely,

Robert L. Stephens

BG (Ret) Robert L. Stephens, Jr.
Director of Personnel

BG(Ret)RLSjr:TMC/

APPROVED John A. Canfield 3/16/95
John A. Canfield, Chairman March 16, 1995
State Personnel Board

SENATE BILL NO. 123

(By Senators Manchin, Anderson, Boley, Grubb and MacNaughtan)

[Introduced January 20, 1995; referred to the Committee on Government Organization; and then to the Committee on the Judiciary]

143-1

A BILL to amend and reenact section three, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of personnel to promulgate legislative rules relating to the administrative rule of the West Virginia division of personnel.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-3. Division of personnel.

(a) The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six,

modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

(b) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-eight, modified by the civil service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the civil service commission (civil service system), are authorized with the amendments set forth below:

On page fifteen, section 5.05(d), after the words "established in" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chapter 29-6A of the Code of West Virginia, as amended."

On page fifteen, section 5.06, after the words "established in" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chapter 29-6A of the Code of West Virginia, as amended."

On pages sixteen and seventeen by deleting all of section 5.07.

And,

On page 46, section 13(f) line 2 by striking the words "previously held".

(c) The legislative rules filed in the state register on the

fourteenth day of May, one thousand nine hundred ninety, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety, relating to the division of personnel (civil service system), are authorized.

(d) The legislative rules filed in the state register on the seventeenth day of September, one thousand nine hundred ninety-two, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-three, relating to the division of personnel (administrative rules and regulations of the West Virginia division of personnel), are authorized, with the following amendments:

On page 5, section 3, subsection 42, after the "affected", by striking the word "classified", and inserting in lieu thereof the word "state";

And,

On page 66, subsection 17.01(e)(3), after the words "provisions of" by striking out the words "W.V. Code §3-8-3, §3-3-4 or §3-8-5(e), or serve as a ballot commissioner or election official working inside a polling place; or sell tickets to political affairs to employees in the classified services; or post or distribute campaign literature in a classified employee's worksite; or wear apparel bearing political logos or endorsements during work hours when observed by

or in contact with the public" and inserting the words "sections three, four or five-e, article eight, chapter three of the Code of West Virginia, as amended.

And,

On page 67, subsection 17.04, by striking all of subsection 17.04.

(e) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred ninety-four, relating to the division of personnel (administrative rule of the West Virginia division of personnel), are authorized.

NOTE: The purpose of this bill is to authorize the Division of Personnel to promulgate legislative rules relating to the administrative rule of the West Virginia Division of Personnel.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

143-1

Bill-Personnel, Admin

2192

H. B. 2192

(By Delegates Gallagher, Douglas, Compton, Linch, Faircloth and Riggs)

(Introduced January 23, 1995; referred to the Committee on Government Organization then the Judiciary.)

A BILL to amend and reenact section three, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of personnel to promulgate legislative rules relating to the administrative rule of the West Virginia division of personnel.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-3. Division of personnel.

(a) The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six,

modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

(b) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-eight, modified by the civil service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the civil service commission (civil service system), are authorized with the amendments set forth below:

On page fifteen, section 5.05(d), after the words "established in" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chapter 29-6A of the Code of West Virginia, as amended."

On page fifteen, section 5.06, after the words "established in" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chapter 29-6A of the Code of West Virginia, as amended."

On pages sixteen and seventeen by deleting all of section 5.07.

And,

On page 46, section 13(f) line 2 by striking the words "previously held".

(c) The legislative rules filed in the state register on the

fourteenth day of May, one thousand nine hundred ninety, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety, relating to the division of personnel (civil service system), are authorized.

(d) The legislative rules filed in the state register on the seventeenth day of September, one thousand nine hundred ninety-two, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-three, relating to the division of personnel (administrative rules and regulations of the West Virginia division of personnel), are authorized, with the following amendments:

On page 5, section 3, subsection 42, after the "affected", by striking the word "classified", and inserting in lieu thereof the word "state";

And,

On page 66, subsection 17.01(e)(3), after the words "provisions of" by striking out the words "W.V. Code §3-8-3, §3-3-4 or §3-8-5(e), or serve as a ballot commissioner or election official working inside a polling place; or sell tickets to political affairs to employees in the classified services; or post or distribute campaign literature in a classified employee's worksite; or wear apparel bearing political logos or endorsements during work hours when observed by

or in contact with the public" and inserting the words "sections three, four or five-e, article eight, chapter three of the Code of West Virginia, as amended.

And,

On page 67, subsection 17.04, by striking all of subsection 17.04.

(e) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred ninety-four, relating to the division of personnel (administrative rule of the West Virginia division of personnel), are authorized.

NOTE: The purpose of this bill is to authorize the Division of Personnel to promulgate legislative rules relating to the administrative rule of the West Virginia Division of Personnel.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Rec'd 10/18/95 DR

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations
(Plus all the volunteer help we can get)

TO: Robert L. Stephens, Jr.

AGENCY: Personnel

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 17, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 143 Personnel

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

****

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Norma J. McCutcheon for Judy Cooper

TITLE OF PERSON SIGNING: Asst. Dir. for Judy Cooper

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.